

Original Research Article

Financial Management of Investment Projects Under the Public-Private Partnership Model: A Survey of the Current of the Law

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Abstract: The purpose of this study is to explore the basic contents of financial management of investment projects under the public-private partnership model according to the provisions of Vietnamese law. To achieve this purpose, this study conducts a survey and assessment of several Vietnamese laws regulating the financial management of investment projects under the public-private partnership model; at the same time, semi-structured interviews are conducted with 13 people who are directly involved in financial management activities in several enterprises with public-private partnerships. The results show that the provisions of the law still reveal some limitations that need to be further improved. Based on the assessment of the current situation and based on some comments and assessments of some stakeholders, this study recommends some solutions to improve the law on the financial management of investment projects under the public-private partnership method in the future to improve the use of investment capital in the future.

Keywords: Financial management, investment projects, public-private partnerships, current status of law.

INTRODUCTION

Financial management is an indispensable pillar, a key link that determines the stability and sustainability of an enterprise. Financial management of investment projects means that all costs and legal revenues as prescribed in the stages of investment preparation, project implementation and project operation must be fully reflected in the project's financial plan in VND (Ministry of Finance, 2016). According to Article 3, Decree 15/2015/ND-CP (2015) of the Government, investment in the form of public-private partnership (abbreviated as PPP) is a form of investment implemented based on a contract between a competent state agency and an investor, a project enterprise to implement, manage, and operate infrastructure projects, and provide public services (Government, 2015).

Many studies have shown that in investment projects in the form of public-private partnership, financial management plays an important role. According to BRAVO (2022), corporate financial management (including projects invested by enterprises) plays an important role in determining the viability of enterprises in the market and their potential for future development. According to VietnamWork (2024), financial management plays a key role in ensuring the success and sustainability of an organization. It not only focuses on managing assets and financial resources, but also ensures that financial decisions are made effectively and based on accurate analysis. Chinh Nguyen (2023) said: Finance is considered the most important resource for the entire operation of a project. That means the project will go bankrupt if it does not ensure a stable source of finance. Therefore, reasonable financial management will help the project move towards the goal of sustainable development in the present and the future. From the perspective of legal regulations, financial management of investment projects under the public-private partnership model plays an important role, contributing to the success of the project, ensuring that the projects do not violate the provisions of the law. According to the provisions of Vietnam law, regulations on investment activities under the public-private partnership model, state

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management, rights, obligations and responsibilities of agencies, organizations and individuals related to investment activities under the public-private partnership model (National Assembly 2020).

Accordingly, the law applies to parties in investment contracts under the public-private partnership model, state management agencies and agencies, organizations and individuals related to investment activities under the public-private partnership model. In which, financial management is considered a key step, requiring scientific and appropriate measures. To properly assess the financial management of investment projects under the public-private partnership model from a legal perspective, this study focuses on clarifying the following questions:

- (i) What is financial management and corporate financial management? What is the financial management of investment projects and investments under the public-private partnership model?
- (ii) What acts are prohibited in the financial management of investment projects under the PPP model?
- (iii) Why does the law stipulate financial reporting?
- (iv) What are the principles of effective corporate financial management?

LITERATURE REVIEW

Financial management and corporate financial management

According to Bravo (2022), In a manufacturing and trading enterprise, the relationship between money - goods - money seems simple at first glance, but for large-scale enterprises, the relationship seems simple, but to manage it effectively and profitably is a difficult problem, even if not controlled well, it will cause many businesses to be on the brink of bankruptcy. In addition to the concept of managing the flow of goods, financial management (management) (cash flow) is defined as: managing financial transactions arising in the production and business process of the enterprise. Or it can be said that financial management helps maximize the profits of the enterprise through effective capital management.

According to AIA (2023), Financial management is the activity of planning revenue and expenditure and managing assets of individuals or organizations with the aim of improving the economic situation to achieve their own needs and goals. An important thing to keep in mind when managing finances for both individuals and businesses is: Establishing a reserve for unexpected incidents and risks that may occur. Depending on the size of each company, financial management is important in ensuring and increasing shareholder value, minimizing risks and protecting the financial health of the business, optimizing the company's profits, etc.

According to DNSE (2022), corporate financial management is the planning, directing, organizing, controlling cash flow, financial activities such as purchasing supplies, monetary funds, etc. In which, financial management includes the administration, maintenance of financial assets, identifying and managing risks. Financial management often goes hand in hand with financial accounting, these are two fields that always go hand in hand, expressed through the numbers of financial reports.

From the above perspectives, financial management and corporate financial management are understood as: two closely related activities, reflected in the management of financial reports. Financial management requires the application of general management principles to financial resources in the enterprise. Financial management is one of the most important tasks of the leader because effective financial management not only helps the enterprise maximize profits but also supports the development of the enterprise.

Investment project financial management

A project is a process with its characteristics including a series of coordinated and controlled activities, with a set start and end date, carried out with limitations on time, cost, and resources to achieve goals by specific requirements. To meet those requirements systematically and professionally, the leader of an organization or enterprise must build for their unit a team of human resources capable of achieving the set goals. The professional construction investment project management course at AFC is the best choice. Circular No. 55/2016/TT-BTC (2016) of the Ministry of Finance has specific regulations on financial management for investment projects in the form of public-private partnership (PPP) and investor selection costs. Accordingly, the Circular specifically regulates the development of financial plans for PPP projects. According to this Circular (Ministry of Finance, 2016), financial management of investment projects is specifically understood as follows:

- (i) All legal costs and revenues as prescribed during the investment preparation, project implementation, and project operation stages must be fully reflected in the project's financial plan in VND. The project's financial indicators are calculated based on after-tax cash flows discounted at the weighted average discount rate.
- (ii) The management and use of official development assistance capital and preferential loans to participate in the implementation of PPP projects shall comply with current regulations of the Government on the management and use of official development assistance capital and preferential loans from donors.

- (iii) Financial plans include: Total investment capital; investment capital structure; capital mobilization plan; incentive proposals to ensure the project's financial plan (if any); investor's equity profit; project implementation, operation, capital recovery and profit time; investment capital recovery and profit plan of the investor; indicators for assessing the feasibility of the financial plan.
- (iv) For projects without construction investment activities, the total investment capital is the total investment costs to put the project into operation and the project operating costs in the first year approved by the competent authority.
- (v) State investment capital to support project implementation, such as state budget capital, government bond capital, local government bond capital, ODA capital and preferential loans from foreign donors, are not included in the total investment capital when determining the equity ratio.

Therefore, financial management of projects is a very important issue and is of concern to both sponsors and the Project Management Board. Accordingly, assessment of project financial management needs to be carried out regularly or periodically. To assess the effectiveness of financial management of projects, it is necessary to focus on the following specific aspects: (i) organizational structure and personnel; (ii) planning; (iii) cash flow and disbursement; (iv) accounting software; (v) accounting and internal control systems; and (vi) financial reporting.

Public-Private Partnership Investment

Public-Private Partnership (PPP): Public-Private Partnership Investment (hereinafter referred to as PPP) is a form of investment carried out on the basis of a contract between a competent state agency and an investor or project enterprise to implement, manage and operate infrastructure projects and provide public services.

With the PPP model, the State will set standards for service provision and the private sector is encouraged to provide services through a payment mechanism based on service quality. This is a form of cooperation that optimizes investment efficiency and provides high-quality public services, which will benefit both the State and the people.

In the PPP model, the establishment of a partnership is typically through a legally binding contract or some other mechanism, in which the responsibilities related to the implementation and management of infrastructure projects are agreed to be shared. The partnership is built on the expertise of each partner to meet clearly defined needs through appropriate allocation of: resources; risks; responsibilities; and rewards.

RESEARCH METHODOLOGY

This study focuses on studying the State's legal documents related to finance and financial management of investment projects under the public-private partnership method, specifically: (i) Circular 50/2022/TT-BGTVT regulating the performance of functions and tasks of competent authorities, agencies signing and implementing investment project contracts under the public-private partnership method managed by the Ministry of Transport; (ii) Official Dispatch 3068/CV-TCT in 2022 guiding several contents on the deployment and implementation of PPP projects; (iii) Decree 35/2021/ND-CP guiding the Law on Investment under the public-private partnership method; (iv) Decree 28/2021/ND-CP regulating the financial management mechanism of investment projects under the public-private partnership method; (v) Decree 29/2021/ND-CP stipulates the order and procedures for appraising important national projects and monitoring and evaluating investments, etc.

Theoretical research method: This study focuses on studying documents related to financial management activities of investment projects under the public-private partnership model according to the provisions of Vietnamese law. The obtained results will be compared, analyzed, and synthesized, thereby drawing theoretical conclusions. The use of sectoral and interdisciplinary methods allows for more comprehensive and complete evaluation results.

Semi-structured interviews: conducted with 13 selected people who are managing businesses related to the PPP investment model, coded from PV1 - PV13. The questions focus on the following contents: (i) What acts are prohibited in the financial management of investment projects under the PPP model? (ii) What are the regulations on financial reporting of investment projects under the PPP form? (iii) What are the principles for effective financial management of investment projects under the PPP form? Answering these questions will help clarify issues related to the financial management of investment projects under the public-private partnership form in accordance with Vietnamese law.

RESEARCH RESULTS AND DISCUSSION

Prohibited acts in the financial management of investment projects under the PPP form

According to Clause 10, Article 3 of the Law on Investment under the Public-Private Partnership Form 2020, investment under the PPP form is an investment method implemented based on limited-term cooperation between the State and private investors through the signing and implementation of PPP project contracts to attract private investors to

participate in PPP projects. According to Article 10 of the Law on Investment under the Public-Private Partnership 2020, prohibited acts in the financial management of investment projects under the PPP method include:

Firstly, deciding on investment policies for PPP projects that are not consistent with strategies, planning, and plans; failing to identify state capital sources in PPP projects for projects requiring the use of state capital; not following the authority, order, and procedures prescribed by the Law on Investment under the Public-Private Partnership. Not clearly defining the financial resource requirements for the bid package: Accordingly, the method for determining the financial resource requirements for the bid package with a dossier bag is as follows:

- i. For bid packages with a bid implementation period of 12 months or more, the financial resource requirements for the bid package are determined according to the following formula: Financial resource requirements for the bid package = $t \times$ (Bidding package price/bid implementation period (calculated in months)). Normally, the coefficient “t” in this formula is 3.

Actual question (Government Information Portal, 2024): During the process of evaluating E-HSDT, unit A encounters the following revenue situation: According to the E-HSMT form, it stipulates “Average annual revenue (excluding VAT) of the 3 most recent fiscal years compared to the bid closing time of the bidder” (Circular No. 08/2022/TT-BKHĐT). Unit A has 1 bid closing notice dated March 27, 2023, at the time of closing the bid, the bidder declared the financial situation of the years (2019, 2020, 2021) and was automatically evaluated by the System as qualified. Based on the instructions in Note No. 4 (Standards for assessing capacity and experience - E-HSDT assessment standards under E-HSMT): “In this case, if the closing date is November 2022, the bidder must submit financial reports for the years 2019, 2020, 2021”. Accordingly, the inviting party understands the above sentence as follows: If the closing date is after November of the year under consideration, the bidder will submit the financial report of the previous year. The question is: Is it appropriate for the bidder to submit the financial report for the most recent year, 2021, as above? How is the specific time required to submit the financial report for the most recent year calculated here?

According to PV1’s assessment: “According to the law, all enterprises in the same industry and economic sector must prepare and present annual financial statements. Therefore, waiting until 2021 to prepare financial statements for 2019 is against the law.” Sharing this view, according to PV5: “For companies (general corporations) with affiliated units, in addition to annual financial statements, they must submit consolidated (summary) financial statements at the end of the annual accounting period, based on the financial statements of the affiliated units. This information is presented according to the form prescribed in accounting standards and accounting regimes. Thus, only preparing annual financial statements is not enough.” According to PV 13: “The law on bidding does not have specific regulations on the number of years for which financial reports are available, however, in previous and latest bidding documents (Circular No. 08/2022/TT-BKHĐT), the number of years is usually guided from 03 to 05 years. Thus, the inviting party, depending on the actual situation of the bidding package, can specify the appropriate number of years, as long as it finds a contractor with sufficient capacity and experience and the bidding package is highly competitive”.

- ii. For bidding packages with a bidding implementation period of less than 12 months, the financial resource requirement for the bidding package is determined according to the following formula: Financial resource requirement for the bidding package = $30\% \times$ Bidding package price. In this case, the contractor must demonstrate the ability to access or have available highly liquid assets. In which, highly liquid assets are cash and cash equivalents, short-term financial instruments, available-for-sale securities, marketable securities, trade receivables, short-term financial receivables and other assets that can be converted into cash within one year.

According to PV2’s assessment: “In the bidding documents (construction, procurement, non-consulting, mixed packages), there is always a requirement to prove financial resources for the package, this is a mandatory requirement that the inviting party requires to prove that the contractor has a certain financial capacity to be able to implement the package if winning the bid”. According to PV11: “Requirement of financial resources for the bid package” is one of the conditions to confirm that the contractor has the sufficient financial capacity to implement the bid package”. Along with this viewpoint, PV3 said: “As we know, for any assigned work, the contractor will only be (or may not be) advanced a very small amount of money according to the contract value for implementation, so if the contractor does not have available financial resources to be able to perform in advance (when paid) the work according to the contract, the feasibility of implementing the bid package will not be guaranteed”.

Thus, the requirement of financial resources for the bid package is determined in many different forms such as: (i) Bank credit commitment: This is the most common and simple method that is often applied, with this method, the contractor only needs to perform with the bank where the contractor transacts so that the bank can provide a credit commitment with a term (according to the requirements of the bidding documents); (ii) Deposit in the bank: Yes (iii) Securities that can be sold and converted into an amount greater than the amount required in the bidding documents; (iv) Trade receivables within 12 months; (v) Short-term financial receivables within 1 year; (vi) Available bank limit: Normally, contractors sign with 1 or more banks every year to grant an available credit limit, however, if using this tool,

contractors need to continue to prove the total amount of granted limits, the amount granted and the remaining available amount, if greater than the required amount, it will meet the requirements.

Second, lack of basis for evaluating the contractor's financial statements:

For public-private partnership enterprises, the average revenue is usually determined from 3 to 5 years before the year of bid closing, and the review of the contractor's financial statements must be based on the accounting period that the contractor declares to the tax authority and the deadline for submitting financial statements according to the provisions of the law on accounting. Circular No. 08 (Ministry of Planning and Investment, 2022) stipulates "Average annual revenue (excluding VAT) of the 3 most recent fiscal years compared to the bid closing time of the contractor" (Ministry of Planning and Investment, 2022). However, in practice, these bases have been ignored, many financial statements do not cover the period from 3 to 5 years; many contractors have not declared to the tax authority and the deadline for submitting the final year's financial statements (according to the cycle of 3-5 years).

According to PV2: "Financial resources are calculated by the total of highly liquid assets or the ability to access highly liquid assets available, credits (including credit commitments from credit institutions legally operating in Vietnam for this bid package) or other financial sources. Therefore, the financial report of the bidder must be based on average annual revenue". According to PV4: "Highly liquid assets are cash and cash equivalents, short-term financial instruments, available-for-sale securities, marketable securities, trade receivables, short-term financial receivables and other assets that can be converted into cash within one year. All of these sources of income must be calculated with the tax authority".

According to Clause 1, Article 3 of the Law on Bidding (2020), bidding activities within the scope of this Law must comply with the provisions of this Law and other relevant legal provisions. Pursuant to Point a, Clause 1, Article 12; Clause 3, Article 29 of the Law on Accounting, the annual accounting period is 12 months, calculated from the beginning of January 1 to the end of December 31 of the calendar year. Accounting units with special organizational and operational characteristics may choose an annual accounting period of 12 full months according to the calendar year, starting from the beginning of the first day of the first month of this quarter to the end of the last day of the last month of the previous quarter of the following year and must notify the financial authority and tax authority. The annual financial report of the accounting unit must be submitted to the competent state agency within 90 days from the end of the annual accounting period as prescribed by law.

According to PV6's assessment: "For PPP investment projects, financial reports must contain summary information on the financial situation, business performance and cash flows of the project over a specific period of time. These reports must be prepared with the purpose of providing an overview and details on the financial performance, profitability and liquidity of the project". Thus, according to the accounting law, poor financial management will cause waste and may violate the provisions of the Bidding Law.

Laws on financial reports

The Accounting Law (Article 12, Clause 1, Point a, Article 29, Clause 3) stipulates that the annual accounting period is 12 months, calculated from the beginning of January 1 to the end of December 31 of the calendar year. Accounting units with specific organizational and operational characteristics are allowed to choose an annual accounting period of 12 full months according to the calendar year, starting from the beginning of the first day of the first month of this quarter to the end of the last day of the last month of the previous quarter of the following year and must notify the financial authority and tax authority. The annual financial report of the accounting unit must be submitted to the competent state agency within 90 days from the end of the annual accounting period as prescribed by law.

According to the instructions in note No. 4, table No. 01, Chapter III, regulations on construction and installation bidding packages issued together with Circular No. 08/2022/TT-BKHĐT dated May 31, 2022 of the Minister of Planning and Investment, the average annual revenue is usually from 03 to 05 years before the year of bidding closing. In case the contractor has been established for less than the number of years required by E-HSMT, the average annual revenue (excluding VAT) is calculated based on the number of years the contractor has been established. In this case, if the average annual revenue (excluding VAT) of the contractor meets the value requirements of E-HSMT, the contractor will still be evaluated without being eliminated (Ministry of Planning and Investment, 2022).

According to PV7: "According to Clause 1, Article 3 of the Law on Bidding (2020), bidding activities within the scope of this Law must comply with the provisions of this Law and other relevant legal provisions. Therefore, the application of other laws must be determined in relation to legal provisions and handling methods if the contractor has been established for less than the number of years required by E-HSMT". According to PV9: "Instructions in the note according to the E-HSMT Form for the non-consulting service bidding package issued with Circular No. 08 of the Ministry of Planning and Investment, 2022, the average annual revenue is usually from 3 to 5 years before the year of bid

closing. In this case, if the average annual revenue (excluding VAT) of the contractor meets the value requirements of the E-HSMT, the contractor will still be evaluated without being eliminated”.

Principles in effective financial management of PPP projects

According to VIB (2022), to help manage your finances more effectively, it is necessary to: (i) Clearly record your business's revenues and expenditures. In addition, you must implement a clear revenue and expenditure plan to help you manage your cash flow more accurately. From there, your business will avoid budget deficits. The principle to help businesses avoid debt is not to spend more than the profits they earn; (ii) Profitable investment: you can continuously invest your business's idle money in profitable projects. This is a way to help your business bring in more profits. When participating in effective investments with high rates of return, it will create a huge cash flow; (iii) Balance between risk and rate of return: To effectively manage your business's finances, you must know how to balance between yield and risk. If there is a small level of risk, it will create a small profit, conversely, the greater the risk, the greater the profit.

According to the Law on Investment under the Public-Private Partnership method in 2020, “PPP project contract” is a written agreement between the contracting agency and the investor, the PPP project enterprise on the State's concession to the investor, the PPP project enterprise to implement the PPP project according to the provisions of this Law, including the following types of contracts: (i) Build - Operate - Transfer (BOT) contract; (ii) Build - Transfer - Operate (BTO) contract; (iii) Build - Own - Operate (BOO) contract; (iv) Operate - Manage (O&M) contract; (v) Build - Transfer - Lease (BTL) contract; (vi) Build - Lease - Transfer (BLT) contract; (vii) Mixed contract. Thus, to ensure that contracts are fully and legally implemented, the financial plan of the PPP project must fully reflect the legal expenses and revenues as prescribed in the investment preparation, implementation and operation stages of the PPP project.

According to PV 10: “The financial indicators of the financial plan must be calculated on the basis of after-tax cash flows discounted at the weighted average discount rate of interest rates on capital mobilization and profits on the investor's equity”. According to PV11: “The use of public investment capital to support the construction of works and infrastructure systems must be specifically stipulated in the PPP project contract regarding the rate, value, progress, and conditions stipulated in the PPP project contract”.

CONCLUSION

Thus, the public-private partnership model can be understood as a form in which the relationship between the state and the private sector jointly implements socio-economic development investment projects on the basis of a contract that clearly divides responsibilities, benefits and risks, in which a part or the whole project will be implemented by the private sector on the basis of competitive bidding, ensuring community benefits, meeting standards on quality of works, products or services prescribed by the State. PPP is understood as an investment method in which the public sector and the private sector become partners in implementing socio-economic infrastructure development projects to provide public services. This is a form of cooperation that will bring benefits to both parties because it takes advantage of financial and management resources from the private sector, while still ensuring benefits for the people. PPP represents a framework with the participation of the private sector but still recognizes the role of the government in ensuring that social obligations are met and promoting public investment reform.

In Vietnam, according to the Law on Investment under the Public-Private Partnership (Law No. 64/2020/QH14 dated June 18, 2020), “Investment under the Public-Private Partnership is an investment method implemented based on limited-term cooperation between the State and private investors through the signing and implementation of PPP project contracts to attract private investors to participate in PPP projects”. Financial management of PPP projects is one of the tools that helps contribute important reform solutions to the field of public investment management, and the need for specific legal sanctions on it. The importance of this form of cooperation has been affirmed in many countries around the world, especially developing countries. Analyze the effectiveness and benefits of investment projects under the PPP form, especially in infrastructure investment projects. Identify the advantages of the PPP method compared to traditional public investment methods, improve transparency and apply standards in investment, thereby supplementing important solution tools and experiences to have a basis for reform in the field of public investment management.

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