



THE LAW OF THE KYRGYZ REPUBLIC

No. 98 of August 11, 2021

On Public-Private Partnership

Article 1: The Purpose of this Law

The purpose of this Law is to create legal framework for the development and implementation of public-private partnership projects, and create favorable conditions for public-private partnership subjects.

Article 2: Scope of Law

1. This Law shall govern the relations in the field of public-private partnership.
The Public-Private Partnership shall extend to infrastructure facilities and/or infrastructure services. The Public-Private Partnership shall not extend to infrastructure facilities and/or infrastructure services related to subsoil use, public procurement and privatization.
2. It is not allowed to include the provisions governed by this Law to other laws.
3. The arrangements under intergovernmental Public-Private Partnership projects shall be regulated by international treaties, to which the Kyrgyz Republic is a signatory, that have been effectuated in the manner prescribed by laws.
4. When applying the Public-Private Partnership framework to sites included in the list of strategic sites, the requirements of the legislation of the Kyrgyz Republic on strategic sites shall also be observed.
5. This Law shall apply to the banking legal relations and entities licensed and regulated by the National Bank of the Kyrgyz Republic, subject to the requirements of the Kyrgyz Republic banking legislation.

If parties to a Public-Private Partnership project are entities supervised by the National Bank of the Kyrgyz Republic, the provisions of this Law shall apply to the extent not contradicting the provisions of the banking legislation of the Kyrgyz Republic.

Article 3: Objectives of Public-Private Partnership

The objectives of the Public-Private Partnership shall be as follows:

- 1) Improve the efficiency and quality of the formation of infrastructure facilities and the provision of infrastructure services;
- 2) Increase the efficiency of public spending on the design, construction and/or upgrade, operation, maintenance of infrastructure facilities and the provision of infrastructure services;
- 3) Attract investments in the national economy;
- 4) Involve more private sector management capacity;
- 5) Achieve an optimal ratio of price during the life cycle of assets and quality or

- appropriateness of their purpose in the implementation of infrastructure projects;
- 6) Use of innovations and private sector efficiency;
 - 7) Encourage the growth and development of new technologies.

Article 4: Public-Private Partnerships

The Public-Private Partnership (hereinafter referred to as “the PPP”) is a cooperation between public and private partners to develop and implement projects for the creation and/or upgrade, operation and maintenance of infrastructure facilities and/or infrastructure services.

A competent government authority for the PPP transactions in cooperation with the government agencies, local self-government bodies, state-owned and municipal enterprises and institutions, joint-stock companies, where over 50 percent of voting shares are state-owned may act as the Public Partner in the respective activities. In addition, the government agencies, local self-government bodies, state and municipal enterprises and institutions, joint-stock companies, more than 50 percent of voting shares are state-owned may act as the Public Partner in the respective activities for the small-scale projects.

Legal entities and individual entrepreneurs shall have the right to act as a Private Partner.

Article 5: Basic Terms used in this Law

The following basic concepts and their definitions are used in this Law:

- 1) **Government Support** means the government financial and economic support for creation of favorable and mutually beneficial conditions for the implementation of PPP projects and ensuring the obligations of the public partners under PPP agreements;
- 2) **Interested Party** means an individual entrepreneur, a legal entity established in accordance with the legislation of the Kyrgyz Republic or the legislation of a foreign country, a consortium interested in participating in a tender and/or initiating a PPP project;
- 3) **Request for Qualifications for participation in a competitive selection** means a document developed and approved by the government authority assigned to arrange such competition, which provides the following details:
 - a) Description of the PPP project;
 - b) Qualification requirements for the bidders;
 - c) Minimum requirements for the PPP project;
 - d) Criteria for evaluation and selection of the private partner;
 - e) Deadline for submission of bids for participation in the qualification selection;
 - f) Other information establishing the requirements for the participants of the competitive selection and/or the PPP project;
- 4) **Request for Proposals for participation in a competitive selection** means a document developed and approved by the government authority assigned to arrange such competition, which details the requirements for technical and financial proposals of the bidders;
- 5) **Infrastructure Services** means social, economic or production works and/or services, including works and/or services provided with the use of the infrastructure facility and/or for maintenance of the infrastructure facility;
- 6) **Infrastructure Facility** means an item of property or an asset group of social, economic or industrial purpose, which is owned by the State, municipality or a private entity;
- 7) **Small-scale PPP projects** means PPP projects with expected investments in the amount equal to or less than KGS 100 million;
- 8) **Minimum Requirements for a PPP project** means minimum mandatory technical, operational, commercial and other requirements to be met for the implementation of a PPP project;

- 9) **PPP Project Proposal** means a document including:
 - a) Description of the PPP project;
 - b) Goals and objectives of the PPP project;
 - c) The rationale for applying PPP for the PPP object;
 - d) The amount of proposed investments to implement a PPP project;
 - e) The minimum requirements for a PPP project;
 - f) The duration of the PPP project;
 - g) Financial, economic and legal analysis;
 - h) Types and conditions of government financial and/or government economic support;
- 10) **Proposal for a Private Initiative** means a document that includes:
 - a) Information to be included in the PPP project proposal;
 - b) A document confirming that the interested party who has applied for a private initiative has experience in implementing infrastructure facilities or infrastructure services projects;
 - c) The amount of the proposed investment and a document confirming the availability of financial resources, guaranteeing their investment of at least five (5) percent of the amount of the proposed investment;
 - d) The main terms and conditions of a PPP contract;
- 11) **PPP project** means a set of relationships between a public and private partner to implement a PPP project, regulated by a PPP contract;
- 12) **The “Project Sandbox” Principle** means a special regulatory regime governing the procedure for piloting PPP projects introduced by an interested party;
- 13) **PPP Contract** means an agreement in writing between the public and private partners, defining the rights, duties, responsibilities of the parties and other conditions of implementation of a PPP project in accordance with this Law;
- 14) **Bid** means a package of documents, including technical and financial proposals of bidders;
- 15) **Bidding Documentation** means a request for qualifications and request for proposals for participation in the bid and the draft PPP agreement;
- 16) **Feasibility Study** means a set of technical, economic, legal, environmental, financial assessment, key risks assessment, the feasibility of the project, as well as the rationale for implementation in the form of a PPP project;
- 17) **Bidder** means an individual entrepreneur, a legal entity established in accordance with the laws of the Kyrgyz Republic or the laws of a foreign country, a consortium participating in the competition.

Article 6: Principles of PPP

1. Public-Private Partnership shall rest upon on the following principles:
 - 1) The rule of law;
 - 2) Fairness, partnership, and freedom of contract;
 - 3) Stability and long-term sustainability;
 - 4) Transparency of activities;
 - 5) Equitable distribution of risks;
 - 6) Protection of the environment and public health;
 - 7) Inadmissibility of inspections by law enforcement and inspection authorities up to three (3) years after the signing of the PPP contract, except for tax audits.

2. Laws and bylaws enacted after the conclusion of a PPP contract and affecting PPP matters do not apply to existing project agreements, unless an initiative to the need for their application comes from the private partner. In this case, amendments to existing agreements are made in accordance with the procedure stipulated by the relevant PPP contracts.

The performance of appropriate actions intended to protect the life and health of citizens and the environment, monitoring the implementation of the PPP project shall be carried out by the public partner in accordance with the PPP contract.

Article 7: Contributions to a PPP project

1. Contributions to the implementation of a PPP project can be tangible and/or intangible assets of the partners.

Tangible assets include, but not limited to, cash, including government budget funds, movable and immovable property, including enterprises as assets groups, goods and other assets not prohibited by the legislation of the Kyrgyz Republic.

Intangible assets include, but not limited to, guarantees of fulfillment of obligations of the public partner; items of intellectual property rights, rights of claim, personal non-property rights, information, etc.

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

- 1) Funds from the national and (or) local budget;
- 2) Public partner funds;
- 3) State-owned and/or municipal property administered by the public partner;
- 4) Private partner funds;
- 5) Third-party financing and other funds not prohibited by the legislation of the Kyrgyz Republic.

3. Contributions to PPP projects may be provided for up to 49 years.

Article 8: Stages of PPP Project Implementation

The stages of PPP project implementation shall be the following:

- 1) Initiation of a PPP project;
- 2) Development of a PPP project;
- 3) Conducting a competition for the selection of a private partner;
- 4) Execution of a PPP contract and its implementation.

Article 9: Initiation of a PPP project

1. Initiation of a PPP project shall be carried out by government agencies, local self-government bodies, state-owned, municipal enterprises and institutions in the relevant field of activity or by an Interested Party by sending a letter to the government authority assigned to arrange a competition about its intention to implement a PPP project.

2. After sending a letter of intent to initiate a PPP project, a government agency, local self-government body, state-owned, municipal enterprise and institution in the relevant field of activity or an Interested Person may proceed to the stage of development of a PPP.

3. If a PPP project is initiated by a government authority for PPP, such government authority shall determine a government agency, local self-government body, state-owned, municipal enterprise and institution of the Kyrgyz Republic, a joint stock company with more than 50 percent of voting shares owned by the state, in the relevant activities as a joint Public Partner.

Article 10. Development of a PPP project

1. A Public Partner or an Interested Person shall develop a PPP project by preparing a PPP Project Proposal or private initiative proposal, respectively.
2. A PPP Project Proposal or private initiative proposal shall be subject to approval by the government authority assigned to arrange the competitive selection.
3. After approval of a PPP Project Proposal or private initiative proposal, a Public Partner shall prepare bidding documentation with the budgeting of financial resources for a PPP project to monitor the Public-Private Partnership project.
4. If a PPP project anticipates the receipt of national budget funds, the Bidding Documentation shall be subject to approval by the relevant national budgetary policy body prior to approval.
5. The government authority assigned to arrange the competitive selection shall approve the Bidding Documentation, form and approve a Tender Committee and conduct the competitive selection to select a private partner.
6. The number of members of the Tender Committee shall be odd and be at least five people. The Tender Committee shall include representatives of the Public Partner, an expert with experience and knowledge of the relevant infrastructure facility, experts in the field of economics or finance, law, a representative of the local community, which will be directly affected by the project. Members of the Tender Committee shall not have a conflict of interest in relation to the project being proposed.

Article 11. Tendering Stages of PPP Projects

1. The private partner shall be selected through a two-stage competitive selection process:
 - 1) Qualifications selection;
 - 2) Awarding the winner.
2. The competitive selection shall be carried out by a government authority for PPP with regard to PPP projects where the amount of proposed investments is more than KGS 100 million, or by the government agencies, local self-government bodies, state-owned, municipal enterprises and institutions in the relevant area of activities with regard to PPP projects, the proposed investments for which are less than KGS 100 million (hereinafter "the government authority for arrangement of the competitive selection") in accordance with the procedures established herein.
3. If the amount of investment is more than one billion Kyrgyz soms, a PPP project shall be awarded through direct negotiations, provided that an applicant meets the qualification requirements.

Article 12. Qualifications-based Selection

1. At the stage of qualifications-based selection the government authority for arrangement of the competitive selection shall publish a Request for Qualifications on its official website. In the case the competitive selection is arranged for the PPP projects, with the proposed investments amount exceeding KGS 100 million, a Request for Qualifications may also be published on international media resources.
2. Collection of applications for the Qualification-based Selection shall be carried out by the Tender Committee during the period specified in the Request for Qualifications, but such period shall not be shorter than 30 calendar days and longer than 60 calendar days from the date of call for Request for Qualifications.
3. To participate in the Qualification-based Selection one application shall be sufficient. Applications for the Qualification-based Selection that fail to meet the qualification requirements specified in the Request for Qualifications shall be rejected by the Tender Committee.

Article 13. Awarding the Winner

1. At the stage of selecting the winning bidder, the government authority for arrangement of competitive selection shall issue a Request for Proposals and a draft PPP contract to the bidders

that have passed the Qualification-based Selection.

2. Qualifying bidders may submit proposals for modifications to the Request for Proposals and/or draft PPP contract within ten (10) calendar days from the date of sending the Request for Proposals and/or draft PPP contract to the bidders.

The government authority for arrangement of competitive selection shall accept or reject proposed modifications to the Request for Proposals and/or draft PPP contract within five (5) calendar days. The modified Request for Proposals and/or draft PPP contract shall be subject to approval by the government authority for arrangement of competitive selection.

If modifications are made to the Request for Proposals and/or the draft PPP contract, the deadline for bids submission shall be extended by not more than 15 calendar days from the date of approval of modifications to the Request for Proposals and/or the draft PPP contract.

The modified Request for Proposals and/or draft PPP contract shall be distributed among all qualifying bidders no later than the next day after the date of approval of the modified RFP and/or draft PPP contract.

3. The Tender Committee shall collect the bids, including technical and financial proposals, during the period specified in the Request for Proposals, but such period shall not be shorter than 30 calendar days and longer than 60 calendar days from the date of sending to the qualified bidders the Request for Proposals and a draft PPP contract.

4. It shall be sufficient to submit one bid to select a winning bidder.

5. A bidder shall provide a performance bid security, the terms and conditions of which are defined in the Request for Proposals.

6. A winner shall be a bidder whose technical and financial proposals are **recognized** by the Tender Committee as meeting the requirements of the Request for Proposals and containing the best conditions for the implementation of a PPP project. If the Tender Committee **recognizes** the technical and/or financial proposals of all bidders as not meeting the requirements of the Request for Proposals, the Tender Committee considers the tender as failed and shall have the right to announce re-tendering.

7. The Tender Committee shall post information about a winner on the official website of the government authority for arrangement of competitive selection.

8. Bidders costs to participate in the competition, regardless of the results of the competition shall not subject to recovery.

9. In case the Tender Committee identifies discrepancies in the validity of the information provided by the winner, subject to documented evidence of such discrepancies, the Tender Committee shall have the right to disqualify the winner or another bidder, and such bidder shall be excluded from the bidding process and may not participate in tenders for a PPP project for the next five (5) years.

10. In case of disqualification of the winner, the Tender Committee shall award a project to the next best bidder based on the bidding results.

Article 14. PPP contract

A draft PPP contract shall specify the following terms and conditions:

- 1) Description of the parties, a scope of contract, and the rights and obligations of the parties;
- 2) Description of a PPP object, taking into account its technical and economic indicators;
- 3) Forms of PPP;
- 4) Minimum volume, procedure of providing and meeting quality standards of infrastructure services rendered in the process of implementing a PPP project;
- 5) The procedure and terms of innovative development, design, construction, reconstruction, upgrade (rehabilitation) and management of infrastructure facilities and services under the PPP project;

- 6) Procedure and terms of maintenance of a PPP object;
- 7) Earning of income and its distribution;
- 8) Distribution of risks between the Public and Private Partners;
- 9) The procedure for monitoring and controlling project implementation;
- 10) Sources of financing of a PPP project;
- 11) The order of ownership, use and disposal of the infrastructure facility;
- 12) The terms and procedure for the validity of a PPP contract;
- 13) The terms and procedure for reimbursement by the parties to the contract;
- 14) Early termination of a PPP contract and its grounds;
- 15) Determination of the further legal fate of the infrastructure facility transferred to the Private Partner in connection with the execution of a PPP contract, after the termination of the PPP contract;
- 16) Providing a private partner with financial guarantees for the implementation of a PPP project;
- 17) Provision of guarantees by the Public Partner for the implementation of a PPP project;
- 18) Liability of the parties in the event of non-performance or improper performance of obligations under a PPP contract;
- 19) The procedure for resolving disputes arising from the PPP contract and related to the implementation of the PPP project.

Article 15. PPP Contract Execution

1. A PPP contract shall be executed with a winner within twenty (20) calendar days from the date of publication of information about the winner in the media and on the official website of the government agency for PPP.
2. If a consortium is a winner the deadline for the execution of a PPP contract may be extended for an additional twenty (20) calendar days.
3. In order to implement a PPP project, a winner has the right to establish a project company in accordance with the legislation of the Kyrgyz Republic.

Termination of activities, pledge of property, alienation or pledge of shares (interests in property, units) of the private partner and/or project company, changes in the amount of the registered (share) capital of the private partner and/or of the project company shall not be allowed without the written consent of the Public Partner.

Article 16. Termination of PPP Contract

A PPP contract shall be terminated in the following cases:

- 1) Early termination in the cases stipulated by a contract;
- 2) Expiry of contract;
- 3) By agreement of the parties;
- 4) By court order;
- 5) On other grounds arising from the PPP contract.

Article 17. Effect of termination of a PPP contract

1. In the event of termination of a PPP contract, the Private Partner and/or the project company shall perform the following actions, unless otherwise provided for in a PPP contract:
 - 1) Transfer to the Public Partner the infrastructure facility and assets received from the Public Partner, which shall be free of any encumbrances from third parties in

accordance with the terms of the PPP contract;

- 2) Train the public partner's staff in the operation and maintenance of the infrastructure facility and/or in the provision of infrastructure services,
 - 3) Ensure continuity of infrastructure services and resources, including the supply of spare parts, if required, for at least three (3) months after the transfer of the infrastructure facility to the Public Partner.
2. Early termination of a PPP contract through the fault of the PRIVATE PARTNER entails the indemnification of the other party for losses incurred in connection with the early termination of the PPP contract.

Article 18. PPP Projects Implementation under the “Project Sandbox” Principle

1. To pilot new and innovative PPP projects, a government authority may submit a proposal to an interested party to implement a PPP project under the “Project Sandbox” principle.
2. If an interested party agrees to implement a PPP project under the “Project Sandbox” principle, the government agency for PPP matters shall submit a relevant draft normative legal act to the Cabinet of Ministers of the Kyrgyz Republic on the implementation of a PPP project under the “Project Sandbox” principle.
3. If the Cabinet of Ministers of the Kyrgyz Republic makes a decision to implement a PPP project under the “Project Sandbox” principle, the government agency for PPP matters shall conclude with an interested party a corresponding contract and identifies the Public Partner.
4. The implementation of a PPP project under the “Project Sandbox” principle shall be monitored by the Public Partner and if such project has social and economic effectiveness it shall submit proposals to the Cabinet of Ministers of the Kyrgyz Republic on taking measures to apply this technology in the Kyrgyz Republic as part of this PPP project.

Article 19. Dispute Resolution Procedure

Disputes arising between the parties to a PPP contract in connection with the execution, performance and termination of the PPP contract shall be resolved through negotiations in accordance with the provisions of the PPP contract.

If the parties cannot resolve a dispute through negotiations, the dispute shall be subject to judicial review by the Kyrgyz Republic in accordance with the laws of the Kyrgyz Republic, unless the PPP contract provides for another procedure, including review of the dispute by international courts or arbitrations.

Article 20. State Registration of PPP Projects and their Subjects

1. PPP projects for which relevant contracts have been concluded, as well as their subjects shall pass the mandatory state registration in the State Register of PPP projects of the Kyrgyz Republic.
2. The procedure for the state registration of PPP projects, under which the relevant contracts were concluded, as well as their subjects in the State Register is determined by the Cabinet of Ministers of the Kyrgyz Republic.

Article 21. Final Provisions

1. This Law shall be effectuated in ten (10) calendar days after its official publication.
2. From the date of effectuation of this Law. the following laws shall be considered invalid:
 - 1) Law of the Kyrgyz Republic “On Public-Private Partnership” No. 95 of July 22, 2019 (*Vedomosti of Jogorku Kenesh* of the Kyrgyz Republic, 2019, No. 7-8, article 483);
 - 2) Article 6 of the Law of the Kyrgyz Republic “On Amendments to Certain Legislative Acts on Investment Support” No. 12, dated December 26, 2020 (the newspaper “*Erkin Too*” edition #1, January 5, 2021).

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

President of the Kyrgyz Republic

S. N. Japarov

Adopted by the Jogorku Kenesh of the Kyrgyz Republic

July 29, 2021