

Infrastructure Project Bankability

From Vietnamese Law Perspective

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Vietnam Infrastructure Landscape

6.5%

Average GDP
Growth (2021–2025)

\$25B+

Annual Infra
Investment Need

8–10%

Of GDP Required
for Infrastructure

Key Sectors Driving Demand

- Power & Energy (thermal, renewables, LNG)
- Transport (expressways, metro rail, airports)
- Water & Waste Treatment
- Telecommunications & Digital Infrastructure

Government Targets

Socio-Economic Development Strategy 2021–2030 targets modernisation of national infrastructure with emphasis on private sector participation through PPP mechanisms.

Legal Framework for PPP/BOT Projects

Evolution from Decree 63/2018
to PPP Law 2020

2021

PPP Law
Effective Date

6

Contract Types
(BOT, BTO, BOO...)

200B

VND Minimum
Investment

PPP Law 2020 – Key Features

Law No. 64/2020/QH14 | Effective 1 January 2021 | Decree 35/2021/ND-CP

Contract Types

- BOT (Build-Operate-Transfer)
- BTO (Build-Transfer-Operate)
- BOO (Build-Own-Operate)
- BTL (Build-Transfer-Lease)
- BLT (Build-Lease-Transfer)
- O&M (Operate & Maintain)

Key Provisions

- Minimum investment thresholds by sector
- Eligible sectors defined (transport, power, water, health, education)
- Government capital contribution up to 50%
- Viability gap funding mechanism
- Revenue sharing when exceeds forecast
- Risk-sharing mechanisms codified

Government Guarantees: PPP Law 2020 limits scope of government guarantees compared to earlier decrees. Foreign exchange guarantees and minimum revenue guarantees are no longer automatically available for all sectors.

What Makes a Project "Bankable"?

The Legal Perspective



Stable Legal Framework

Predictable regulatory environment with minimal retrospective changes



Clear Risk Allocation

Construction, demand/revenue, currency, political/regulatory change risks properly allocated



Enforceable Security Package

Step-in rights, assignment of project agreements, share pledges



Government/Credit Support

Guarantees, viability gap funding, minimum revenue guarantees



International Arbitration

Neutral dispute resolution; typically Singapore (SIAC) or ICC



Investment Protection

Ownership rights, profit repatriation, currency convertibility

Successful BOT Power Projects

Vietnam's Track Record in International Project Finance

Project	Type/MW	Sponsors	Status
Phu My 2.2	Gas / ~715 MW	EDF, Sumitomo, TEPCO	Operating
Phu My 3	Gas / ~740 MW	BP, Kyushu Electric	Operating
Mong Duong 2	Coal / ~1,200 MW	AES, POSCO Energy	Operating
Nghi Son 2	Coal / ~1,200 MW	Marubeni, Kepco	Operating
Van Phong 1	Coal / ~1,320 MW	Sumitomo, JERA	Under Construction
Vung Ang II	Coal / ~1,200 MW	Mitsubishi, CLP	In Development

Common Features: Long-term PPA with EVN | Government Guarantee (GGU) | International Arbitration | Offshore Escrow Accounts | Political Risk Insurance (MIGA/ADB)

Case Study: Phu My 2.2 & Phu My 3

Pioneering BOT Power Projects in Vietnam from 2001-2002

Phu My 2.2 BOT

- ~715 MW gas-fired CCGT
- Sponsors: EDF, Sumitomo, TEPCO
- 20-year BOT concession
- Financial close: 2001
- First internationally-financed BOT power project
- Set template for subsequent projects
- MIGA political risk guarantee

Phu My 3 BOT

- ~740 MW gas-fired CCGT
- Sponsors: BP, Kyushu Electric
- 20-year BOT concession
- Financial close: 2002
- Integrated fuel supply (BP)
- Refined GGU structure
- Enhanced lender protections

Phu My 2.2 BOT – A 25-Year Success Story

Vietnam's First Internationally Financed BOT Power Project

2001

Financial Close

\$400M+

Non-Recourse
Project Finance

25 yrs

BOT Concession
Period

Landmark Achievements

- First BOT power project in Vietnam to raise international capital through non-recourse project financing
- Won multiple international awards recognising Vietnam's breakthrough in international capital markets
- Government Guarantee & Undertaking (GGU) including foreign currency convertibility guarantee
- Contracts governed by foreign law with international arbitration

Concerns at the Time

- Was Vietnam conceding too much in negotiations?
- Was the GGU risk too great for the Government?
- Would foreign governing law disadvantage Vietnam?

Phu My 2.2 – 25 Years Later: The Verdict

What Did NOT Happen

(The Feared Risks)

- No international arbitration disputes arose
- Government guarantee obligations were never triggered
- Foreign governing law caused no disadvantage to Vietnam

What DID Happen

(The Actual Benefits)

- 20+ years of stable operation contributing to national energy security
- No major legal disputes with the Government throughout the contract term
- In 2025, BOT project was transferred to Vietnam at no cost (residual value: hundreds of millions of USD)
- Total output: over 90 billion kWh per plant over 20 years
- Plants capable of continued operation for decades (~8–9 billion kWh/year)
- 9 BOT power plants successfully operating prove the model works

Key Takeaway

“25 years ago, Vietnam faced the same question we face today: will accepting bankable international terms expose the country to excessive risk? The answer from practice is clear.”

Case Study: Mong Duong 2 & Nghi Son 2

Scaling Up – Larger Coal-Fired BOT Projects

Mong Duong 2

- ~1,200 MW coal-fired
- Sponsors: AES, POSCO Energy
- 25-year BOT period
- Financial close: 2012
- US\$2.1 billion total investment
- Multi-sourced debt (KEXIM, JBIC, commercial)
- Comprehensive insurance package

Nghi Son 2

- ~1,200 MW coal-fired
- Sponsors: Marubeni, Kepco
- 25-year BOT period
- Financial close: 2018
- US\$2.8 billion total investment
- JBIC/KEXIM covered tranche + commercial
- Refined step-in mechanics

Key Bankability Features

Government Guarantee & Power Purchase Agreement

Government Guarantee & Undertaking (GGU)

- Issued by Prime Minister / MOIT
- Covers EVN's payment obligations under PPA
- Foreign currency convertibility & transferability
- Change in law protections
- Political force majeure relief
- Terminal value / buyout obligations

Power Purchase Agreement (PPA) with EVN

- Long-term (20–25 years) take-or-pay structure
- Capacity charge + energy charge (two-part tariff)
- USD/VND indexation mechanisms
- Deemed dispatch provisions
- EVN as sole creditworthy offtaker
- Back-to-back fuel pass-through

Key Bankability Features

Security Package & Lender Protections

Step-in Rights

Lenders' right to step in and cure defaults; replace project company management; exercise direct agreements with key counterparties

Escrow Accounts

Revenue waterfall through bank accounts; debt service reserve accounts; cash sweep mechanisms ensuring priority repayment

International Arbitration

Singapore (SIAC) or ICC arbitration for project agreements; ICSID for investment treaty claims; New York Convention enforcement

Political Risk Insurance

MIGA guarantees against expropriation, breach of contract, currency transfer; ADB partial risk guarantees; bilateral ECA coverage

Off-taker Payment Risk & Mitigation

Critical Bankability Concern for International Lenders

The Risk

- Non-payment or delayed payment by the off-taker (e.g. EVN)
- Risk heightened upon early termination of:
 - BOT/BT Contract (by government or default)
 - Off-take Contract / PPA
- Project company loses revenue stream but retains debt obligations
- Termination payments may be disputed, delayed, or inadequately calculated



The Mitigation

Guarantee from a Creditable Guarantor

- GGU – covering EVN's obligations under PPA
- Sovereign guarantee for termination payments
- Multilateral guarantees (MIGA, ADB partial risk)
- Ensures lender debt recovery even if BOT/PPA terminated
- Creditworthiness of guarantor is what ultimately makes the project bankable

Without a creditable guarantor standing behind the off-taker's obligations — especially termination payments — international lenders cannot achieve the credit comfort required for non-recourse project financing.

Lessons Learned from BOT Power Projects

Critical success factors and
challenges encountered over
two decades of development.



Negotiation



Financing



Risk Mitigation

Lessons Learned

01

Government Commitment

Political will and institutional support at the highest level are essential. Successful projects had direct Government involvement in key decisions.

02

Creditworthy Offtaker

EVN's credit, backed by sovereign guarantee through GGU, is the cornerstone of bankability. Without a reliable offtaker, no project reaches financial close.

03

Long Negotiation Timelines

Typically 3–5 years from MOU to financial close. Multiple government approvals, inter-ministerial coordination, and evolving legal frameworks extend timelines significantly.

04

Currency Risk

Foreign currency exposure remains the foremost concern for international lenders. Convertibility and transferability protections in the GGU are heavily negotiated.

Lessons Learned (cont.)

05

Regulatory Changes

Frequent changes in legal framework during project development (e.g., from Decree 108 to Decree 63 to PPP Law 2020) create uncertainty and require renegotiation of key terms.

06

Standardised Documentation

Need for standard-form project agreements to reduce transaction costs and negotiation time. Each project currently negotiated bespoke adds years and millions in advisory costs.

07

ESG Compliance

Environmental and social safeguards increasingly important for international lenders and ECAs. Equator Principles, IFC Performance Standards now standard requirements.

08

Local Content & Capacity

Building local engineering, procurement and legal capacity reduces reliance on foreign advisers and creates a more sustainable project development ecosystem.

Applying Lessons to Other Infrastructure Sectors

Transport

Expressways, Airports, Metro

- Revenue/demand risk harder to mitigate
- Availability-based payments preferred
- Higher traffic risk than power off-take
- Land acquisition complexity

Water & Waste

Treatment Plants, Distribution

- Smaller ticket sizes
- Municipal counterparty risk
- Tariff affordability constraints
- Less international sponsor interest

Opportunities

Under PPP Law 2020

- Viability gap funding available
- Blended finance structures
- Technical assistance from MDBs
- Growing domestic capacity

Transport PPP: Key Challenges

Why Power BOT Lessons Don't Translate Directly

Power (BOT Model)

- Single creditworthy offtaker (EVN)
- Take-or-pay revenue certainty
- Government guarantee (GGU)
- Proven project finance template
- International arbitration standard

Transport (Expressways/Airports)

- Diffuse user base – demand risk
- Traffic volume uncertainty
- No equivalent of GGU guaranteed
- Complex land clearance issues
- Political sensitivity of toll rates

Key Insight: Availability-based payment mechanisms (where government pays based on asset availability rather than user revenue) offer the most promising path to bankability for transport PPPs.

Key Challenges & Risks

Obstacles to Bankability in Current Environment



Regulatory Uncertainty

Frequent legal changes; lack of grandfathering provisions; retrospective application concerns



Limited Government Guarantees

PPP Law 2020 restricts guarantee availability; no automatic GGU for non-power sectors



Foreign Exchange Risk

VND depreciation exposure; capital controls; limited hedging instruments available onshore



Land Acquisition

Compulsory land clearance delays; resettlement complexities; compensation disputes



Institutional Capacity

Local entities lack experienced PPP personnel



Dispute Resolution

Enforcement of international arbitral awards still uncertain; sovereign immunity issues

Draft Amended Electricity Law

The Amendment

- An amendments to the Electricity Law is being drafted to introduce some internationally recognized bankability standards for power project development

Key Bankability Issues Being Addressed

- Government guarantees for power purchase obligations
- Foreign currency conversion & transfer mechanisms
- Termination payment obligations & lender step-in rights
- Change-in-law protections for project investors
- International arbitration provisions for dispute resolution

Impact on Power Project Development

- Aligns Vietnam with international project finance standards
- Reduces perceived risk for foreign lenders & sponsors
- Expected to unlock significant new investment in renewables and thermal power
- Provides legal certainty for long-term PPAs and project agreements

“For the first time, international bankability principles are being codified into Vietnamese energy law, signaling a major shift toward accommodating international project finance requirements.”

Source: Draft Amended Electricity Law (2024)

Recommendations / Way Forward

Enhancing Bankability for Infrastructure PPP



Strengthen Institutional Capacity

Dedicated PPP unit with authority and resources; specialised training for government officials; clear decision-making hierarchy



Develop Standardised Bankable Contracts

Model project agreements for each sector; reduce bespoke negotiation; align with international standards (FIDIC, World Bank)



Expand Credit Support Mechanisms

Viability gap fund capitalisation; availability payment frameworks for transport; partial credit guarantees for non-power sectors

“The single most impactful reform would be the development of standard-form project agreements – reducing transaction costs and negotiation timelines by 40–60%.”

Recommendations (cont.)

✓ Enhance Transparency & Competitive Bidding

Open, competitive procurement processes; clear evaluation criteria; independent oversight; anti-corruption safeguards

✓ Build Domestic Long-term Financing Capacity

Develop local currency bond market for infrastructure; pension fund participation; insurance company investments; credit enhancement structures

✓ Align with International Best Practices

AIPP (Association for Infrastructure PPP); World Bank PPIAF guidelines; UNCITRAL model legislative provisions; OECD Principles for Public Governance of PPPs

Role of Legal Advisers

Legal practitioners play a critical role in: (i) structuring bankable risk allocation; (ii) drafting enforceable security packages; (iii) navigating regulatory approvals; and (iv) bridging the gap between international lender expectations and Vietnamese legal constraints.

Key Takeaways

- Vietnam's BOT power projects demonstrate that bankable infrastructure is achievable under Vietnamese law— with the right legal architecture
- GGU + long-term PPA + international arbitration formula has been the proven bankability template for two decades
- Extending this success to other sectors requires adapted risk allocation: new payment mechanisms, and expanded government support or payment guarantee
- The PPP Law provides a stronger legal foundation but limits guarantee availability— creative structuring is needed
- Energy transition is reshaping the bankability landscape— new frameworks needed for renewables and LNG
- Legal practitioners are essential in bridging international lender expectations with Vietnamese legal realities

Conclusion

Vietnam has proven it can deliver bankable infrastructure projects. The challenge now is scaling that success beyond the power sector.

Bankability is not just
a financial concept –
it is fundamentally
a legal one.

The legal architecture determines whether risks are properly allocated, security is enforceable, and investor confidence can be sustained over 20–25 year project cycles.

Questions & Discussion

We welcome your questions on any aspect of infrastructure project bankability, PPP legal frameworks, or Vietnamese investment structures.

Thank You

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