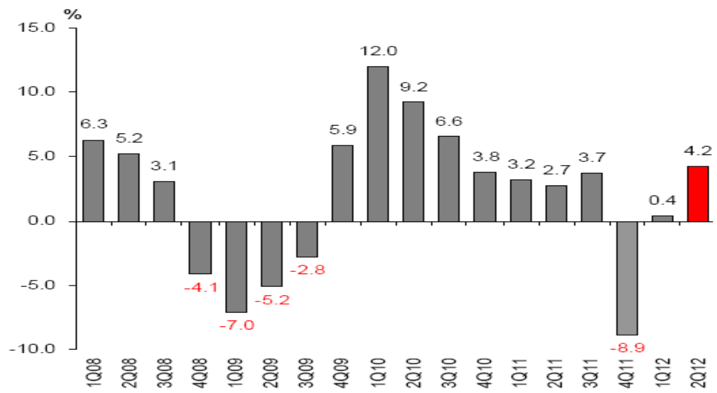
Thailand

1. General Overview

Thailand has a population of more than 66 million people, with a total area of 513,120 km^2. With a well-developed infrastructure, a free-enterprise economy, generally pro-investment policies, and strong export industries, Thailand enjoyed solid growth from 2000 to 2007 - averaging more than 4% per year - as it recovered from the Asian financial crisis of 1997-98. However, the global economic downturn in 2008 cut Thailand's exports severely, which in turn caused economic growth to fall to 2.2%. Following the 2008 downturn in the world economy, growth rates in Thailand have been uneven, but now look to be rebounding strongly with GDP growth in Q2 2012 reaching 4.2% as shown in Fig.1, and economic growth projected to top 5% in 2013. The US credit rating agency Standard & Poor's (S&P) maintained Thailand's existing credit rating for 2013 at BBB+ with a stable outlook for the country going forward. In an effort to maintain strong growth, the government intends to expedite major investments in both ongoing and new projects in order to raise the quality of life and increase competitiveness. This strategy will require national fiscal discipline, transparency, and accountability.

In Thailand, PPP is a term that has historically been used in a broad sense to cover concession-based private investment in public infrastructure, made on the basis of traditional project finance structures. These traditional forms of project financing have played a major role in many sectors of the Thai economy for more than a decade, most notably in the energy, telecommunications, and transport sectors. According to the Global Competitiveness Report 2011-2012, Thailand's infrastructure is ranked 42nd out of 142 countries indicating that infrastructure is developing, but that there remains room for improvement.



2. Institutional and Regulatory Framework

A fundamental policy instrument used by the government to guide public-private participation and investment is the "Public Participation in State Undertaking Act B.E. 2535 (1992)" also known as the "PPSU Act." This act was brought in to regulate PPP activities which utilize public assets in projects exceeding one billion baht (approximately USD 33.3 million) in value. However, since the main purpose of the current PPSU act is to prevent government corruption in granting rights to private investors for operation or use of state properties, rather than to provide an enabling environment for PPP projects, only certain types of PPP project involving in state properties (e.g. Build-Operate-Transfer (BOT) and Build-Transfer-Operate (BTO) schemes) are covered by the Act. Several other types of scheme such as Build-Own-Operate (BOO) and management contracts are not covered. To continue to promote private investment, the Ministry of Finance (MOF) has drafted a new PPP act with the objective of providing better support for PPP development.

In Thailand, a long term concession agreement between the relevant government authority and the investor is seen as a common feature of almost all project financing. The type of structure used depends on the nature of the project being implemented and the relevant governmental authority. The most common structures for project financing are as follows:

A. Build - Own - Operate (BOO)
B. Build - Transfer - Operate (BTO)
C. Build - Operate - Transfer (BOT)

The PPSU Act (1992) sets requirements and procedures for granting concessions and private participation in state undertakings. This is to ensure transparency in the approval process of large public projects by mandating that approval authority shall not lie solely within any single government agency. The 1st and 2nd Ministerial Regulation B.E. 2537 (1994), which was issued pursuant to the PPSU Act, describes the procedure for developing invitations for private participation, topics for the private sector's proposals, invitation methods, the selection procedure to be conducted through bidding and the determination of bid or performance security. The announcement of the Office of the National Economic and Social Development Board (NESDB), regarding submission of the results of project studies, analyzes the topics that must be covered in the feasibility studies for project approval. The PPSU Act also identifies the qualifications of the consultants hired by project agencies to assist with projects exceeding 5 billion baht in size.

The government usually finances all civil works either through the fiscal budget or through borrowing from multilateral institutions. Other kinds of government contribution, e.g., equity, are also allowed under each project agency's Establishment Act. However, the Thai government cannot provide any guarantee for funding to the private sector. The funding guarantee is only provided for government agencies and State Owned Enterprises.

Thai citizens are allowed to own immovable assets, while foreigners can obtain ownership for land and buildings under conditions specified in the Land Law, the Private, Commonly-owned Housing the Act, the Investment Promotion Act, and the Industrial Estate Authority of Thailand Act. In the case of PPP projects, the ownership of assets depends on the particular project agency's Establishment act. For example, the MRTA (Mass Rapid Transit Authority) Act specifies that the ownership of the assets will be transferred to the MRTA once construction is completed. Therefore, the ownership of land and buildings adheres to the government. Generally, the government is allowed to acquire land or immovable assets for public utilities or in the public interest according to the Expropriation of Immovable Property Act B.E. 2530 (1987). However, the objectives of land uses and boundary of the required lands of each project must be specified and issued in a Royal Decree. A compensation committee will then be appointed to set the property value and compensation amount.

3. Recent Developments in PPP

The amendment of the current PPSU Act has already been passed by both the Senate and the House of Representatives. The final draft shall be signed and be announced in the Government Gazette which is expected to become effective by early 2013. The government expects this updated PPP law to accelerate the development of public-private ventures and to significantly reduce project construction times due to a newly streamlined regulatory process. The draft new PPP law contains the following key provisions:

- A Committee of Private Investment in State Undertakings, chaired by the Prime Minister, will be appointed to set up a five-year strategic plan for the Cabinet approval and to approve the PPP project principle.
- The five-year national PPP plan must include investment policy in public projects and appropriate PPP project types, as well as project priority. The target contribution from each financial source such as national budget or private funds must be also defined in order to ensure accountability and fiscal discipline.
- The State Enterprise Policy Office (SEPO) will act as a secretariat office for the above committee as a central PPP unit. The key roles of this unit are to prepare strategic plans, provide recommendations on project feasibility, and provide a database and information about PPP schemes.
- The project agency must hire consultant to conduct a feasibility study. A feasibility study must at least cover project costs, comparison of costs and values among national or agency budget and PPP, PPP types, project impacts, risk identification and risk management. The proposal including a feasibility study must then be submitted to the responsible ministry, the PPP secretariat office and the PPP committee for approval respectively.
- Consideration procedure will be shortened, and time period for the relevant governmental organizations to fulfill their duties will be set within a reasonable time. The entire process for a PPP project approval will be approximately 7-12 months instead of 2 years currently.
- After the project is approved by the PPP committee, the project agency must set up a selection committee which is chaired by the representatives from the project agency, the MOF, the Attorney General Office and the Budget Bureau to approve TOR and a draft contract, and to select private entity. The selection result will be submitted to the responsible minister for comment and then submitted to the cabinet for approval.
- A PPP procurement procedure and a standard PPP contract will be also developed by the PPP secretariat office to standardize and facilitate negotiation, and to strengthen project management. Contract management such as criteria and clauses to amend or renew an agreement between the public and private sector will be provided.
- A Project Development Fund (PDF) will be established by the MOF to provide seed money for new investment projects. This fund will be used for the preparation of a strategic plan and for conducting feasibility studies.

Although the new PPP law is still under consideration in Parliament, some projects have already been implemented through the existing PPSU Act in the past few years. Most of them are in the transport sector, such as 2nd stage Expressway (BTO), Sri-Rat Expressway (BTO), Donmuang Tollway (BTO), Bangkok Skytrain or BTS (BOT), Mass Rapid Transit-Blue Line (BTO), Mass Rapid

Transit-Purple Line (PPP Gross Costs), Catering and Ground Services in the Suvarnabhumi Airport (BTO). Forthcoming projects which are under preparation for PPP are Mass Rapid Transit - Green and Blue Lines extension, Inter-city or Motorway Projects, Coastal Port at Lam Cha-Bang, etc. Obviously, PPP projects are expected to play an important role complementing the new 2 trillion baht (approximately USD 66.6 billion) Government investment plan in infrastructure over the next seven years (2013-2020).

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