

MAIN AMENDMENTS TO THE PPP LEGISLATION

Since 2017, Uzbekistan has been experiencing a significant increase of foreign investment activity. The government has been implementing numerous reforms in its domestic legislation regarding openness and attractiveness of the foreign investment market in Uzbekistan.

The main issues in the implementation of investment projects were the following: what benefits and preferences they can get and what guaranteed benefit they would receive.

On June 10, 2019, the Law of the Republic of Uzbekistan “On Public-Private Partnership” (hereinafter – the “Law on PPP”) was adopted, it has expanded the types of mechanisms for implementing investment projects. On January 22, 2021 legislators have amended the Law on Public Private Partnership (“PPP”) which had a significant impact on investors.

The amendments effected the following sections of the Law on PPP:

1. The Law “On currency regulation” No.357 dated October 22, 2019, and the Law on PPP were amended. For example, linking foreign currencies or digital units to the costs of goods and/or services is prohibited in Uzbekistan. However, the new amendments make exceptions for the investment projects which involve foreign investment under PPP agreements and investment agreements based on presidential decisions. Such novelty is an important stage for the development of the PPP market because it reduces the risks for foreign investments;
2. Numerous definitions and concepts were also introduced:
E.g., a **concession** is a form of PPP in which the state provides a private partner with properties and land plots and issues a permit to carry out certain types of economic activities in the course of the concession agreement;
Another example is the new concept: “**Success Fee Payment**” which means a single payment by the bid winner to the state budget;
3. The novelty also defined a new authorised body – PPP Development Agency, which hold the following functions:
 - coordinating the tender documentation of PPP projects and drafting PPP agreements with a total value of more than one million USD;
 - conducting negotiations with the international financial institutions, the international and local consulting and project developing organisations on consulting and auditing services within the framework of the PPP projects, as well as concluding contracts;
 - entering into the agreements with the winner of the tender or a participant in direct negotiations in order to charge a one-time payment for the successful execution of a public-private partnership agreement.
4. The novelties also defined the new authorities of local executives. Their authorities have expanded to defining the target objects for prospect conclusion of the agreements, studying and defining potential of the territory and the efficiency of project implementation, as well as the allocation of land without auctions;

5. On the other hand, according to the amendments, there is a new controversial restriction on the transfer of the allocated land plot for the implementation of the project to the third parties. Thus, the private partner does not have the right to transfer the terms and rights granted to him;
6. The Law on PPP introduces a special purpose vehicle (hereinafter – the “SPV”) as an additional optional entity on the private side (now it is only existing local and foreign legal entities and consortia). The SPV to be created by the winner of the auction in order to execute the PPP contract;
7. There are some other amendments to the procedure for submission of the technical and financial proposals (timelines, sequence of events). It is important to note that under the revised procedure the winner is determined based on the Tender Proposals consisting of financial and technical proposals (which is not the feasibility study);
8. The introduced clause on changes in legislation that came into force after the conclusion of the PPP agreement now indicates that the private partner has the right to increase their income. The exception is if it does not apply to changes in taxes and fees. If, after the signing of the PPP agreement, any changes are made to the legislation that worsens the situation of the private partner, then the law in force on the date of the conclusion of the PPP agreement applies to the private partner. According to the amendments, the 10-year statute of limitations was abolished;
9. In addition, the legislators have introduced the concept of reimbursement, which guarantees that the state will compensate the losses connected to the changes in legislation, which may negatively impact on the investments in the PPP projects.
10. Finally, some amendments have also been introduced to the procedure for submitting technical and financial proposals (deadlines, sequence of events).

According to the revised procedure, the winner is determined on the basis of tender proposals consisting of financial and technical proposals (which is not a feasibility study).

In our opinion, the amendments to the legislative acts have significantly changed positions of the investors, bringing PPP projects closer to profitability and safety. Such legislative exertion will probable increase the attractiveness of PPP projects in Uzbekistan.