

ESTABLISHMENT OF PUBLIC-PRIVATE PARTNETSHIP IN UZBEKISTAN AND ITS LEGAL FRAMEWORK

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Abstract: *The public-private partnerships (PPP) has played a significant role to boost the undergoing processes of national economic growth, and develop social infrastructures including roads, facilities, buildings, public services such as health, utilities, education, and sanitation, etc. It has normally been driven at the situation of the significant gap between available public funding and required expenditure, especially as in an era of rising national dept and budget deficits. This article discusses development of Public-private partnership in republic of Uzbekistan.*

Аннотация: *Государственно-частное партнерство (ГЧП) сыграло значительную роль в ускорении происходящих процессов национального экономического роста и развитии социальной инфраструктуры, включая дороги, объекты, здания, общественные услуги, такие как здравоохранение, коммунальные услуги, образование и санитария и т. д. обычно было вызвано ситуацией значительного разрыва между доступным государственным финансированием и необходимыми расходами, особенно в эпоху роста дефицита государственного долга и бюджета. В данной статье рассматривается развитие государственно-частного партнерства в Республике Узбекистан.*

Keywords: *public-private partnership, development of PPP in Uzbekistan, legal aspects of PPP*

Ключевые слова: *государственно-частное партнерство, развитие ГЧП в Узбекистане, правовые аспекты ГЧП*

Public-private partnership (PPP), as a legal instrument of cooperation between the state and the private sector aimed at solving social and infrastructural problems, is a relatively new phenomenon for Uzbekistan. The concept of PPP was first introduced at the legislative level on 5 April 2018, by the Regulation on Public-Private Partnership in the Sphere of Preschool Education No. PP-3651. Since then, a number of regulatory by-laws have been adopted at the level of the President and the Cabinet of Ministers of Uzbekistan designed to regulate the procedures for procurement of PPP projects in certain very limited industries, such as healthcare, public services, museums and theatres.

In order to facilitate the development of PPP in Uzbekistan, a new state agency has been established – the Public-Private Partnership Development Agency (PPPDA) – under the Ministry of Finance by the Presidential Decree No. PP-3980 of 20 October 2018. From the first days of its establishment, the PPPDA began to actively promote PPP projects, including through drafting a comprehensive legislative framework.

The Law on Public–Private Partnership No. ZRU-537 dated 10 May 2019 (the PPP Law) which was developed under the auspices of a number of IFIs, has become an important milestone for further accelerated development of this institution in Uzbekistan. To elaborate the procedural steps for the procurement of PPP projects as set in the PPP Law, the Regulations on Implementation of Public–Private Partnership Projects No. 259 of 26 April 2020 have been adopted. Though this document did not bring much clarity to the existing PPP Law, it specified some procedural terms and introduced the template forms of PPP project concept and requirements for PPP project feasibility studies, namely a project evaluation document (PED).

The first PPP agreements (PPPAs) were concluded as early as 2018 (i.e., before the adoption of the PPP Law), yet, the first PPPA with a foreign investor and under the PPP Law was only signed in 2020 (the Dialysis PPP Project). Currently, the most popular PPP sector in Uzbekistan is the energy industry, which accounts for more than half of the overall foreign investments attracted in PPP projects. The Uzbek government has announced an ambitious energy sector development programme aimed at almost doubling the volumes of produced energy by 2030.² The attraction of private investment through PPP mechanisms has been chosen as one of the primary methods in achieving this goal.

The PPP legal framework in Uzbekistan has been undergoing constant changes over the past three years. In 2021, this trend continued, and a number of major amendments to the PPP Law and the Regulation on PPP have been introduced and new procedural regulations adopted in this sector.

In particular, on 22 January 2021, the President of Uzbekistan signed Law No. 669 aimed at addressing certain gaps and shortcomings of the PPP Law identified during the preceding two-year testing period. Notable amendments include:

a The definition of a public partner has been changed to allow the ministries, state agencies, local municipalities and other authorised entities to enter into a PPPA as a public partner on their own behalf, while previously only the Republic of Uzbekistan could be a public partner in any PPP project. The purpose of this amendment was to decrease or limit the amount of direct liability of the state in PPP projects while keeping its contingent liability to the fullest extent. B

Concessions have been recognised as one of the forms of PPP. As a result of the changes, the PPP project procurement procedures now apply to concession projects as well, and the Law on

Concessions No. 110-I of 30 August 1995 was abolished.

Government support agreements (GSAs) have had the introduction of a new mechanism of provision of additional state support and guarantees to be entered into with a private partner (and/or its lenders) and the Ministry of Finance on behalf of the Republic of Uzbekistan. d

Special purpose vehicles (SPVs) now allow for a winning bidder to enter into a PPPA as a private partner. Previously, only a winning bidder could become a private partner (i.e., sign a PPPA). e

Pegging of prices to foreign currency is now permitted. This amendment basically allows an indexation of prices (i.e., adjustment of PPP prices (payments) depending on forex or inflation fluctuations, or both) in PPP projects, which is certainly crucial for the viability of the PPP mechanism in general.

Another important legislative change was a land reform introduced by Presidential Decree No. UP-6243 of 8 June 2021. The document has established that land plots in PPP projects may be allocated to a private partner only through a lease agreement. This amendment increased the predictability of the PPP procurement process and was welcomed among investors and PPP specialists in Uzbekistan.

Apart from the legislative novelties, 2021 was a productive year from the perspective of the practical implementation of PPP mechanisms in the procurement of infrastructure and energy projects. In 2021, more than 150 PPP projects were awarded or signed, which is thrice the 2020 figure.³ Out of these PPP projects, around 10 were cross-border financing transactions involving international bidders and lenders. The aggregate value of awarded PPP projects and concluded PPPAs in 2021 was more than US\$2 billion. Below we highlight some of them.

Table 1: Major PPP projects awarded/signed in 2021 in Uzbekistan

No.	Project name	Public partner	Private partner	PPP form	Procurement form	Status	Value
1	Tashkent District Heating	Tashkent City Municipality	Veolia Central & Eastern Europe (France)	Affermage (O&M+Modernisation)	Direct negotiations	Signed	Approx. €1.4 billion
2	Namangan Wastewater Treatment Plant	Republic of Uzbekistan represented by the Ministry of Housing and Communal Services	Metito Utilities Ltd. (UAE)	DBFOM and Transfer	Tender	Awarded	More than US\$90 million
3	100MW Uzbekistan Wind Power Project	JSC 'National Electric Grids of Uzbekistan'	ACWA Power (Saudi Arabia)	Power Purchase Agreement	Tender	Awarded	US\$108 million
4	Modernisation and Operation of Samarkand International Airport ⁵	JSC 'Uzbekistan Airports'	LLC 'Air Marakanda' (Uzbekistan)	DBFOM and Transfer	Direct negotiations	Signed	US\$80 million

Further, the analysis of tender documents and PPPAs of 2021 shows that the government has achieved a more-or-less unified approach with respect to the covid-19 pandemic. Due to travel restrictions all over the world, in the majority of tenders for PPP projects, bidders were allowed to submit bid documents electronically subject to a subsequent submission of documents in paper format. It is expected that the same

approach will be continued in 2022. Within the framework of PPPAs, the position of the government is to treat the covid-19 event as a force majeure only if such an event makes the performance of the PPPA impossible for any of the parties. The reimposition of covid-19-related restrictions, which had previously already been practised in Uzbekistan (such as global lockdown), will not grant CIL relief to the private partner.

In Uzbekistan, the following forms of cooperation of public and private sectors are available:

- concession;
- government investment agreement;
- public procurement;
- privatisation;
- trust management with investment obligations;
- PPPA.

From a legal perspective, none of the above-listed project procurement instruments, except for concession, is considered to be a PPP. Under the PPP Law, a PPP is defined as a legally formalised cooperation between a public partner and a private partner based on the pooling of their resources for the implementation of a certain PPP project. In turn, a PPP project is a set of activities carried out based on the attraction of private investments and (or) introduction of best management practices, aimed at addressing economic, social and infrastructural objectives.

Despite the broad definition of PPP projects, legally, a PPPA is a separate type of civil contract that has a special procurement and award procedure, as well as its own subject matter and distinctive features.

The following can be a subject matter of a PPPA:

- design, construction, operation, management of assets, proprietary complexes or public infrastructure;
- delivery of works and services.

In this respect, in Uzbekistan, a PPP project is understood to be cooperation based on a PPPA, and the rest of this chapter is based on this thesis.

The PPP Law allows the implementation of PPP projects by any possible types of PPPA. The type of PPPA is usually decided by the public partner in agreement with the PPPDA (and the Ministry of Finance) based on the project specifics. The following types of PPPA have been utilised in practice in Uzbekistan so far:

- build-operate-transfer (BOT);
- build-operate-own-transfer (BOOT);
- design-build-finance;
- design-build-finance-maintain (DBFM);
- design-build finance-operate-maintain (DBFOM) (the most popular type);
- affermage/operate and maintain (O&M).

In accordance with the definition of the public partner, basically, any ministry or local municipality can be involved in the implementation of PPP projects as a public

partner, if the given project is being implemented in the area of activity or competence of the ministry or within the territory of the local municipality.

The main government bodies engaged in the PPP sector (not necessarily as public partners) are the following:

The President of the Republic of Uzbekistan. Within the PPP sector, the President is entitled to:

- authorise a public partner to enter into PPPAs through direct negotiations;
- make a decision on the transfer of the PPP object to the ownership of a private partner;
- approve GSAs;
- provide customs and tax benefits; and
- allow pegging of the prices to goods and services sold in Uzbekistan under a PPP project to foreign currency;

The Cabinet of Ministers, which is responsible for:

- the implementation of the state policy and adoption of regulatory legal acts in the PPP sector;
- the appointment of a public partner for PPP projects on the proposal of the PPPDA (in the event of uncertainty);
- approval of the concept of the PPP project with a total value exceeding the equivalent of US\$10 million;
- approval of the composition of the tender commission;
- issuance of the decision on the procurement of the PPP project through direct negotiations;
- approval of GSAs; and
- approval of any amendments, additions and early termination of PPPAs;

The Ministry of Finance, which is responsible for:

- the execution of GSAs (if any) on behalf of the Republic of Uzbekistan;
- analysis of the feasibility of financial aspects of a PPP project and issuance of an opinion in relation to the PPP project concept if the project envisages monetary allocations from the state budget; and
- registration of the public partner's financial liabilities under the PPPA and allocation of relevant budgetary assignments to the public partners;

The PPPDA, which is the main government body enforcing the state policy in the PPP sector. The PPPDA carries out the following functions in respect of PPP projects:

- provision of general assistance in the development of PPP projects;
- approval of PPP project concepts with a total value exceeding US\$1 million;
- approval of tender documentation and draft PPPAs;
- provision of explanations and clarifications on PPP matters;
- maintenance of the register of PPP projects;
- monitoring the implementation of PPP project in line with the terms of the PPPA; and

- a collection of success fees for the successful execution of PPPAs;

The Antimonopoly Committee, which is responsible for the examination and approval of PPP project concepts and draft PPPAs, if the PPP project is being procured via direct negotiations.