



**PPP (PUBLIC-PRIVATE PARTNERSHIP) PROJECTS
PREPARATION AND IMPLEMENTATION:
PRACTICAL ASPECTS**

**IBL-213
LLM-576**

**Three (3) credits
(Distance Learning)**

Fall 2020

Instructor: Sultan Khalilov, Master of Laws
Class Schedule: Monday, 14:10
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I. GENERAL DESCRIPTION AND OBJECTIVES OF THE COURSE

Public-private partnership (PPP) involves long-term and mutually beneficial collaboration between a government agency and a private-sector company that can be used to finance, build and operate projects, such as public transportation networks, parks, schools, medical organizations, etc. PPP is also defined as a long-term contract between a private party and a government entity, for providing a public asset or service, in which the private party bears significant risk and management responsibility, and remuneration is linked to performance.

The objective of the course is to provide students with knowledge of PPP regulation and implementation of PPP projects in Kyrgyzstan and abroad.

Students will learn how to participate in stages of a PPP project, from preparing a feasibility study to organization and holding a tender for selection of a private partner and signing a PPP agreement with the selected private partner. The topics of discussion include such issues as providing professional legal services in PPP sector, including legal support and structuring of a PPP project from initiation to completion; legal due diligence of a PPP project; assessment of prospects of a PPP project and identification of legal risks, as well as ways to mitigate or avoid them; drafting of tender documents, PPP agreement, as well as other relevant documents; cooperation with state and municipal authorities to improve the PPP legislation and practice, etc.

II. PROGRAM AND COURSE LEARNING OUTCOMES

PROGRAM LEARNING OUTCOMES

Upon successful completion of the course students should be able to:

1. carry out professional activities in good faith on the basis of developed legal consciousness, legal thinking, and legal culture and with observation of ethical principles of the legal profession;
2. apply professional judgment, perform quality legal analysis, conduct legal research, and solve legal problems;
3. be able to speak and write in an argumentative, logical, and clear way in the legal context, have skills necessary to draft legal documents, be fluent in the English language at the level of professional communication;
4. draft normative legal acts and carry out their legal expertise in the field of professional activity;
5. interpret and apply substantive and procedural norms, provide qualified legal opinions and consultations in concrete types of legal activity;
6. demonstrate leadership qualities, active citizenship, take and develop initiatives aimed at promotion of civil society and welfare state;
7. understand the essence and significance of information in the development of modern society and law, master the basic methods of working with information and information technologies in the professional sphere.

COURSE LEARNING OUTCOMES

Upon successful completion of the course students will be able to:	Law Program Learning Outcomes
1. comprehend the main principles and sources of PPP legislation;	1, 2, 4, 5, 7
2. understand the basics of PPP and PPP law;	1, 2, 4, 5
3. understand objectives, types and methods of state regulation of PPP;	2, 7
4. explain nature and essential differences among different PPP forms/models;	2, 3, 5
5. understand the essential elements of PPP agreements/ contracts, agreement/ contract performance, and remedies in the event of contractual improper performance or non-performance;	1, 2, 3
6. know the basic principles and legal guarantees as applied to PPP projects/investments;	1, 2, 4
7. draft relevant documents for PPP projects (legal due diligence reports, tender rules, PPP agreement, etc.)	2, 3, 5, 6
8. differentiate among the various dispute resolution methods regarding PPP projects;	2, 6
9. understand corporate structures and corporate governance issues in PPP projects;	1, 2, 5
10. determine the nature, purposes and consequences of PPP preparation and	1, 2, 5

implementation procedures;	
11. identify legal issues, interpret, analyze PPP law, and apply law to a variety of business situations regarding PPP projects.	2, 4, 5, 7

III. TEACHING METHODS

During this course (distance learning) a variety of teaching methods are employed, including but not limited to the Socratic method, in-class written reflections, lectures, in-class discussions and presentations, preparation and discussion of documents related to PPP projects, showing and discussion of PPP law related video materials, presentations, quizzes.

IV. COURSE REQUIREMENTS AND POLICY

General requirements

- (1) Class sessions are a mixture of lectures and interactive student-focused activities (class discussion based on reading assignments, presentations, etc.). *Students are expected to come to classes prepared and be ready to discuss the assigned materials.* The instructor will call on students randomly to discuss class materials.
- (2) Students are expected to **BE ON TIME** for classes. If the instructor marked a student absent in case the student is late for class, he/she is considered to be absent for the whole class, unless excused by the instructor.
- (3) **ATTENDANCE:** Class attendance is required. If you cannot attend a class due to sickness or other reason, please inform the instructor about it by writing to his email.
- (4) Students must submit all written assignments on the due date. **Late submissions will not be accepted** and will be given a grade of “zero” (0) for the assignment.
- (5) Students must follow the **AUCA ACADEMIC HONESTY** code. All types of plagiarism are strictly prohibited. If a student fails to observe this requirement, the instructor may assign an “F” for the work or an “F” for the whole course, depending on the type of assignment and relevant circumstances.
- (6) The use of cell phones during class is strictly prohibited. Students violating this policy will be given one (1) warning. A second violation of this policy will result in the student receiving a grade of “zero” (0) for class attendance (-10%).
- (7) The use of mobile phones (talking, texting, etc.) and any other electronic devices during class for any purpose not related to the furtherance of the class objectives is strictly prohibited. Recording (audio, video) of classes is not allowed. Students violating this policy will be given one (1) warning. A second violation of this policy will result in the student receiving a grade of “zero” (0) for class attendance (-10%).
- (8) Please note that this syllabus **is subject to change**. Any changes to the syllabus will be announced in class, and the updated version of the syllabus may be found on the e-course. It is students’ duty to stay informed of any adjustments made.
- (9) Students shall regularly follow updates in the E-Course.

Special requirements related to online learning

- (1) The instructor may use Zoom, Webex or another system for online classes.

- (2) Students shall use their full name in Zoom, Webex or another system for online classes.
- (3) Students shall be serious to online classes as to any face-to-face class. They shall prepare their working space, dress code, and all necessary materials in front of them.
- (4) Students shall be polite, respectful to each other and to the instructor, use proper language.
- (5) Students shall visit E-Course and other platforms related to the course in preparation for the course; take responsibility for genuine preparation for the class in terms of submission of assignments, participation in discussions, answering instructor's questions, writing quizzes, etc. They shall attend the classes and shall not rely on recordings and presentations. Recordings are not available for everyone automatically, but only to those who have missed a class due to justifiable/acceptable reason (illness, personal/family circumstances, etc.). The instructor may consider a reason as justifiable/acceptable one at her/his own discretion.
- (6) Microphones should be turned off unless a student is speaking.
- (7) It is recommended for students to turn videos on, unless a student has technical problems with her/his device and Internet connection. Student's camera has to be on whenever instructors ask.
- (8) If a student has questions, she/he can raise hand by clicking 'hand' button or write questions in the chat. If needed, a student may unmute her/himself and ask a question.
- (9) It is recommended for students to enter a class at least 5 min in advance to check their devices and Internet connection.
- (10) Students shall use chat for class purposes only. It is recommended for students to save the chat as it may have issues discussed in class.
- (11) If a student wants/needs to leave a class for a period of time, she/he shall inform the instructor of this via chat.
- (12) If a student has problems with joining a class, she/he shall inform instructors of this via email.

V. GRADING CRITERIA

Class attendance	10%
Active participation (participation in in-class discussions, presentations on the topics of the course)	20%
In-class written assignments	5%
Mid-term Examination (home written assignment)	25%
Final Examination (home written assignment)	40%
<i>Total</i>	<i>100%</i>

Grading Scale

A	94-100%	C	68-73%
A-	90-93%	C-	64-67%
B+	86-89%	D+	60-63%
B	80-85%	D	54-59%
B-	77-79%	D-	50-53%
C+	74-76%	F	below 50%

VI. LEARNING ACTIVITIES

Classes	Activity/ Assignment	Course Learning Outcomes
Classes 1 – 15	To read relevant materials/ documents and be ready to answer instructor’s questions and participate in discussions.	1 – 11
	To prepare individual/ group presentations on relevant topics related to discussions (if any).	
	To prepare relevant documents (legal due diligence report, tender rules, draft PPP agreement, term sheet, etc.).	
	Mid-term Examination (home written assignment) (to prepare relevant document (s), to be specified in class).	
	Final Examination (home written assignment) (to prepare relevant document (s), to be specified in class).	

VII. CRITERIA FOR ASSESSMENT OF WRITTEN ASSIGNMENTS

- **Structure (10%)** - You must develop a structure which enables the clear and logical development of your written assignment. Your written assignment must include a clear and informative introduction and conclusion. The use of headings is required and care should be taken to ensure that these clearly correspond to major divisions in the text.
- **Expression and spelling (10%)** - Clarity of expression is central to the development of a written assignment, which shall be accessible, informative and persuasive. Your assignment should be written in a manner that fosters these qualities. Care must be taken with spelling, punctuation, grammar and capitalization. Sloppy expression and lack of attention to the requirements for academic writing (including referencing) will be penalized.
- **Depth of research/ analysis (40%)** - The written assignment enables you to consider a topic of public-private partnership in detail. You are expected to canvass a wide range of primary and secondary resources appropriate to your topic and to identify these clearly in footnotes and in an appended list of references (if applicable).
- **Quality of argument (40%)** - The written assignment should form an extended argument on a specific topic related to public-private partnership. You are expected to ensure that your arguments are presented in a clear and structured manner and are fully supported by references.
- **Late Submission:**

An assessment item submitted after the due date, without an approved extension from the instructor, will be penalized. The standard penalty is the reduction of the mark allocated to the assessment item by 10% of the maximum mark applicable for the assessment item, for each working day or part of working day that the item is late. Assessment items submitted more than five working days after the due date are awarded zero marks.

VIII. COURSE MATERIALS

You will be required to read materials that will be posted in the e-course, including the following materials:

- Constitution of the Kyrgyz Republic (the "KR") dated 27 June 2010;
- Civil Code of the KR, Part I and II;
- Tax Code of the KR;
- Law on Normative Legal Acts (Laws and Regulations) of the KR dated 20 July 2009, No. 241;
- Law on Public-Private Partnership dated 22 July 2019, No. 95;
- Law on Public-Private Partnership in the Kyrgyz Republic dated 22 February 2012, No. 7 (repealed);
- Law on Investment in the KR dated 27 March 2003, No. 66;
- Law on Public Procurement dated 3 April 2015, No. 72;
- Law on State Registration of Legal Entities, Branch (Representative) Offices dated 20 February 2009, No. 57;
- Law on Business Partnerships and Companies dated 15 November 1996, No. 60;
- Law on Joint-Stock Companies dated 27 March 2003, No. 64;
- Regulation on Tender Committee for Public-Private Partnership Projects (annex to the Resolution of the Government of the Kyrgyz Republic dated 21 February 2020, No. 111);
- Regulation on the Form of Private Partner's Participation in Public-Private Partnership Projects (PPP Models) (approved by the Order of the Ministry of Economy of the Kyrgyz Republic dated 28 February 2013, No. 39);
- Programme for Development of Public-Private Partnership in the Kyrgyz Republic in 2016 – 2021 (approved by the Resolution of the Government of the Kyrgyz Republic dated 16 June 2016, No. 327);
- Business in the Kyrgyz Republic: Legal Aspects 2020, Guide prepared by Kalikova & Associates Law Firm. URL: http://www.k-a.kg/sites/default/files/business_in_the_kyrgyz_republic_2020-eng-10.04.2020-final-clean.pdf
- ADB, EBRD, IDB, IsDB and WBG. 2016. The APMG Public-Private Partnership (PPP) Certification Guide. Washington, DC: World Bank Group. License: Creative Commons Attribution CC BY 3.0 IGO. URL: <https://ppp-certification.com/pppguide/download>
- other documents and information.

In addition, you may refer to the following list of additional materials for further reading:

- Public-Private Partnerships Reference Guide, Version 3.0. 2017. International Bank for Reconstruction and Development/ The World Bank, Asian Development Bank, and Inter-American Development Bank. URL: <https://library.pppknowledgelab.org/documents/4699?prepage=home>;

- Public-Private Partnership Handbook. Asian Development Bank. 2008.
URL: <https://www.adb.org/documents/public-private-partnership-ppp-handbook>;
- Doing Business in Russia, CMS Russia. 2019.
URL: <https://cms.law/en/rus/publication/doing-business-in-russia-2019>;
- Evaluating the environment for public-private partnerships in Asia-Pacific. The 2014 Infrascope. A report by The Economist Intelligence Unit. 2015;
- Evaluating the environment for public-private partnerships in Eastern Europe and the Commonwealth of Independent States. The 2012 EECIS Infrascope. Findings and Methodology. The Economist Intelligence Unit. 2013;
- Green Paper on Public-Private Partnerships and Community Law on Public Contracts and Concessions. Commission of the European Communities. 2004;
- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Mobilising private and public investment for recovery and long-term structural change: developing Public-Private Partnerships. Commission of the European Communities. 2009;
- IFC Notes on PPP projects;
- Preparing a Public-Private Partnership Law. Observations from the International Experience. Philip Kelly. ADB East Asia Working Paper Series. 2016;
- EBRD Core Principles for a Modern Concessions Law. Prepared by the EBRD Legal Transition Team. 2006;
- G20 IWG Survey on PPP development in G20 countries. Russian PPP Center. 2019.
URL: <https://www.github.org/resources/publications/g20-iwg-report-on-the-results-of-the-survey-on-public-private-partnership-developments-in-the-g20-economies/>;
- other documents and information.

IX. COURSE OUTLINE

Notice: All homework assignments and reading materials are posted in the e-course.

Class	Course topics
Class 1	Introduction to the course. Brief overview of PPP concept and PPP laws
Class 2	Brief overview of PPP concept and PPP laws. PPP models. Kyrgyz PPP Law 2012
Class 3	Kyrgyz PPP Law 2012 v. Kyrgyz PPP Law 2019
Class 4	Kyrgyz PPP Law 2012 v. Kyrgyz PPP Law 2019
Class 5	Public Procurement: consulting services
Class 6	Feasibility study report: legal framework assessment. Part 1
Class 7	Feasibility study report: legal framework assessment. Part 2

Class 8	Feasibility study report: legal framework assessment. Part 3
Class 9	Review Session. Mid-term Examination (home written assignment)
	Fall Break
Class 10	Tender Rules. Request for qualifications. Request for proposals. Part 1
Class 11	Tender Rules. Request for qualifications. Request for proposals. Part 2
Class 12	PPP agreement. Part 1
Class 13	PPP agreement. Part 2
Class 14	PPP agreement. Part 3
Class 15	Review Session. Final Examination (home written assignment)