



# PUBLIC-PRIVATE PARTNERSHIP (PPP)

INDUSTRY AND LEGAL UPDATE

**KALIKOVA & ASSOCIATES**  
law firm

Information for effective business solutions

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## Industry Update

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4 October 2013

### Mayor's Office proposes to open PPP-based kindergartens

The Bishkek city Mayor's Office invited business structures to participate in the creation of PPP-based kindergartens. According to Mayor of Bishkek city Isa Omurkulov, this type of business is very profitable. Today, there are about 102 thousand children of preschool age. Mayor's Office can secure kindergarten places only for 25 thousand children, or maximum 35 thousand children in case of overloading.

<http://www.vb.kg/246249>

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12 September 2013

### Private sector to take over some power utilities through pilot projects

MP Turatbek Madylbekov offered to launch pilot projects in Kyrgyzstan for the handover of Severelectro's power utilities to the public sector.

As MP told at the plenary session of Kyrgyz Parliament, Severelectro handed over 4 of its power utilities in the Pervomaisky district to the public sector two and a half years ago in accordance with the PPP law. Before, theft of electricity in this district was 44%. After their takeover by the public sector, theft of electricity decreased to 10-30%.

<http://tazabek.kg/news:357425/>

## Legal Update

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08 November, 2013

### President signs amendments in furtherance of PPP law

Kyrgyz President Almazbek Atambaev signed the law amending certain legal acts of the Kyrgyz Republic such as the Land Code, Customs Code, Tax Code, Law on Status of Capital of Kyrgyz Republic, Basic Principles of Budgetary Law in Kyrgyz Republic, etc.

The law was enacted by Parliament on October 3, 2013.

The law aims to ensure the enabling legal environment for the Law on Public-Private Partnership passed on February 22, 2012. The proposed amendments are necessitated by the enactment of the PPP law which contains references to the above legal acts.

The law takes effect upon expiration of 15 days from the date of official publication.

<http://www.tazabek.kg/news:361510/>

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03 October 2013

### Parliament passes PPP enabling bills package in third reading

A proposed amendment bill passed into law after third reading by Kyrgyz Parliament on October 3, 2013. The bill proposes amendments to a number of legal acts such as the Land Code, Tax Code, Law on Status of Capital of Kyrgyz Republic, Law on Basic Principles of Budgetary Law, Law on Municipally Owned Property, Law

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6 September 2013

### **Government to attract \$40 million for establishing PPP-based agro-technical service centers**

The Government adopted a resolution to establish PPP-based agro-technical service centers and plans to attract \$40 million in loans.

The goals of these centers will be: a) to provide timely and adequate mechanized services to rural commodity manufacturers; b) to create enable environment for leasing services; and c) to renovate and modernize agrarian sector on the basis of PPP.

<http://tazabek.kg/news:357137/>

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5 July 2013

### **Bishkek to construct and renovate 40 thousand sq.m. of sidewalks under a PPP arrangement**

Bishkek plans to construct and renovate 40 thousand sq.m. of sidewalks under a PPP arrangement, Mayor of Bishkek Isa Omurkulov announced at the meeting with the representatives of construction companies. The meeting resulted in the decision to cooperate in solving the problems of the city and the construction sector in general.

<http://www.vb.kg/234967>

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26 June 2013

### **German bank to finance feasibility study for hemodialysis center and laboratory services projects**

The Ministry of Health of the Kyrgyz Republic received an agreement of KfW (Kreditanstalt für Wiederaufbau) to finance the feasibility study (FS) for hemodialysis center and centralized accredited laboratory services projects. This was reported by representative of the Ministry of Health Anara Eshhodjaeva.

Hemodialysis centers and Laboratory services projects are the PPP projects aimed at creating favorable conditions for private medical companies to provide medical services in health institutions. According to A. Eshhodjaeva, the

on Status of Osh City, Law on Financial and Economic Principles of Local Self-Governance, Law on Local State Administration, Law on Local Self-Governance.

The Ministry of Economy drafted the bill amending certain legal acts to ensure the enactment of legislation enabling the PPP law passed on February 22, 2012.

The proposed amendments are as follows:

#### Land Code

Article 29 of the Land Code is amended to allow the private partners under the PPP agreement to receive land use rights without holding an auction in the manner determined by the Government of Kyrgyzstan.

Article 62 of the Land Code is amended by adding a new subsection 12 requiring that land rights be terminated upon termination of the PPP agreement.

Article 64.1 of the Land Code is amended by adding a reference to above Article 62.12. This amendment allows transferring the land plot to the state or municipal owner upon termination of the PPP agreement.

#### Customs Code

Article 246 of the Customs Code is amended by adding the provisions allowing a deferral or installment payment of customs duties for supplies made under the PPP project if so provided in the PPP agreement and on the basis of the decision of the Kyrgyz Government.

Article 248 of the Customs Code is amended by adding the provisions describing the cases, procedures and conditions determined by the Government for reimbursement of interest on deferred or installment payment of customs duties paid by private partners and/or projects companies under the PPP project.

#### Tax Code

Article 79.2.2 of the Tax Code is amended by adding the provisions allowing a deferral or installment payment of tax arrears arising in connection with the activities carried out under the PPP legislation.

Article 2561 of the Tax Code is amended by the provisions granting the VAT exemption for supplies of goods, works, or services provided by the private partners and/or project company under the PPP agreement subject to approval by the Government of Kyrgyzstan.

#### Law on Status of Capital of Kyrgyz Republic («Law»)

duration of the preparatory stage will be 4-6 months. The project implementation will begin in 2014.

<http://www.vb.kg/233770>

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12 June 2013

### **Joomart Otorbaev meets with regional manager of IFC in Central Asia**

On June 11, 2013, First Vice Prime Minister Joomart Otorbaev held negotiations with IFC Regional Manager for Central Asia Moazzam Mekan. Moazzam Mekan said IFC is interested in infrastructure and public-private partnership projects. Joomart Otorbaev in turn underlined importance of cooperation with IFC.

<http://www.vb.kg/231726>

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11 June 2013

### **Kyrgyzstan to use two PPP models to build logistics and distribution centers for fruits and vegetables**

The Committee of the Kyrgyz Chamber of Commerce and Industry on PPP, stock exchanges and investments (PPP Committee) held a presentation on establishing in Kyrgyzstan the logistics and distribution centers for fruits and vegetables.

The meeting of the PPP Committee was attended by the resident representative of JICA in Kyrgyzstan Oyama Takayuki, representatives of leading business associations and officials of ministries and agencies.

The resident representative of JICA in Kyrgyzstan noted that assistance in promoting agricultural business was one of priority targets of JICA's strategy for cooperation with the Kyrgyz Republic adopted in 2013. Also, he underlined the importance of the logistics and distribution centers for development of business in Kyrgyzstan.

The Chairman of the PPP Committee and Managing Director of Niet Araket Financial Consulting Company Nurbek Elebaev presented the results of research conducted in February and March 2013. The research showed the most appropriate and effective PPP models for the establishment and operation of logistics and distribution centers in the Kyrgyz Republic.

Article 13 of the Law is amended by adding the provisions introducing the new functions of the head of Bishkek city state administration.

The head of state administration will be authorized to ensure, within the scope of his authority, the performance of the PPP agreement in accordance with the PPP law and to search for and initiate the PPP projects and execute the PPP agreements in accordance with the PPP law.

*Law on Basic Principles of Budgetary Law in Kyrgyz Republic («Law»)*

Amendments of Article 37.2 of the Law concern the financing of expenditure obligations of the Kyrgyz Government under the PPP agreements. The public funds will come from national budget to finance undertakings of national importance, responsibility for which is imposed on the Government acting through its respective authorities.

Amendments to Article 37 of the Law refer to financing of undertakings with the public funds coming from local budgets. The Law provides that the public funds from local budgets will be used to co-finance undertakings under the PPP agreements.

*Law on Municipally Owned Property («Law»)*

Amendments of Article 19 of the Law refer to competencies of local self-governance authorities in respect of management and disposal of municipally owned property. In particular, the Law establishes the competency of the local council to search for and initiate the PPP projects and to execute the PPP agreements in accordance with the PPP law.

*Law on Status of Osh City («Law»)*

Changes to Article 8 of the Law refer to competencies of the mayor of Osh city. In particular, the Law establishes the competency of the mayor to search for and initiate the PPP projects and to execute the PPP agreement in accordance with the PPP law.

*Law on Financial and Economic Principles of Local Self-governance («Law»)*

Amendments of Article 23.2 refer to relationships between the local self-governance and a municipal enterprise or joint stock company founded by it. The Law provides that in case of establishing a joint stock company as a project company under the PPP agreement, the requirement for local self-governance to hold more than half of the shares of the indicated company does not apply.

*Law on Local State Administration («Law»)*

The Government was recommended to develop and adopt «The Program for Development of National Logistics System». The process of the Program implementation will be coordinated at a governmental level with particular role played by the international logistics center in Bishkek and regional logistics centers in Talas, Chui and Issykul regions.

<http://www.evrazes-bc.ru/news/view/25190>

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27 May 2013

### **Reconstruction of Osh international airport to require \$100–120 million investment.**

According to preliminary estimates, reconstruction of Osh international airport will require \$100–120 million investment, the Ministry of Transport and Communications stated in its presentation on PPP Projects in the Airport Sector.

According to the Ministry's data, the period of reconstruction will be about 3 years, the internal rate of return will be 16–19%. Osh international airport reconstruction project is considered as a possible pilot PPP project.

[http://www.caan.asia/ru/show-investitsionnie\\_rashodi\\_na\\_rekonstruktsiyu\\_megdunarodnogo\\_aeroporta\\_osh\\_sostavyat\\_100-120 mln.html](http://www.caan.asia/ru/show-investitsionnie_rashodi_na_rekonstruktsiyu_megdunarodnogo_aeroporta_osh_sostavyat_100-120 mln.html)

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24 May 2013

### **ADB assists Kyrgyzstan to develop PPP**

ADB is providing technical assistance to the Kyrgyz Republic to develop a stronger policy, legal and regulatory environment for PPPs.

ADB noted that the fiscal resources of the government are limited and the use of technical and management know-how is also minimal. Thus, involving the private sector to help address the country's pressing infrastructure needs is crucial.

It is developing the plan and guidelines for a Project Development Support Facility to develop competitively tender and implement well structured projects.

The assistance is helping strengthen the capacity of the Ministry of Economy – the government agency authorized to implement PPP public policy and programs. The technical

Amendments of Article 9 of the Law refer to competencies of the local state administration. In particular, the Law establishes the competency of the local administration to search for and initiate the PPP projects and to execute the PPP agreements under the PPP law.

#### ***Law on Local Self-Governance («Law»)***

Amendments of Article 41 of the Law refer to competencies of the Mayor's Office and rural government. In particular, the Law establishes the competency of the Mayor's Office and rural government to search for and initiate the PPP projects and to execute the PPP agreements under the PPP law.

More information on the amendments proposed can be found on the official website of Kyrgyz Parliament at <http://www.kenesh.kg/lawprojects/lps.aspx?view=projectinfo&id=47690.0>, which shows a comparative table attached to the bill proposing amendments to some legal acts of the Kyrgyz Republic.

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24 September 2013

### **Bishkek Mayor's Office identifies Bishkek Development Agency as single PPP unit**

In furtherance of the PPP law, Bishkek Mayor's Office identified the Bishkek Development Agency as a single PPP unit for Bishkek city. The Bishkek Development Agency is vested with powers:- to take necessary steps to execute civil law transactions with specialized legal entities for development of the feasibility study;- if necessary, to conduct respective consultations and to keep correspondence with the PPP authority, the Risk Management Unit, the ministries and agencies of the Kyrgyz Republic, and international organizations on the PPP matters;- to provide clarifications to all interested persons on the municipal policies, programs and practices of applying legislation to the PPP projects;- to exercise other powers conferred by the PPP law, regulatory acts and documents of Bishkek Mayor's Office on the PPP.

<http://tazabek.kg/news:358073/>

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7 March 2013

### **On March 7, 2013, the Ministry of Economy of the Kyrgyz Republic approved the tender procedure of the PPP projects («Procedure»).**

assistance also supports the Risk Management Unit under the Ministry of Finance.

<http://www.vb.kg/229300>

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21 May 2013

### **PPP Forum takes place in Bishkek**

The international forum on 'Public Private Partnership in Infrastructure and Services: From Policy to Projects', jointly organized by the Government of the Kyrgyz Republic and ADB, was held in Bishkek on 23-24 May.

demonstrate the government's commitment to PPP in infrastructure and services Participants of the forum will discuss the readiness of the Kyrgyz Republic for Public Private Partnerships (PPPs) and also seek to build consensus on additional reforms needed to improve the environment for the development and implementation of PPP projects.

The forum brought together policy makers from the Kyrgyz Republic and high ranking government officials and private sector.

<http://www.vb.kg/228794>

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21 May 2013

### **Kyrgyzstan to award 15 PPP projects**

Kyrgyzstan has identified 15 projects to be implemented under a PPP arrangement, reported the deputy minister of economy Sanjar Mukanbetov.

According to the official, the projects will be carried out in infrastructure and health sectors. Bishkek Mayor's Office plans to launch PPP projects in sub-sectors such as car park, street lighting. The ministry of transport and communications plans to award contracts for renovation of part of the Bishkek-Osh road and to collect toll for its use. The road can pay back in 10-12 years.

The government official noted that the projects are in place but investors are not identified yet.

<http://www.vb.kg/228791>

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26 April 2013

### **Prime Minister unveils plan to revive economy of Batken region**

This document regulates the tender procedure of the PPP projects; specifically, the issues related to invitation to bid, submitting and accepting tender bids, preliminary selection, determination of the winning bidder, negotiation with the winning bidder and subsequent execution of the PPP agreement.

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28 February 2013

### **On February 28, 2013, the Ministry of Economy of the Kyrgyz Republic approved the Regulations on the form of private participation in the PPP projects (PPP models) («Regulations»).**

The Regulations specify possible PPP mechanisms and forms of private participation in the PPP projects.

It is provided that private participation in the PPP projects may take various forms depending on the type of an infrastructure project or services, their sectoral affiliation, purpose of the PPP project and agreements reached by the parties to the PPP project.

The basic types of PPP models are: 1) build and transfer; 2) build, lease and transfer; 3) build, operate and transfer, etc.

It should be noted that the list of PPP models defined in the Regulations is not conclusive. The parties to the PPP agreement may define other PPP models to the extent not inconsistent with Kyrgyz laws.

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28 January 2013

### **On January 28, 2013, the Kyrgyz Government approved the Procedure for preparing tender rules and tender documents for the PPP projects in the Kyrgyz Republic» («Procedure»).**

The Procedure regulates the actions of the public partner after initiating the PPP project and establishes the contents of tender rules and tender documents.

The Procedure applies to tenders conducted in respect of the infrastructure facilities and/or services under a PPP arrangement, except for those determined by the Kyrgyz Government.

The Procedure does not apply to the projects in the area of mineral resources, state procurement and privatization.



At the first International Investment Forum Batken 2013, Prime Minister Jantoro Satybaldiev noted that the PPP law enables private foreign capital to participate in infrastructure projects based on the PPP mechanisms.

Prime Minister shared plans to revive the local economy through PPP projects in the following sectors:

- construction of loop roads bypassing the territory of neighboring states. As the loop roads have place mainly in Batken region, there is a need to build about 125 km of road (Osh-Batken-Isphana road);
- renovation and modernization of Batken airport;
- completion of construction of irrigation facilities (Burgandin district of Batken region) and introduction of 3,498 ha of new irrigated lands;
- construction of P-4 channel and raising capacity of current P-4 channel in Batken region;
- construction of new water supply facilities, water pipelines and renovation of those existing in each village;
- construction of new and renovation of existing sewer pipelines of effluent facilities.

<http://www.vb.kg/226342>

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18 March 2013

### **AESE stands for PPP projects in energy sector to ensure power security in Kyrgyzstan**

Association of Energy Sector Entrepreneurs (AESE) stands for the PPP projects in the energy sector to ensure power security in Kyrgyzstan.

AESE believes that it is high time to sit at the negotiating table and to proceed with the work based on the current laws. There is no point in wasting time for drafting amendments and proposing new laws.

First of all, AESE supposes to proceed with the most problematic sectors of state power distribution companies and start preparing for the next heating cycle of 2013-2014, which is going to be not easy due to lack of water at HPPs and problems in distribution networks.

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28 January 2013

### **On 28 January 2013, the Kyrgyz Government approved the Regulations on Tender Committee for Selection of Private Partners for PPP Projects («Regulations»).**

The Regulations define the process of formation, powers and organization of activities of the tender committee for selecting private partners for the PPP projects.

It should be noted that the tender committee is formed for each individual PPP project. Its competencies include holding the tender for selecting the private partner with adequate opportunities and qualification for participation in the PPP project. The activities of the tender committee are carried out on a pro bono basis.

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14 September 2012

### **On September 14, 2012, the Kyrgyz Government passed Resolution N 616 identifying the PPP agencies.**

The Government identified the Ministry of Economy of the Kyrgyz Republic as the PPP Authority and the Ministry of Finance of the Kyrgyz Republic as the Risk Management Unit.

[http://news.mir.kg/business/apek\\_energobezopastnost-id18467.html](http://news.mir.kg/business/apek_energobezopastnost-id18467.html)

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71 Erkindik Boulevard,  
Bishkek, 720040  
Kyrgyz Republic

Tel.: +996 (312) 666060  
Fax: +996 (312) 662788  
Web: [www.k-a.kg](http://www.k-a.kg)  
Email: [lawyer@k-a.kg](mailto:lawyer@k-a.kg)

The sources of news contained in the Update are websites:  
[www.akipress.kg](http://www.akipress.kg), [www.24.kg](http://www.24.kg), [www.parus.kg](http://www.parus.kg), [www.kyrgyz-el.kg](http://www.kyrgyz-el.kg)

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