

LAW OF RT «ON PUBLIC – PRIVATE PARTNERSHIP»

Requisites

December 28, 2012, # 907

Scope the Law

The Law establishes the principles of public-private partnership (hereinafter - PPP) and procedure for implementation of PPP projects in the field of infrastructure and social services, and applies to all projects implemented by public authorities and private partners in accordance with PPP agreement.

Field of application

Types of projects to be implemented under PPP agreement:

- infrastructure projects – designing, construction, development and use of new infrastructure facility or reconstruction, modernization, extension and operation of any existing infrastructure facility;
- social services project – designing, development and operation of any structure operating under the jurisdiction of the state partner prior to the project start which renders directly or indirectly social services to the population for the period not less than 3 years (domestic, psychological, medical, educational and other services).

Restriction with respect to projects

The Law shall not apply to:

- goods procurement, work performance and service rendering in accordance with the Law of RT «On state procurement of goods, works and services»;
- privatization and denationalization of state property and enterprises in accordance with the Law «On privatization of state property of the Republic of Tajikistan»;
- granting rights for subsoil use according to the Law of RT «On subsoil use» and «On concessions»;
- implementation of loan project (grants), funded by international finance institutions and governments of foreign states and regulated by rules and regulations of such institutions which shall apply obligatory in accordance with and under the obligations undertaken by the Republic of Tajikistan, whereby the requirements of these regulations shall prevail.

In addition, the Government is entitled to specify the list of infrastructure facilities and social services in respect of which the Law shall not apply.

Parties to PPP agreement

Public partner (contracting authority) – central or local state authority;

Private partner – individual entrepreneur or non-governmental legal entity, as well as consortium.

Foreign investors are entitled to participate in PPP projects implementation. In accordance with the Law contracting authority may request private partner to establish a legal entity that will be registered according to the legislation of RT.

Contracting authority also gives permission to consortium for participation in tender, as well as it specifies the terms of such participation. One of the members of the consortium is to be appointed as a leader and bears responsibility for the consortium.

Unless otherwise established by the contracting authority in tender documentation, each member of the consortium may participate directly or indirectly only in one consortium at the same time. In case of withdrawal of one member from the consortium, the other members thereof are responsible for all liabilities of the consortium.

Regulatory authorities

State authorities regulating the activity under PPP:

- the Government of the Republic of Tajikistan;
- the Public–Private Partnership Council (hereinafter - the Council);
- the State committee on investment and state property management of the Republic of Tajikistan (hereinafter - the Committee).

Special provisions

Each project undergoes reconciliation procedure with the Committee. Reconciliation is required for project proposal, tender documentation and for PPP agreement itself. The final approval in respect of the said documents, as well as implementation of PPP project is to be issued by the Council. All terms related to reconciliation and issuance of approval are established by Council.

The Law assigns a leading part to contracting authority (state authority) in reconciliation of PPP project. Thus, the contracting authority prepares feasibility study of PPP project (independently or through engagement of specialized organizations), develops tender documentation and participates in negotiation and preparation of PPP agreement.

Contracting authority presents quarter and annual reports to the Committee and the Council on the management of ongoing PPP projects, tender process, execution of PPP agreement and implementation stage of each PPP project.

Procedure for consideration of PPP project and selection of private partner:

- Preparation of project proposals by contracting authority and holding of a tender;
- Submission of unrequested proposals by private partner and subsequent tendering.

Compliance criteria of participant to tender conditions: availability of sufficient institutional, financial and technical resources for PPP project implementation, as well as non-participation in litigation at the time of making a project proposal.

Replacement of private partner

In case of non-performance of material obligations by private partner or in any other cases that might otherwise justify the termination of PPP agreement, the contracting authority may agree with the requirements of any institution that provides financing partnership project which imply replacement of private partner.

PPP agreement

The Law stipulates mandatory requirements for type, content and implementation procedure of PPP agreement. Also the parties are entitled to include additional conditions to PPP agreement on the basis of terms and specifics of certain PPP project.

Termination of PPP agreement

The Law establishes grounds and terms for termination of PPP agreement by the contracting authority and private partner, as well as by mutual consent of the parties.

Rights, guarantees and incentives provided to investors

Property rights of investors

1. Encumbrances.

Upon execution of PPP agreement, the private partner has the right:

- to encumber movable or immovable property pertaining to the private partner or its interests in the assets of PPP project;
 - to pledge future incomes and receivables of the private partner for implementation of PPP project.
- Shareholders of a legal entity of the private partner, established upon request of the contracting authority, have right to pledge or apply any other security in respect of their interests in such legal entity.

2. Assignment of rights under PPP agreement

Rights and responsibilities of the private partner under PPP agreement cannot be transferred to a third party without the written consent of the contracting authority.

3. Control over a legal entity

Unless otherwise provided by PPP agreement, the majority shareholding in a legal entity of the private partner cannot be transferred to third parties without the consent of the contracting authority.

References to documents

The List of infrastructure facilities and social services in respect of which the Law shall not apply to be approved by the Government of RT. Currently such List has not been approved yet.

Incentives for investors

Support provided by the contracting authority and related to obtaining of licenses or permits that are necessary for PPP project implementation.

Preferences and incentives offered to the private partner by the contracting authority.

In accordance with the land legislation, the contracting authority or other state authority grants land plot for use to the private partner or, as may be required, assists in obtaining of land use rights by the private partner that are necessary for PPP project implementation.

In accordance with legislation and PPP agreement, the contracting authority or other state authority makes available to the private partner or, if necessary, assists the private partner in the acquisition of the right to enter, pass through or carry out works, develop infrastructure, place property of third parties in the territory of RT as may be required for PPP project implementation.

Barriers

The Law gives no further details of terms and procedure for provision of preferences, incentives and support.