

## PRIVATE FINANCE

# Vietnam's new PPP law bets on water investment

The country's new PPP law aims to provide the missing pieces to make private investment in the water sector truly attractive. Will this be the final reform needed?

Vietnam's National Assembly approved the country's new public-private partnership (PPP) law on 18 June, raising hopes that government PPPs in the country's water and wastewater sector could finally be approaching a breakthrough.

The new law, which has been in the works for over a year since a draft was released in May 2019, and which will come into force at the beginning of 2021, includes a guarantee for revenue risk-sharing that has thus far been missing from Vietnam's PPP framework. The country will require significant private investment to keep up with investment needs, and has outlined multiple big PPPs including wastewater treatment plants in Ho Chi Minh City. Foreign investors have, however, remained cautious.

With two previous decrees announced in 2015 and 2018 unsuccessful in encouraging uptake of large PPP projects in the water sector, this is not the first time the country has tried to fire up private investment through legal reforms. Nevertheless, the new law is intended to provide a comprehensive framework for PPPs – unlike the limited scope of the previous decrees – and has introduced more sweeping changes than the 2018 decree did.

It has narrowed down the number of eligible sectors for PPP projects to five, but water and wastewater remains one of them. "The new law reflects market demand. The five eligible sectors under the PPP law are also the sectors that will in the long run require funding from foreign investors. This is due to the increasing demand in those sectors not corresponding with the limited state budget," Dr Oliver Massmann, a partner in law firm Duane Morris's Vietnam office, told GWI.

He added that the narrowing down of sectors implies that the government intends to promote primary and sustainable economic sectors.

While some stakeholders GWI reached out to emphasised that it is still early days to discuss the law's impact, several aspects of the legislation aim to address issues which previously held back water sector PPP projects. Under the new law's revenue

risk-sharing mechanism, if an investor's revenue falls below 75% of the revenue outlined in the PPP agreement for a BOT, BOO or BTO project, the state will provide 50% of the difference to the developer. On the other hand, if the revenue exceeds 125% of the revenue outlined, the state will receive a 50% share of the increase in the revenues from the developer.

The law also features a foreign currency balance scheme for projects, which could address a key concern of overseas investors, and unlike the previous decree, it demands open bidding, making it easier for investors to compete in good faith. "Foreign investors should make use of this process, along with their advantages of substantial investment capital, to win the bids for major projects," Dr Massman said.

Vietnam's PPP framework also competes with direct investment projects under a separate legal framework, under which investors can secure investment certificates for specific projects from local authorities.

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While the direct investment model has proved popular, particularly for being less complex and more dynamic, it has proved challenging in its own way for interested foreign entities, with Singaporean developer Darco and development and investment company InfraCo Asia's project in Ben Tre province – which reached financial close in late 2019 – taking significant time to make it through due diligence.

Dr Massmann believes, however, that there may now be a better case for the PPP law. "For large-scale projects, it is recommended that they follow the [PPP law] as PPPs come with certain guarantees and commitment from the Vietnamese government, which can help investors to avoid substantial risks."

He added, however, that some obstacles remain unaddressed, including lengthy administrative procedures and legal uncertainty in Vietnamese courts, which means investors could struggle to reach dispute settlements. ■

## WATER IN VIETNAM'S PPP PIPELINE

Vietnam's new PPP law could make it easier to manage risk for the many large-scale projects in the country's water sector pipeline. However, the law will still have to compete with the possibility of direct investment.

| Project name          | Capacity                 | Location            | Notes                                       |
|-----------------------|--------------------------|---------------------|---|
| Song Hau WTP No. 1    | 400,000m <sup>3</sup> /d | Hau Giang Province  | Expansion of 100,000m <sup>3</sup> /d plant |
| Song Hau WTP No. 2    | 300,000m <sup>3</sup> /d | An Giang Province   | Feasibility study in 2019                   |
| Tan Hoa-Lo Gom WWTP   | 300,000m <sup>3</sup> /d | Ho Chi Minh City    | Conceptual project                          |
| Song Tien WTP No. 1   | 300,000m <sup>3</sup> /d | Tien Giang Province | On hold until local elections in 2021       |
| Song Tien WTP No. 2   | 300,000m <sup>3</sup> /d | Vinh Long Province  | On hold until local elections in 2021       |
| Dong Thap WTP         | 200,000m <sup>3</sup> /d | Dong Thap Province  | Conceptual project                          |
| Binh Thanh Basin WWTP | 180,000m <sup>3</sup> /d | Ho Chi Minh City    | Conceptual project                          |
| Song Hau WTP No. 3    | 150,000m <sup>3</sup> /d | An Giang Province   | On hold until local elections in 2021       |
| West Saigon WWTP      | 150,000m <sup>3</sup> /d | Ho Chi Minh City    | ADB supporting project preparation          |
| North Saigon 1 WWTP   | 139,000m <sup>3</sup> /d | Ho Chi Minh City    | Conceptual project                          |
| North Saigon 2 WWTP   | 130,000m <sup>3</sup> /d | Ho Chi Minh City    | Conceptual project                          |
| Northwest Basin WWTP  | 130,000m <sup>3</sup> /d | Ho Chi Minh City    | Conceptual project                          |
| Cau Dua WWTP          | 100,000m <sup>3</sup> /d | Ho Chi Minh City    | Conceptual project                          |

Source: GWI Project Tracker