Investment project contract under the partnership method public-private - Current situation in Vietnam and international experience

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ABSTRACT

Public-private partnership (PPP) is a form of investment based on a contract between a competent state agency and an investor or project enterprise to implement, manage, and operate infrastructure projects and provide public services. In the PPP model, establishing a partnership typically uses a contract whereby the parties agree to share responsibilities related to implementing and managing infrastructure projects. Therefore, the PPP sector's legal framework could be more stable, causing disadvantages for the state, investors, and project enterprises when implementing PPP projects. As a result, the PPP project implementation process faces many difficulties and needs to be improved. Therefore, the approach of this article is to review and evaluate the current status of Vietnamese law on PPP based on legal experience and practice in implementing PPP project contracts in Vietnam as well as other countries. From there, develop several appropriate legal policy recommendations to improve Vietnamese law on PPP contracts.

JEL Classification: K20, K29

1. Introduction

The 2020 PPP Law and its guiding documents have unified current regulations governing PPP investment activities, as in many previous ones. Vietnam and the Government of the Socialist Republic of Vietnam on developing the national infrastructure system through mobilizing private resources by PPP investment method; Improve transparency and fair competition in selecting investors to implement PPP projects, gradually approaching international and regional standards. Therefore, in recent times, law enforcement in attracting and implementing PPP projects has encountered problems and inadequacies such as (i) lack of uniformity and contradictions between the provisions of the Law. PPP 2020 with specialized Laws, leading to different interpretations and applications among competent state agencies on the same issue related to PPP projects; (ii) Legal regulations guiding the implementation of the PPP Law and related regulations governing PPP investment activities exist in many different documents, causing difficulties for contracting agencies, investors and project enterprises in the process of signing and implementing PPP project contracts; (iii) legal regulations of the PPP Law 2020, Decree No. 35 /2021/ND-CP on the process of formulating and approving PPP projects; form and process of investor selection; Investor capacity criteria, technology standards applied to the project, standards, and methods for evaluating bids for selecting investors; implementing PPP projects; investment guarantee.

When applied to transport infrastructure construction, wastewater treatment, and solid waste, many problems still require specific guidance from specialized management agencies. Legal documents on PPP still need more guidance on ensuring investment incentives in case of legal changes and the parties' responsibilities in compensation, resettlement support, and land allocation, leasing land to implement PPP projects, investment capital, and disbursement of investment capital transferring the project to the state, seriously violating the PPP project contract.

2. Concept of PPP contract

A PPP project contract is a written agreement between the contracting agency and the investor or PPP project enterprise regarding the State's concession to the investor or PPP project enterprise to implement the PPP project. Accordingly, the PPP project contract is signed between one side, the contracting agency, and the other side, the investor and project enterprise. Contracting agencies include competent state agencies and affiliated agencies and units authorized by competent state agencies. Authorize the signing of PPP project contracts under their authority. This regulation is intended to create flexibility in negotiating and signing PPP project contracts while clearly defining each agency's powers and legal responsibilities in signing and implementing PPP project contracts. The concept of a PPP project contract fully demonstrates the nature of the PPP contract relationship as "*the State cedes rights to investors and project enterprises to implement PPP projects*."

A PPP project contract is an agreement between the state and project enterprises to invest in and develop infrastructure and provide public services. Part or all of the public services will be franchised ("concession") to investors and project enterprises to provide according to agreements with competent State agencies. Because it is a franchise relationship, the State still holds the right to manage public services provided by investors and project enterprises by setting standards and requirements in the PPP project contract and binding requirements regarding commitment to quality and service for private suppliers. Vietnam's legal regulations on the concept of PPP project contracts are similar to those of some countries, such as the Philippines.

3. Principles for entering into PPP project contracts

3.1. Genenral Principles

The subject entering into the contract is, on one side, a competent state agency, and on the other side is an investor or project enterprise. However, the PPP project contract is essentially a civil relationship. Therefore, the parties must comply with the principles of establishing civil transactions and entering into contracts according to civil law provisions. In Vietnam, entering into contracts must comply with fundamental principles in establishing, implementing, and terminating civil rights and obligations, including (i) the Principle of equality: In civil relations, all individuals and legal entities are equal before the law and cannot use any reason to discriminate; The parties in civil relations are equally protected by law in terms of personal and property rights; (ii) Principle of freedom, voluntary commitment, and agreement: All individuals and legal entities establish, exercise and terminate their civil rights and obligations based on freedom and voluntary commitment and agreement. All commitments and agreements that do not violate legal prohibitions or are not contrary to social ethics are binding on the parties and must be respected by other entities; (iii) Principle of good faith and honesty. Any deception, threat, or coercion by one party forcing the other party to establish, perform, or terminate its civil obligations against its will will result in the civil transaction being invalid. (iv) Principle of respecting the interests of the State, public interests, and the legitimate rights and interests of others; (v) Principle of civil liability: Individuals and legal entities must be responsible for not performing or improperly performing civil obligations; (vi) Principles for applying customs according to: In cases where the parties do not have an agreement and the law does not stipulate, customs can be applied in civil transactions, but the applied customs must not be contrary to basic principles of the law (National Assembly of the Socialist Republic of Vietnam, Civil Code, 2015).

3.2. Specific principles

3.2.1. Principle of equality between Vietnamese State agencies and investors and project enterprises

One party participating in the PPP project contract is the competent state agency (contracting agency), and the other is the project investor and enterprise. The legal status of the parties in the contract is different, which can lead to inequality. Therefore, the negotiation and signing of PPP project contracts must ensure a balance between the interests of the State and the interests of investors and project enterprises. In principle, only one competent state agency ("Contracting Agency") is assigned to act as the representative to sign PPP project contracts with investors and project enterprises. However, negotiating and signing PPP project contracts often involves the participation of many specialized management agencies in planning, construction, land, environment, tax, finance, and bidding. Each specialized management agency will perform the functions and authority of state management according to the legal regulations governing that field. Therefore, each agency will have its views and approaches on related issues in PPP project contracts.

Starting from the principle that investors and project enterprises can do what the law does not prohibit, and competent state agencies can only do what the law stipulates, so in the PPP project contract, the section stipulating the meaning Services of investors and project enterprises are often very strict with specific sanctions. Meanwhile, regulations on obligations and sanctions for Contracting Agencies are often only general, principled, or descriptive, referring to relevant legal provisions. When a violation or dispute occurs, holding the contracting agency responsible and demanding compensation for investors and project enterprises is complicated. This is one of the reasons why the PPP investment model becomes less attractive to investors. Therefore, emphasizing equality between Vietnamese state agencies, investors, and project enterprises in the 2020 PPP Law is necessary. However, that is only meaningful when this principle is expressed explicitly in the content of signed PPP project contracts.

3.2.2. Principles of ensuring harmony of interests between the State, investors, users and the community

PPP projects are often implemented in essential fields such as transportation infrastructure, energy, urban infrastructure, and wastewater treatment. In addition to financial benefits, the State is also essential. Pay attention to other rights such as ownership, management, and transfer of PPP project assets and ensure national and community interests related to the PPP project. While investors often only participate in investing in PPP projects when they feel the investment capital is secure and has attractive benefits, those benefits must be bound and guaranteed by contractual agreements. PPP project. Therefore, signing a PPP project contract can only take place when it harmoniously and satisfactorily resolves the relationship of interests between the State inv, esters, and project enterprises.

3.2.3. The principle that investors and project enterprises are reserved and more beneficial investment incentives are applied in case of legal changes

PPP projects have a common characteristic of being long in operation and are subject to many legal documents in many different fields during implementation. Therefore, every time there is a change in State policies and laws, it will often lead to both positive and negative impacts on PPP projects and possibly threaten to harm investors' legal rights and interests. Therefore, this principle is recognized in the Investment Law 2020: "*In case a new legal document is issued regulating new investment incentives or higher investment incentives, the investor will enjoy investment incentives according to the provisions of the new legal document for the period of enjoying the remaining incentives of investment projects. Suppose a newly issued legal document* *stipulates lower investment incentives than the investment incentives the investor previously enjoyed. In that case, the investor will continue to apply the investment incentives according to the previous regulations for the period. The remaining incentive period of the investment project* (National Assembly of the Socialist Republic of Vietnam, Investment Law, 2020).

Investors and project enterprises enjoy investment guarantees according to the provisions of the Investment Law in the form of public-private partnerships and investment laws (National Assembly of the Socialist Republic of Vietnam, Investment Law, Law on Investment by public-private Partnership, 2020). However, there are different regulations between the Investment Law and the investment law under the public-private partnership method regarding business investment orders, procedures, and investment guarantees. In that case, the provisions of the Investment Law will comply, except in the case of Authority, order, and procedures for investment and project implementation; Laws governing project contracts; investment guarantee, state capital management mechanism applied directly to investment projects in the public-private partnership mode implemented by the provisions of the Law on investment in the public-private partnership mode (National Assembly of the Socialist Republic of Vietnam, Investment Law 2020).

4. Types of PPP contracts

The classification of PPP project contracts is based on criteria according to three main aspects of the PPP project: (i) Types of assets related to the project are divided into two groups: newly formed and newly formed assets. Newly formed assets must be associated with construction or development activities (Develop) while existing assets will be associated with maintenance (Maintain) and restoration activities (Rehabilitate); (ii) The role of the investor in the project: the investor can play different roles, such as the lessee to perform the service (Lease), the operator (Operate) or the owner (Own) of the asset; and (iii) Payment mechanism for investors: investors in PPP projects can be paid from fees collected directly from public service users, from the State budget, or a combination of both methods. Based on the above classification criteria, regulations in Article 45 of the PPP Law 2020 divide PPP project contracts into 03 groups with specific project contract types as follows:

+ *Project contract groups apply the mechanism of collecting fees directly from users or organizations purchasing public products and services* :

(i) Build - Operate - Transfer Contract (PPP Contract): a contract in which the investor or PPP project enterprise is granted the right to build, do business, and operate the project and infrastructure system within a certain period. At the end of the term, the investor or PPP project enterprise transfers the project and infrastructure system to the State;

(ii) Build – Transfer – Operate Contract (BTO Contract): a contract in which the investor or PPP project enterprise is granted the right to build works and infrastructure systems;

(iii) Build – Own – Operate Contract (BOO Contract): is a contract in which the investor or PPP project enterprise is granted the right to build, own, do business, and operate the infrastructure system within a certain period; At the end of the term, the investor or PPP project enterprise terminates the contract.

+ *Project contract group applies the State payment mechanism based on the quality of products and public services* :

(i) Build - Lease - Transfer Contract (BTL Contract): is a contract in which the investor or PPP project enterprise is granted the right to build the project and infrastructure system and transfer it to the State after completion; has the right to provide public products and services based on operating and exploiting that project or infrastructure system within a certain period; the agency signs a service lease contract and makes payments to investors. , PPP project enterprise;

(ii) Build - Transfer - Lease Contract (BLT Contract): is a contract in which the investor or PPP project enterprise is granted the right to build works and infrastructure systems and provide public services based on operating and exploiting that infrastructure system and works within a specific time; The agency signs a service lease contract and makes payments to investors and PPP project enterprises. At the end of the term, the investor or PPP project enterprise transfers the project and infrastructure system to the State;

+ A mixed contract is a contract that combines the types of contracts between the above two groups.

Today, the law regulates 07 types of PPP project contracts in Vietnam. Compared to before the Vietnam National Assembly promulgated the PPP Law 2020, the law has abolished the form of Build-Transfer Contract (BT Contract). This is appropriate because the BT Contract is not true to the nature of a PPP project contract because there is no "concession" element. Classifying PPP project contracts according to current Vietnamese law is basically similar to the provisions of some countries, such as the Philippines and South Korea (Territorial Development and Urbanization, 2011).

6. Content of PPP project contract

The content of a PPP project contract is the terms that the parties agree and agree on in the contract, by the principles governing PPP project contractual relationships and current law, and stipulates details of the rights, obligations, and benefits of each party in the PPP contractual relationship and financial and legal mechanisms and solutions for implementing the PPP project and resolving conflicts and disputes that arise and terminate the contract. The PPP project contract has the following essential contents (National Assembly of the Socialist Republic of Vietnam, Law on investment by public-private partnership, 2020): (i) Project objectives, scale, location and progress; construction time of works and infrastructure systems; effective date of the contract; contract term; (ii) Scope and requirements on techniques, technology, quality of works, infrastructure systems, products and public services provided; (iii) Total investment; capital structure; financial plan, including financial arrangement plan; prices and fees for public products and services, including methods and formulas to establish or adjust; (iv) Conditions for using land and other resources; plans for organizing the construction of auxiliary works; requests for compensation, support, and resettlement; (v) Responsibility for carrying out licensing procedures according to relevant laws; design; organization of construction; inspection, supervision, and quality management during the construction phase; Acceptance, finalization of investment capital and confirmation of completion of works and infrastructure systems; (vi) Public duties are provided continuously and stably; conditions, order and procedures for transferring works and infrastructure systems; Ensure performance of contracts; ownership, management and exploitation of project-related assets; rights and obligations of investors and project enterprises; agreement on the use of third-party guarantee services for the obligations of the contracting authority; (vii) Solution in case of fundamental changes in circumstances according to the provisions of civil law to continue performing the contract; (viii) Responsibilities of parties related to information security; report mode; (ix) Principles and conditions for amending, supplementing and terminating the contract before the deadline; transfer of rights and obligations of the parties; rights of the lender; procedures, rights and obligations of the parties when liquidating the contract; (x) Incentives, investment guarantees, plans to share increases and decreases in revenue, ensure foreign currency balance, and types of insurance (if any); (xi) Laws governing contracts and dispute resolution mechanisms.

Vietnamese law stipulates that the above essential contents only guide the parties in negotiating and signing PPP project contracts. The PPP Law 2020 requires PPP project contracts to define the rights and obligations of the contracting agency, investor, and project enterprise based on equality. Therefore, in the process of drafting PPP project contracts, Competent state agencies will base on the primary content of the contract as stipulated in the PPP Law 2020, based on the nature of the PPP project and the needs and desires of the market to draft terms of the contract, by the principles of law, not contrary to law and social ethics. Usually, the detailed terms of a PPP contract are completed based on a system of regulations and other legal regulations related to many fields, from investment, land, construction, finance, accounting, auditing, management, and use of public assets for environmental protection, as well as based on practices and practical experience in implementing PPP projects.

As described above, the structure model of PPP project contract content is also a model applied by the laws of many countries. For example, in the Philippines, the main contents of a PPP project contract are stated in Article 4.3 IRR on contract drafting. Accordingly, the drafted PPP project contract must clearly state the relationship between the two parties in terms of each party's rights, obligations, and responsibilities when implementing the project. In particular, Philippine law stipulates targets, indicators, and procedures for measuring and reporting the main performance results of the project. Details of types of insurance that investors must buy, such as risk insurance, motor vehicle insurance, insurance for workers, comprehensive liability insurance. According to recommendations of the World Bank, PPP project contracts need to detail the rights and obligations of the parties fully but must ensure that principles of conduct between parties are established. It is necessary to focus on the following groups of terms:

(i) Terms of contract performance requirements (Performance Requirement): Specify the necessary quality and quantity of goods and services under the contract, which focuses mainly on output standards, meaning the final standards at the construction and transfer stages in PPP Contracts and BLT Contracts, not on input standards, for example of iron, steel for construction.

(ii) Payment Terms (Payment Mechanism): Specifies how investors will receive payments directly from the State or based on user fee collection, payment terms, Payment profile, regulations on rewards, and penalties in case of late payment.

(iii) Contract Adjustment Terms: Develop regulations on adjusted cases, adjustment procedures, and dispute resolution in case of disagreement on adjustments as a basis for implementation when there are any changes requiring adjustments to the PPP project contract;

(iv) Dispute Resolution Clause: Specifies the dispute resolution method and applicable law when resolving disputes related to PPP project contracts. PPP project contracts can apply many different dispute resolution mechanisms depending on the type of dispute, so it is necessary to clarify which mechanism, order, and procedures are applied to which dispute.

(v) Terms of contract termination (Contract Termination): Determine the contract term and handover terms, and determine the case of terminating the PPP project contract ahead of schedule or due to serious violation by the contracting agency implementation of contractual obligations, determination of other cases, and impacts of terminating a PPP project contract ahead of schedule (PRC, 2022).

7. Recommendations for Vietnam on PPP project contracts

7.1. Supplementing legal regulations on the responsibilities of parties in compensation, resettlement support, land allocation, and land lease to implement PPP projects

The failure of the project contract signing agency to properly carry out its obligations and responsibilities for coordination in compensation, resettlement support, land allocation, and land lease for project implementation is one of the causes leading to the Slow implementation of the PPP Project. This causes risks and losses for investors and project enterprises: increases loan interest costs, construction investment costs due to price slippage, affects project quality due to inconsistent construction, costs of resolving disputes and complaints with contractors, banks stopping funding, and changing the financial plans of investors and project enterprises. To overcome this situation, the PPP Contract needs to supplement and detail regulations on the responsibilities of the Agency signing the PPP Contract when violations occur in compensation and resettlement support, land allocation, land lease to implement PPP projects in the following directions:

(i) Supplement legal regulations on specific violations of the PPP Contract Signing Agency in compensation, resettlement support, land allocation, and land lease for PPP project implementation;

(ii) Supplementing legal provisions on liability for compensation for damages arising from violations of the PPP Contract Signing Agency;

(iii) Supplementing legal regulations on principles of proving incurred damage, damage assessment methods by independent valuation and appraisal units;

(iv) supplementing legal regulations on maximum penalties for violations for Contracting Agencies when there are violations in compensation, resettlement support, land allocation, and land leases to implement PPP projects for construction purposes. Increase the initiative and responsibility of local authorities in site clearance and handing over clean sites to investors.

(v) In addition, it is necessary to supplement legal regulations on not considering the delay in implementing a PPP project as a violation of the investor or project enterprise in case the progress of site clearance of the PPP project is delayed due to the Authority. Signing a contract with properly performing the obligations and responsibilities of coordinating, supervising, and urging local state management agencies; Delays in site clearance that are not due to the fault of the investor or project enterprise are not included in the project implementation deadline. In this case, Vietnam can refer to the Model PPP Contract for thermal power projects issued by the World Bank with the following provisions: "*Delays leading to postponement of any construction activities or opening date or collect fees, the investor is entitled to an extension of the completion deadline of that construction project and (if more than 28 consecutive days or more) is compensated by the State for all costs and loss on revenue, if any,* that *investors must bear due to the consequences of slow site clearance* (Worldbank, 2021). Or the PPP Contract Model drafted by the World Bank, it stipulates that the competent state agency does not hand over the project according to the schedule specified in the contract, and this delay leads to the project's construction or the estimated delivery date (Worldbank, 2009). Suppose the project operation to collect fees is delayed. In that case, the investor has the right to extend the project implementation period and be compensated by the competent state agency for the increased/lost costs due to that delay, except in cases where the investor is at fault.

7.2. Supplement legal regulations on investment capital and disbursement of investment capital

7.2.1. Supplementing regulations on the responsibilities of PPP contract signing agencies in supporting financial arrangements and disbursement of capital sources

PPP projects, in general, primarily transport PPP projects, require significant investment capital and long implementation periods, so the management of these projects' investment capital and capital disbursement progress is invaluable. Article 76, PPP Law 2020 stipulates that investors and project enterprises must arrange finance for PPP projects using equity capital and legally mobilized capital sources. At the same time, the plan, financial arrangement schedule, and handling measures must be stipulated in case the investor or project enterprise violates the financial arrangement obligation for the project. However, practice shows that arranging finance for PPP projects is always a complex problem. For many reasons, few PPP projects do not encounter problems in financial arrangement procedures and disbursement progress. One of the reasons is the need for timely support from competent state agencies, leading to investors and project enterprises needing help accessing capital sources and delaying disbursement progress. According to the experience of many countries around the world, because investing in the transportation sector requires a large amount of capital, the law often stipulates that the state must have direct and indirect financial support policies for transport companies. Investors. For example:

(i) The US Transportation Infrastructure Finance and Innovation Act (TIFIA) allows investors to borrow public debt at a low cost to upgrade and improve the transportation system. The Government will also support loan guarantees and reserve credit funds;

(ii) According to Mexican law, PPP projects will be financed from the standard long-term credit program provided by BANOBRAS, the National Development Bank of Mexico, and the Contract Payment Enhancement Fund (CPEG). These funds and policies aim to enhance the role and support of the State for private enterprises in arranging capital sources;

(iii) According to Philippine law, the agency signing the PPP contract and the government will issue a type of guarantee to the investor, such as a guarantee for direct liability (Guarantee direct liability), a written guarantee issued by the Ministry of Finance. The issued finances are intended to ensure the Government's responsibility for debts arising if the contracting agency violates its financial obligations. This document will be attached to the PPP Contract and take effect when necessary. Guarantee for contingent liabilities (Guarantee for Contingent Liability) means that the Government can guarantee the performance of the investor's obligations upon the occurrence of certain events agreed upon by the parties in the PPP Contract (Japan International Cooperation Agency, 2017).

Current Vietnamese law on PPP project contracts does not have regulations on the State providing direct support with budget capital or having separate financial funds. There is also no binding mechanism to ensure the State's support for investors and project enterprises regarding financial arrangement procedures for projects and capital disbursement. Therefore, competent state agencies often need to process documents or take measures to support investors and project enterprises in completing financial arrangements for projects and capital disbursement. Therefore, it is necessary to supplement legal regulations on support responsibilities, forms of support, support measures, and duration of support measures of competent state agencies and contracting agencies. PPP supports investors and project enterprises in financial arrangement procedures for projects and capital disbursement.

7.2.2. Supplement regulations on the responsibilities of the agency signing the PPP contract in case of violation of payment obligations

Vietnam's public-private partnership investment law and guiding documents have regulations on the value of State capital supporting the construction of works and infrastructure systems, payment schedules, and payment schedules as the contract signing agency's obligation to pay the above capital to the project enterprise. However, practice shows that some PPP projects have a situation in which investors and project enterprises have completed construction, but auxiliary items invested with state capital have not been completed due to delayed settlements, so the project cannot be put into operation, causing damage to investors and project enterprises.

Therefore, it is necessary to supplement regulations on compensation for investors and project enterprises in case the contracting agency violates the obligation to pay the project enterprise for the State capital support. It is supporting the construction of works and infrastructure systems. Compensation by the Contracting Authority can take one of the following two forms: (i) or the Contracting Authority directly pays the damages that must be compensated to the investor or project enterprise. ; (ii) or the Contracting Authority and the investor or project enterprise shall consider adjusting and extending the contract performance period to ensure that the investor or project enterprise compensates for losses through collecting fees for public products and services.

7.3. Additional legal regulations on transfer of works to the state

According to the provisions of Articles 77 and 78 of Decree 35/2021/ND-CP, a PPP project, before being transferred, must meet conditions such as the project conforming to regulations, technical standards, quality, not being a security asset for other transactions, meeting the necessary usage and capacity. Clause 3, Article 85, PPP Law 2020 also stipulates that the entire asset value of the PPP project must be audited when transferred 107. According to Clause 1, Article 77 of Decree No. 35 /2021/ND-CP, PPP projects can only be accepted when the project enterprise ensures that the following principles and conditions are fully met: (i) Construction Works and infrastructure systems conform to regulations and standards as prescribed by construction law and other relevant laws; comply with project contract regulations; (ii) The works and infrastructure systems of the PPP project are not under mortgage, mortgage or any other ownership restrictions; (iii) Works and infrastructure systems fully meet the necessary uses, capacity and quality by technological and quality requirements of works and infrastructure systems stipulated in the project contract at the time of transfer, eligible for continued use according to the provisions of law; (iv) The transfer and receipt of projects and infrastructure systems must not affect the continuity and quality of the provision of public products and services.

Current Vietnamese law does not stipulate sanctions for project enterprises in cases where the principles and conditions for transferring construction works are not met at the time of transfer, and the project enterprise fails to perform. Repair and maintenance of PPP projects at the request of competent state agencies. According to Clause 1, Article 78 of Decree No. 35 /2021/ND-CP, at least 01 years before the date of termination of the PPP project contract according to the term specified in the contract, the project enterprise must publicly announce the transfer, infrastructure systems, procedures, contract liquidation deadlines, and debt payment; At the same time, send dossiers requesting transfer of works and infrastructure systems to the contracting agency.

Within thirty days from receipt of the transfer request dossier, the contracting agency shall preside over and coordinate with specialized state management agencies in charge of assets, financial agencies, and other agencies. Other related implementation (Government of the Socialist Republic of Vietnam, Decree No. 35 /2021/ND-CP, 2021): Organize inspection of quality, value, condition of works and infrastructure systems according to principles and conditions agreed in the project contract; Prepare a list of transferred assets; Make a record identifying property damage (if any) to request DNDA to perform property repair and maintenance; Report to the competent authority on the assignment of an agency or unit to operate, do business and maintain works, infrastructure systems. Current Vietnamese law does not stipulate the minimum term for an enterprise. The project must send the transfer request dossier to the Contracting Authority how many days before the PPP project contract's termination date. This may lead to a situation where the project enterprise submits a request for transfer of the PPP project to the Contracting Authority close to the date of termination of the PPP Contract, causing the Contracting Authority to no longer have enough time to carry out tasks according to legal regulations. Meanwhile, the term of the PPP contract has expired, and it is not easy to bind the responsibilities of the investor and project enterprise to complete the remaining work and responsibilities to ensure that the PPP project meets the principles and requirements. Transfer conditions according to legal regulations. Therefore, it is necessary to supplement regulations on the minimum time limit for enterprises to submit transfer request documents to the contracting agency before the PPP project contract's termination date.

7.4. **Additional legal regulations on serious violation of PPP project contracts**

One of the cases to consider terminating a PPP Contract ahead of schedule is when one of the parties in the contract seriously violates the obligations specified in the contract. Serious breach is the failure to properly perform one party's obligations to the extent that the other party fails to achieve the purpose of entering into the contract. This legal provision is unclear, causing controversy in determining whether a violation of PPP project contract obligations is serious. Therefore, it is necessary to supplement legal regulations on severe violations of the implementation of obligations specified in PPP project contracts. Accordingly, the contracting agency seriously violates the implementation of obligations stipulated in the PPP project contract when Delays in (i) supporting investors and project enterprises in receiving documents and necessary permits to implement the project, (ii) coordinating in implementing compensation, site clearance, support, and resettlement obligations; (iii) fulfill the obligation to pay the capital to support construction of works, the capital to pay to project enterprises providing public products and services; or The contracting agency acts to obstruct the implementation of contractual obligations of the investor or project enterprise, leading to the investor or project enterprise not being able to fulfill their obligations according to the Contract. Investors and project enterprises seriously violate the implementation of obligations specified in the PPP project contract when (i) Delaying project implementation progress beyond the committed deadline without the fault of the signing agency. Contracting affects the investment efficiency of the project; (ii) poor quality construction.

Author Contributions: Dr. Vo Trung Hau is the author of the entire article.

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