Public sector infrastructure development in Thailand has experienced periods of growth and stagnation. The government of Thailand now seeks to implement a new infrastructure initiative, in part through the passage of legislation relating to public-private partnerships (PPPs). PPPs represent a concerted effort to bring the efficiency of private enterprise together with public resources and oversight in order to streamline and major development projects and reduce their overall cost for taxpayers. Prominent examples of previous PPP projects in Thailand include the Bangkok Mass Transit System (BTS) and the Metropolitan Rapid Transit (MRT).

Lesson learned from past legislation

Until this year, forms and terms of public-private partnerships for public services or works had been governed by the Private Participation in State Undertaking Act B.E. 2535 (1992) (the Previous Act). Uncertainties deriving from lack of clarity and insufficient State support severely limited the effectiveness of the Previous Act and turned away many prospective private investors. For example, the Previous Act omitted clear monitoring techniques by state agencies of PPP projects, raising questions as to when the State should intervene or under what circumstances can the State unilaterally amend the terms of contract. Additionally, stipulations of contract renewal, termination, and penalties for breach of contract were all largely unaddressed.

At a time when the concept of public-private partnerships was a legislative innovation, Thailand appeared as a pioneer in a new mode of infrastructure and public services development. However, implementation of the theory proved difficult, as opaque arrangements fostered by legal ambiguity led to a lack of enforcement and rampant corruption.
Toward a new dynamic

The Private Joint Investment in State Undertaking Act B.E. 2556 (2013) (the Act) came into force on 4 April 2013 and has breathed new life into public-private infrastructure investments. The Act clarifies many of the previous inconsistencies and significantly shortens the feasibility study to the ground-breaking ceremony processing time from a minimum of two years to a mere 7-12 months. The Act also outlines numerous incentives and mechanisms of support for projects including the establishment of a public development fund and the framework for a five-year national PPP strategy. The new Committee of Private Investment in State Undertaking (the Committee) is empowered to act as the central agency responsible for all facets of PPP projects while ensuring compliance with fiscal discipline and adherence to provisions of appropriate risk allocation. Assessments by a specially-assigned Supervision Committee in conjunction with professional consultants from the private sector will be conducted throughout the implementation process of each PPP project.

Conclusion

The Act paves the way for a fresh PPP dynamic in a context of growing tension between strong infrastructure needs and increasing concern for budgetary discipline. Announcements of new “Mega Projects” accompany concrete measures, adjusting legal and regulatory framework necessary for their development, which is encouraging to investors and financiers. In addition, the broadest conception of PPP as a method of public management could conceivably cover areas such as water and waste services, management of hospitals, and educational institutions. However, it is not yet certain that the Act allows for extension beyond “mega” sectors, as, absent specific exceptions, a 20 billion baht minimum investment is required for a project to be considered applicable to the public-private partnership legislation.

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