

LAW OF KYRGYZ REPUBLIC

Bishkek, August 11, 2021, No. 98

On Public-Private Partnership

Article 1. Purpose of this Law

The purpose of this Law is to establish a legal framework for the development and implementation of public-private partnership projects and to create a favorable environment for public-private partnership entities.

Article 2. Scope of this Law

1. This Law shall govern the matters arising in the field of public-private partnership.

Public-private partnership shall apply to infrastructure facilities and/or infrastructure services. Public-private partnership shall not apply to infrastructure facilities and/or infrastructure services related to subsoil use, public procurement and privatization.

2. The matters falling within the scope of this Law shall not be governed by other laws.

3. The matters arising from international public-private partnership projects shall be governed by international agreements of the Kyrgyz Republic duly put into effect.

4. Public-private partnership projects applied to facilities included in the list of strategic assets shall be also subject to the requirements of the legislation of the Kyrgyz Republic on strategic assets.

5. The banking matters and entities licensed and regulated by the National Bank of the Kyrgyz Republic shall be governed by this Law subject to the requirements of the banking legislation of the Kyrgyz Republic.

If the public-private partnership project participants are the persons supervised by the National Bank of the Kyrgyz Republic, the provisions of this

Law shall apply to the extent not inconsistent with the banking legislation of the Kyrgyz Republic.

Article 3. Tasks to be solved by public-private partnership

The tasks to be solved by public-private partnership are:

- 1) to improve efficiency and quality of creation of infrastructure facilities and provision of infrastructure services;
- 2) to improve efficiency of public spending on planning, construction and/or modernization, operation, or maintenance of infrastructure facilities and provision of infrastructure services;
- 3) to attract investment in the national economy;
- 4) to attract additional management capacity of the private sector;
- 5) to achieve optimal value for money across the asset life cycle and quality or consistency with intended purpose when implementing infrastructure projects;
- 6) to deploy innovation and efficiency of the private sector;
- 7) to stimulate growth and development of new technologies.

Article 4. Public-private partnership

Public-private partnership (PPP) means cooperation between the public and private partners aimed at developing and implementing the projects related to the creation and/or modernization, operation and maintenance of infrastructure facilities and/or infrastructure services.

Public partner must be a designated PPP authority jointly with the government authorities, local self-government authorities, state-owned or municipal enterprises or institutions, or joint-stock companies where the government owns 50 or more percent of voting shares, in the respective industry, or government authorities, local self-government authorities, state-owned or municipal enterprises or institutions, or joint-stock companies where the government owns 50 or more percent of voting shares, in the respective industry, in case of small-scale projects.

Private partner must be legal entities or individual entrepreneurs.

Article 5. Terms and definitions used in this Law

As used herein, the following terms shall have the following meanings:

1) **government support** means government financial or government economic support directed at creating favorable and mutually beneficial conditions for the implementation of PPP projects and ensuring performance of obligations of public partners under PPP agreements;

2) **interested person** means an individual entrepreneur, or legal entity registered under the laws of the Kyrgyz Republic or the laws of a foreign country, or a consortium interested in participating in the tender and/or initiating the PPP project;

3) **request for qualifications** means a document drafted and approved by the designated tendering authority and containing:

- a) description of the PPP project;
- b) qualification requirements for bidders;
- c) minimum requirements for the PPP project;
- d) criteria for evaluating and selecting a private partner;
- e) time limits for submission of applications for qualification;
- f) other information establishing the requirements for bidders and/or the PPP project;

4) **request for proposals** means a document drafted and approved by the designated tendering authority and setting forth the requirements for technical and financial proposals of bidders;

5) **infrastructure services** mean works and/or services of social, economic or commercial nature, including works and/or services provided with the use of an infrastructure facility and/or related to the maintenance of an infrastructure facility;

6) **infrastructure facility** means a property or property complex of social, economic or commercial nature held in public, municipal or private ownership;

7) **small-scale PPP projects** mean the PPP projects with the projected investment value of KGS 100 million or less;

8) **minimum requirements for the PPP project** mean minimum mandatory requirements, whether technical, operational, commercial or other, to be met in order to implement the PPP project;

9) **PPP project proposal** means a document containing:

- a) description of the PPP project;

- b) purposes and tasks of the PPP project;
 - c) arguments in favor of applying PPP model to infrastructure facility;
 - d) amount of projected investment in the PPP project;
 - e) minimum requirements for the PPP project;
 - f) implementation period of the PPP project;
 - g) financial, economic and legal analysis;
 - h) types and conditions of providing government financial and/or government economic support;
- 10) **unsolicited proposal** means a document containing:
- a) information to be included in the PPP project proposal;
 - b) document confirming that the interested person submitting an unsolicited proposal has experience in implementing infrastructure facilities or infrastructure services projects;
 - c) amount of projected investment and proof of funds covering at least 5% of the amount of projected investment;
 - d) main provisions of the PPP agreement;
- 11) **PPP project** means a complex of relationships between the private and the public partners associated with the PPP project and regulated by the PPP agreement;
- 12) **sandbox model** mean a special regulatory regime governing the procedure for implementing PPP projects proposed by the interested person in a pilot mode;
- 13) **PPP agreement** means a written contract between the public and private partners setting forth the rights, obligations and liability of the parties, and other terms and conditions of implementing the PPP project in accordance with this Law;
- 14) **tender proposal** means a package of documents including technical and financial proposals of bidders;
- 15) **tender documents** mean the request for qualifications, the request for proposals and the draft PPP agreement;
- 16) **feasibility study** means a totality of technical, economic, legal, environmental, financial, key risk and project viability assessments, and arguments in favor of applying PPP model;
- 17) **bidder** means an individual entrepreneur or legal entity registered under the laws of the Kyrgyz Republic or the laws of a foreign country, or a consortium participating in tender.

Article 6. PPP principles

1. PPP is based on the following principles:

- 1) supremacy of law;
- 2) fairness, partnership, and freedom of contract;
- 3) stability and long-term sustainability;
- 4) transparency;
- 5) fair distribution of risks;
- 6) environmental and public health protection;
- 7) inadmissibility of compliance and regulatory audits, except tax audits, during 3 years after signing the PPP agreement.

2. The laws and regulations enacted after the execution of the PPP agreement and affecting the PPP matters shall not apply to the effective project agreements, unless their application is requested by the private partner. In such case, the effective agreements shall be amended in the manner provided by the respective PPP agreements.

The respective actions directed at ensuring public health, safety and environmental protection, monitoring the implementation of the PPP project shall be undertaken by the public partner in accordance with the PPP agreement.

Article 7. Contributions to the PPP project

1. Contributions to the PPP project must be made up of tangible and/or intangible assets of the partners.

Tangible assets include, among others, cash funds, including public funds, movable and immovable property, including enterprises treated as property complexes, goods and other assets not prohibited by the laws of the Kyrgyz Republic.

Intangible assets include, among others, guarantees of performance of the public partner's obligations, intellectual property rights, rights of claim, personal non-property rights, information, etc.

2. The sources of investment in the PPP project include:

- 1) funds of the central and (or) local government budget;
- 2) funds of the public partner;

- 3) state-owned and/or municipal property controlled by the public partner;
 - 4) funds of the private partner;
 - 5) borrowed and other funds not prohibited by the laws of the Kyrgyz Republic.
3. Contributions to the PPP projects may be provided for a term of up to 49 years.

Article 8. Stages of the PPP project

The stages of the PPP project are as follows:

- 1) initiation of the PPP project;
- 2) preparation of the PPP project;
- 3) holding of tender to select the private partner;
- 4) execution of the PPP agreement and implementation.

Article 9. Initiation of the PPP project

1. The PPP project shall be initiated by the government authorities, local self-government authorities, state-owned or municipal enterprises or institutions, in the respective industry, or interested person by sending a letter to the designated tendering authority demonstrating intent to implement the PPP project.

2. After sending the letter of intent to initiate the PPP project, the government authority, local self-government authority, state-owned or municipal enterprise or institution, in the respective industry, or interested person shall upgrade to the stage of preparation of the PPP project.

3. In case of initiating the PPP project by the designated PPP authority, the designated government authority shall announce the public co-partner represented by the government authority, local self-government authority, state-owned or municipal enterprise or institution, or joint-stock company where the government owns 50 or more percent of voting shares, in the respective industry.

Article 10. Preparation of the PPP project

1. The PPP project shall be prepared by the public partner or interested person by developing the PPP project proposal or unsolicited proposal respectively.
2. The PPP project proposal or unsolicited proposal shall be approved by the designated tendering authority.
3. After approval of the PPP project proposal or unsolicited proposal the public partner shall prepare the tender documents and plan the funds in the PPP project budget to cover the costs of monitoring the PPP project.
4. If the PPP project intends to receive financing from the public budget, before approval, the tender documents shall be agreed by the respective public budget policy authority.
5. The designated tendering authority shall approve the tender documents, form and approve the tender commission and hold the tender to select the private partner.
6. The tender commission shall have an odd number of members (at least five). The tender commission shall include the public partner's representative, the relevant infrastructure specialist, the economics or finance specialist, the legal specialist, and the representative of the local community directly affected by the project. The members of the tender commission must not have a conflict of interest in respect of the project in question.

Article 11. Stages of tender process for PPP projects

1. The private partner shall be selected through tender.
The tender shall be conducted in two phases:
 - 1) qualification of bidders; and
 - 2) selection of a successful bidder.
2. The tender shall be conducted by the designated PPP authority in case of the PPP projects with the projected investment value over KGS 100 million, or by the government authorities, local self-government authorities, state-owned or municipal enterprises or institutions in the respective industry, in case of the PPP projects with the projected investment value of KGS 100 million or less (the designated tendering authority) in accordance with the procedures established by this Law.

3. If the investment value is more than KGS 1 billion, the PPP project shall be awarded by direct negotiation, provided that the applicant meets the qualification requirements.

Article 12. Qualification of bidders

1. At the stage of qualification of bidders, the designated tendering authority shall publish the request for qualifications on its official website. In case of the tender process for the PPP projects with the projected investment value over KGS 100 million, the request for qualifications may also be published in international media resources.

2. The applications for qualification shall be collected by the tender commission within the period specified in the request for qualifications, but not less than 30 nor more than 60 calendar days from the date of publication of the request for qualifications.

3. The qualification of bidders shall be conducted if at least one application for qualification is submitted.

The applications for qualification not meeting the qualification requirements specified in the request for qualifications shall be rejected by the tender commission.

Article 13. Selection of successful bidder

1. At the stage of selection of a successful bidder, the designated tendering authority shall circulate the request for proposals and the draft PPP agreement to the qualified bidders.

2. The qualified bidders may propose revisions to the request for proposals and/or the draft PPP agreement within 10 calendar days from the date of circulating the request for proposals and/or the draft PPP agreement to the bidders.

The designated tendering authority shall, within 5 calendar days, accept or reject revisions to the request for proposals and/or the draft PPP agreement. The revised request for proposals and/or the draft PPP agreement shall be subject to approval by the designated tendering authority.

In case of making revisions to the request for proposals and/or the draft PPP agreement, the period of collection of tender proposals shall be extended for not

more than 15 calendar days from the date of approval of revisions to the request for proposals and/or the draft PPP agreement.

The revised request for proposals and/or the draft PPP agreement must be circulated to all qualified bidders not later than the next calendar day following the date of approval of revisions to the request for proposals and/or the draft PPP agreement.

3. The tender proposals, including technical and financial proposals, shall be collected by the tender commission within the period specified in the request for proposals, but not less than 30 nor more than 60 calendar days from the date of circulating the request for proposals and the draft PPP agreement to the qualified bidders.

4. The selection of a successful bidder shall be conducted if at least one tender proposal is submitted.

5. The bidder shall provide a tender bond satisfying the requirements set forth in the request for proposals.

6. The bidder whose technical and financial proposals are recognized by the tender commission as satisfying the requirements of the request for proposals and offer the best conditions for implementing the PPP project shall be announced as the successful bidder. If the tender commission recognizes the technical and/or financial proposals of all bidders as not satisfying the requirements of the request for proposals, the tender commission shall declare the tender invalid and may announce the repeated tender.

7. The tender commission shall publish information about the successful bidder on the official website of the designated tendering authority.

8. The costs of participation in tender incurred by the bidders, regardless of the tender outcomes, shall not be refunded.

9. In case the tender commission discovers that the information provided by the successful bidder is inconsistent, and there is documentary evidence of such inconsistency, the tender commission may make a decision to disqualify the successful bidder or other bidder who shall be excluded from the tender process and shall not be eligible to participate in the tender processes for PPP projects during 5 years.

10. In case of disqualification of the successful bidder, the tender commission may announce the second highest bidder as the successful bidder.

Article 14. PPP agreement

1. The PPP agreement must contain the following clauses:

- 1) description of parties, subject matter of the agreement, rights and obligations of the parties;
- 2) description of the PPP project and its technical and economic performance indicators;
- 3) forms of PPP;
- 4) minimum volume, manner of provision and standards of quality of infrastructure services to be provided in the process of implementing the PPP project;
- 5) procedure and period of innovative development, planning, construction, reconstruction, modernization (restoration) and management of infrastructure facilities and provision of services under the PPP project;
- 6) procedure and period of maintenance of the PPP facility;
- 7) generation and distribution of income;
- 8) allocation of risks between the public and private partners;
- 9) procedure for monitoring and controlling the project implementation;
- 10) sources of funding for the PPP project;
- 11) procedure for possession, use and disposal of infrastructure facility;
- 12) term and effect of the PPP agreement;
- 13) period and procedure for refunding the costs of the parties to the PPP agreement;
- 14) procedure and grounds for early termination of the PPP agreement;
- 15) determination of subsequent legal fate of the infrastructure facility transferred to the private partner due to performance of the PPP agreement after expiration of the PPP agreement;
- 16) provision by the private partner of financial guarantees of implementation of the PPP project;
- 17) provision by the public partner of guarantees of implementation of the PPP project;
- 18) liability of the parties in case of non-performance or improper performance of obligations under the PPP agreement;
- 19) procedure for resolution of disputes arising from the PPP agreement and related to the implementation of the PPP project.

Article 15. Execution of the PPP agreement

1. The PPP agreement shall be executed with the successful bidder within 20 calendar days from the date of publication of the information about the successful bidder in mass media and on the official website of the PPP authority.

2. In case of announcing the consortium as the successful bidder, the period of execution of the PPP agreement may be extended for another 20 calendar days.

3. The successful bidder may establish the project company to implement the PPP project in accordance with the laws of the Kyrgyz Republic.

The dissolution, pledge of property, disposal or pledge of shares (interest, equity) of the private partner and/or the project company, change in share (equity) capital of the private partner and/or the project company shall be subject to prior written consent of the public partner.

Article 16. Termination of the PPP agreement

The PPP agreement may be terminated in the following cases:

- 1) prior to expiration of its term in cases provided by the agreement;
- 2) upon expiration of its term;
- 3) by agreement of the parties;
- 4) by decision of the court;
- 5) on other grounds arising from the PPP agreement.

Article 17. Implications of termination of the PPP agreement

1. If the PPP agreement is terminated, the private partner and/or the project company must do the following, unless otherwise provided for in the PPP agreement:

1) to transfer to the public partner the infrastructure facility and other assets received from the public partner free and clear of any encumbrances in favor of third parties as required by the PPP agreement;

2) to train personnel of the public partner on matters of operation and maintenance of the infrastructure facility and/or provision of infrastructure services;

3) to ensure the continuity of infrastructure and other services and supply of resources including spare parts, if required, within at least 3 months after transfer of the infrastructure facility and other assets to the public partner.

2. The early termination of the PPP agreement due to the fault of the private partner shall entail an obligation to reimburse the other party for damages incurred due to early termination of the PPP agreement.

Article 18. Applying sandbox model to PPP projects

1. The designated public authority may propose to an interested person to apply a sandbox model to the PPP project for testing the new innovative PPP projects in a pilot mode.

2. If the interested person agrees to apply the sandbox model to the PPP project, the designated PPP authority shall submit the respective draft regulatory legal act to the Cabinet of Ministers of the Kyrgyz Republic on applying the sandbox model to the PPP project.

3. If the Cabinet of Ministers of the Kyrgyz Republic makes a respective decision on applying the sandbox model to the PPP project, the designated PPP authority shall execute the respective agreement with the interested person and identify the public partner.

4. The application of the sandbox model to the PPP project shall be monitored by the public partner and, in case of its socio-economic efficiency, shall propose measures to the Cabinet of Ministers of the Kyrgyz Republic addressing the application of this technology in the Kyrgyz Republic in the framework of the given PPP project.

Article 19. Dispute resolution procedure

All disputes arising between the parties to the PPP agreement in connection with the execution, performance and termination of the PPP agreement shall be settled by negotiation in accordance with the provisions of the PPP agreement.

Any disputes that cannot be settled by negotiation shall be referred to the courts of the Kyrgyz Republic in accordance with the laws of the Kyrgyz Republic, unless the PPP agreement stipulates a different proceeding, including international litigation or arbitration.

Article 20. State registration of PPP projects and entities

1. The PPP projects and entities with whom the respective agreements are executed shall be subject to mandatory state registration in the state register of PPP projects of the Kyrgyz Republic.

2. The procedure for state registration of PPP projects and entities with whom the respective agreements are executed in the state register shall be determined by the Cabinet of Ministers of the Kyrgyz Republic.

Article 21. Final provisions

1. This Law shall enter into force upon expiration of ten calendar days from the date of official publication.

2. From the date of entry into force of this Law, the following acts shall be deemed repealed:

1) The Law of the Kyrgyz Republic on Public-Private Partnership, July 22, 2019, No.95 (Official gazette, 2019, No. 7-8, p.483);

2) Article 6 of the Law of the Kyrgyz Republic approving amendments to some legal acts on support of investment, December 26, 2020, No.12 (Erkin-Too newspaper, January 5, 2021, No.1).

3. The Cabinet of Ministers of the Kyrgyz Republic shall take respective measures arising from this Law.

S. Japarov

President of the Kyrgyz Republic

Passed by the Parliament

of the Kyrgyz Republic on July 29, 2021