

Public-private partnership in Uzbekistan: Development of road projects

Public-private partnership is developing rapidly in Uzbekistan. This creates a favorable environment for attracting direct investments.

In December 2018, the Agency for the development of public-private partnership under the Ministry of Finance of the Republic of Uzbekistan (hereinafter the “Agency”) was established.

On May 10, 2019, the Law of the Republic of Uzbekistan “On public-private partnership” was adopted. The PPP development Agency is defined as the authorized state body in the field of PPP development.

I. Legal concept of public-private partnership (PPP) in Uzbekistan

According to the PPP Law, the preparation of any project can be divided into three main categories:

1. Initiation and preparation of the PPP project;

The PPP project may be initiated by a government Agency and / or an individual entrepreneur or legal entity. Initiating a public-private partnership project includes:

- development of the concept of a public-private partnership project;
- sending the concept of a public-private partnership project for evaluation, approval and approval to the appropriate state authority;
- consideration by the authorized state body of the concept of the public-private partnership project;
- approval, rejection or return of the concept of the public-private partnership project for revision by the authorized state body;
- approval of the agreed concept of the public-private partnership project by the state partner or the Cabinet of Ministers of the Republic of Uzbekistan;
- inclusion of the concept of a public-private partnership project by an authorized state body in the Register of public-private partnership projects.

The state initiator develops the concept of a PPP project, usually in the priority areas of the economy and social sphere that fall within its competence. Preparation of the PPP project is carried out on the basis of preliminary financial calculations that ensure the identification of the rationality and effectiveness of the PPP project and its optimal form for its implementation.

The private initiator has the right to develop and present the concept of a PPP project to a potential public partner. The concept of a PPP project should contain an innovative approach to solving existing problems and provide a balanced benefit acceptable to the parties.



Prior to submitting the concept of a public-private partnership project, the private initiator can conduct preliminary discussions, as well as exchange information about the PPP with a potential public partner.

If an individual entrepreneur or legal entity has declared its interest in the implementation of a PPP project, the identification of a private partner for the implementation of a public-private partnership project is carried out on the basis of a tender.

The private initiator may be reimbursed for expenses related to the preparation of the public-private partnership project in an amount not exceeding 1% of the total cost of the PPP project at the expense of the winner or reserve winner of the tender.

The concept of a PPP project is approved by various government agencies, depending on the total cost of a potential PPP project. This is how the concept can be approved by:

- The competent state authority - total cost of up to 1 million USD;
- The competent state authority in agreement with the PPP Agency - total cost of more than 1 million to 10 million USD;
- The Cabinet of Ministers - total cost of more than 10 million USD.

After approving the model of the PPP scheme and including it in the register, the public partner agrees to prepare the PPP scheme and begins the selection process for the private partner.

2. Selection of a private partner;

Tenders can be **one-stage** (for a PPP project in the equivalent of up to one million USD) or **two-stage** (more than 1 million USD).

When conducting a one-stage tender, bids (offers) of bidders developed on the basis of a conceptual solution and conditions specified in the tender documentation, with a detailed technical and commercial (financial) offer, with mandatory price (tariff) indication, are considered and evaluated. In the process of organizing a tender, negotiations with bidders on the parameters of the subject of the tender are allowed.

The law also provides for the possibility of concluding a PPP agreement without a tender based on direct negotiations in the following cases:

- ensuring the defense and security of the state;
- ownership of exclusive rights to the results of intellectual activity, other exclusive rights, land, other real estate and other property that is a prerequisite for the implementation of the project to a certain person;
- defined by Presidential decrees and resolutions.

3. The partnership agreement.

The public partner enters into a PPP agreement with the winner of the tender in accordance with the terms, terms and procedures set out in the tender documentation.

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A PPP agreement is concluded for a period of 3 to 49 years. It must contain the following information:

- about the parties to the public-private partnership agreement;
- about the subject of the public-private partnership agreement;
- obligations and responsibilities of the parties;
- on the distribution of risks between the public partner and the private partner;
- about technical and economic indicators of the object of public-private partnership, including the description of other transferred or subject to design, construction, creation, financing, reconstruction, operation and maintenance of objects of public-private partnership in accordance with the agreement on public-private partnership, the purposes and terms of their use;
- etc.

Land issue

Under PPP Law, the land plot where the object of PPP is located and (or) which is necessary for implementation of the activity under the PPP contract shall be provided to the private partner for the term established by the PPP contract. The land plot shall be provided to the private partner without carrying out tender procedures. Failure by a public partner to provide a private partner with a land plot may be considered as a ground for unilateral termination of the PPP contract by a private partner. Termination of the PPP contract shall be the basis for a termination of the private partner's right to the land plot provided for the implementation of the PPP project.

Guarantees and preferences for investors and creditors of PPP projects

In case if changes to the legislation of Uzbekistan worsens conditions of investments made in PPP project, the law which was in effect on the date of conclusion of the PPP contract shall apply to the private partner within the period of **10 years** from the date of conclusion of the relevant PPP contract. Moreover, private partner is entitled to selectively apply those provisions of the new legislation of the Republic of Uzbekistan that improve conditions of its investment in PPP project.

PPP contract may include provisions that guarantee the rights of the creditor, including provisions stipulating amount of compensation to be paid to creditors in the event of early termination of the PPP contract. A private partner may provide its creditors with any type or form of security, including its rights under the PPP contract and agreements concluded pursuant to the PPP contract, rights, assets included in the PPP project, pledge of shares, pledge or assignment of rights, profits and amounts due under the PPP contract.

Investor risk

The business goes to the project where it can get a strong guarantee of return

on investment. On the one hand, without investing financially, the state gets a ready-made object that performs economic and social tasks. On the other hand, businesses expect to make a certain profit on a long-term basis.

At the same time, there are many risks that are ready to destroy this formula, the main of which is the low actual return. This risk is an integral element of almost any long-term infrastructure project, which by its nature is affected by many factors — shortcomings in calculations, changes in legislation, the tax system, price hikes, changes in demand.

And it is to smooth out these risks that the state needs to develop and use a mechanism for protecting the investor, which will include decisions on all the issues outlined above in advance.

II. The development of PPP projects, specifically modernization of roads in Uzbekistan

Today, PPP is developing in such sectors of the economy as energy, transport, telecommunications, roads, utilities, agriculture and water management, and tourism. The Agency carries out a number of works to attract investment in these areas. The development of infrastructure, specifically modernization of roads in the future brings more benefits than just economic income. This phenomenon is related to the fact that development of infrastructure attracts large businesses, which in turn creates many investment opportunities and develops related industries, which further leads to the development of cultural, educational and medical institutions, thus leading to overall socio-economic benefits.

Using the experience of developed countries in the field of PPP taking into account the specifics and geographical location of the regions of the Republic of Uzbekistan, as well as attracting international financial organizations and recognition of experts in this field will provide additional funds for investment and improving the quality of road construction. Due to the fact that the cost of major repairs of the road network and the construction of new roads is very high, the state is always faced with the issue of attracting funding for such infrastructure projects. One of the possible solutions to the issue of investing in road infrastructure is PPP.

A meeting with representatives of the World Bank was held at the Public-Private Partnerships Development Agency under the Ministry of Finance in May 2019.

It was noted that 10 projects on development of road transport based on public-private partnership for two billion US dollars are under development.

The World Bank participates in their financing. In Uzbekistan, 98% of all cargo and 88% of passengers are transported by road. Development of road infrastructure is needed for fast and qualitative delivery of goods.

Together with the Global Infrastructure Fund, a project is underway to build a new Tashkent – Andijan highway. Experts of the World Bank on road construction that arrived in Uzbekistan will study the road sections.

On October 2, 2019, President of the Republic of Uzbekistan Shavkat Mirziyoyev held a meeting and identified the main tasks for further development of the road sector and wide attraction of investments in this sphere.

The need was noted for active involvement of international organizations and private partners in construction and repair of roads. In particular, instructions were given on implementation of 18 major projects based on such a partnership, covering 1.6 thousand kilometers of roads of international and national importance.

Insufficient involvement of viloyats in the renovation of internal roads was indicated. The Ministry of Finance was entrusted with the task of introducing a practice according to which the funds of the republican budget will be allocated only to public roads, and the funds of local budgets – to internal roads. It was noted that foreign practice of involvement foreign investments in the form of PPP is efficient.

The European Bank for Reconstruction and Development (EBRD) will assist in the implementation of the PPP project “Construction of the Tashkent-Samarkand toll road”. The corresponding agreement was signed between the Ministry of Transport and the PPP Agency, the press service of the PPP Development Agency reports. The EBRD will attract international consultants through technical assistance.

According to the signed agreement, international experts together with the Ministry of Transport will carry out the necessary work for the implementation of the PPP project in several stages, including a comprehensive examination and preparation of the project, taking into account legal, financial and technical aspects.

The parties will consider all possible options for implementing the project, taking into account long-term prospects and tasks, as well as the characteristics of the region.

For today, no one project has been implemented under the PPP in Uzbekistan.

It is known that at the moment there is a pre-feasibility study and selection for the construction project of the Tashkent - Samarkand (EBRD) and Tashkent – Andijan (World Bank) roads.

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