

INFRASTRUCTURE REPORT

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1. Over the years Vietnam has made substantial investments in infrastructure. However, despite this high level of investment, Vietnam's infrastructure is still regularly rated by businesses and chambers of commerce in Vietnam as a constraint on growth.
2. It is difficult for the State to build new power plant capacity. The Government is trying to reduce public spending. EVN has some appreciable debts. And PetroVietnam is trying to sell interests in many of its projects rather than to build new ones.
3. There are currently at least 15,000 MW of power at some stage of development by foreign private sector developers. This represents potential investment of about \$25 billion. Assuming that these projects are at least as efficient as projects built by the State, this would save the State from having to find an equivalent amount of money.
4. Some private sector power projects have been licensed recently, such as the Vinh Tan 1 project, but many others still struggle. Some projects have been under negotiation for many years. Others have just signed MOUs with the Ministry of Industry and Trade.
5. In the refinery sector, project financing was arranged for an amount of \$5 billion in respect of the Nghi Son Refinery, which demonstrates that with the right structures, the foreign private sector can assist in bringing in substantial funds into Vietnam to build energy infrastructure.
6. The VBF infrastructure group would like to focus on a few items that could encourage more foreign private investment in the sector.

No.	Topic	Context	Proposal
SOEs			
	Asset Sales	<p>EVN, PetroVietnam and Vinacomin have all been instructed by the Government to dispose of certain assets, especially non-core assets:</p> <ul style="list-style-type: none"> - PetroVietnam is willing to sell interests in pipelines, refineries, fertiliser plants etc. - EVN is willing to sell interests in Vinh Tan 3 etc. - Vinachem wants to sell its 11% interest in the Long Son petrochemicals plant. 	<p>For a foreign entity to contribute capital to the Vietnamese economy by buying SOE assets is difficult because assets are difficult to value, liabilities are hard to determine, prices tend to be set by investment cost not market value, and approvals are difficult.</p> <p>In order to overcome the issues, the Government could consider public bids for specific assets of SOEs, just as it has conducted bids for the equitisation of SOEs themselves. Bid documents</p>

			would help to delineate values and risks.
	Equitisations	Some equitisations of SOEs in the energy sector, such as PV Gas, could be reopened.	Given the history, it would be provide comfort to bidders through break fees
	Competition	Vietnam pays an inefficiency cost resulting from lack of competition in the sector. While the market is slowly being created, some aspects of it could be created faster and reduce risks for the State	Private to private sales of electricity (e.g. foreign-owned BOT power plants to manufacturing facilities without passing through EVN) could be contemplated. Foreign owners of manufacturing plants could take some of the currency risks.
BOT			
	Foreign exchange (FX) guarantee	No law provides for the FX guarantee ratio. Official Letter 1604 of the Prime Minister provides that the Government will only guarantee convertibility of 30% of Dong revenue. BOT projects are currently not bankable without effective FX guarantees – as all projects to date have shown. It does not matter how good the BOT or PPP structure is otherwise, if this element is not addressed.	To amend Official Letter 1604 to permit the FX guarantee ratio of 100% or set out firm guidelines for what criteria have to be met for a 100% guarantee to be available. It would also be useful for the Government to look to establish a fund for sovereign and sub-sovereign guarantees against which projects may draw (per the project contract terms). This would increase the bankability of the projects and will allow the State to better control its debt profile.
	Mortgage of land use rights and assets attached to land to foreign lenders	Mortgage of land use rights and assets attached to land to foreign lenders is not permitted under the Land Law. This restriction affects the bankability of not only BOT projects but also other infrastructure projects.	To issue regulations clarifying that banks licensed in Vietnam can hold mortgages of land use rights as security agents for foreign lenders. Unfortunately, the Draft Land Law currently at the National Assembly does not clarify the issue.

	Mortgage of land exempted from land rental	Land cannot be mortgaged if all payments for the land have not been made. This restriction has been interpreted to prohibit mortgages of land for BOT projects because BOT projects are exempted from land rental. This unnecessarily affects the bankability of BOT projects	The implementing regulations should make it clear that land exempted by law from land rental is fully paid. The Draft Land Law currently at the National Assembly suggests that exempted land will be treated as land whose land use fees have been paid on an annual basis.
	FX guarantee for BOT projects in water sector	Decree 108 allows FX guarantee for BOT projects. However, the same Decree 108 does not allow BOT projects in some sectors (e.g. the water sector).	To amend Decree 108 to permit water BOT projects to be entitled to FX guarantee. One of the drafts of the PPP regulations has attempted to deal with this.
	Feasibility study of tender projects	Decree 108 sets out that the ASB will prepare project proposal or feasibility study for tender projects. However, the selected investors are still required to prepare the feasibility study of the project again for the licensing purpose.	The implementing regulations should clarify and avoid the repeat of work and incurrence of cost for the project.
	Double licensing of BOT procedures	During the contract negotiation period, the Project Documents are discussed extensively with, and agreed by, the relevant ministries and provinces. After the Project Documents are initialed by the ASB, and the IC application is submitted to MPI, the Project Documents are reviewed by the ministries again. This takes time and costs investors and also the Government.	To amend Decree 108 to stipulate that after the Project Documents are agreed by the relevant ministries and initialed by the ASB, the IC will be promptly issued without going through a 2 nd round of review by the ministries.
PPP			
	The approval process for tenders is cumbersome	Currently, many approvals require decisions by the PM on projects.	The Government needs a streamlined decision making process wherein the key commercial and risk

			sharing allocation between the private sector and public sector is determined PRIOR to tender. The tender process should then be based on documents that reflected that approved process and the final approvals are then examining whether the initialized document complies with the approved project plan.
	Level of State Support	The level of support from the Government to a project is capped (at 30% under Decision 71).	The level of support from the Government to a project should be flexible. Different project types have differing levels of need. That need should be determined through feasibility studies, weighing of course the value for money for Government to determine if the project as a PPP delivers better value than a traditional procurement. If so, the level of State Support should then be measured but not limited. One of the drafts of the PPP regulations currently circulating has a 50% cap.
	PPP Steering Committee	Tough decisions are often needed on whether a project proposed by the ASB meets the project selection criteria	We would suggest a function where someone provide oversight to PPP projects. That's too politically difficult for a single ministry.
	Fund for viability gap funding (<i>VGF</i>)	There is currently no clear mechanism for VGF	We recommend that VGF on PPP be backed by a state fund that ensures there is balance of budget to fund the VGF commitments across projects.
	Feasibility studies	Currently, project development goes through pre-FS and FS requirements that are based on the laws	The PPP drafting team should introduce PPP type feasibility study requirements. This will

		<p>on construction, which may not be specific or relevant for infrastructure projects. In the meantime, the BOT regulations set out clear terms and conditions of pre-FS and FS.</p>	<p>make it more relevant to Government, easier for the authorised state agencies to manage and clearer for the private sector.</p>
BOT/PPP			
	<p>Combination of BOT and PPP regulations</p>	<p>BOT projects are a type of PPP. There is therefore a logic to combining the two. However, the combination would cast some doubt to the current BOT framework underlying some BOT projects, which either reached financial close or are under negotiation.</p>	<p>BOT projects have a track record in the power sector in Vietnam. PPPs do not have that track record. Therefore there is a danger that combining the two will prevent future BOTs before PPP has been proven to work.</p> <p>At a minimum all BOT projects that are currently being negotiated should be grandfathered.</p>