05.10.2020

**PPP Projects course**

**Differences between the PPP Law 2019 and PPP Law 2012**

**Group 1**

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| **PPP Law 2019** | **PPP Law 2012** |
| Article 10. Stages of a PPP project  The stages of a PPP project are:  1) PPP project preparation;  2) Holding of a tender/tender process;  3) PPP project implementation. | Article 15. PPP project stages  PPP project stages are:  - Searching and initiation of a PPP project;  - PPP project preparation;  - Private partner selection;  - PPP project implementation. |
| Article 1  Private partner – a person, which has concluded PPP agreement with a public partner as a result of a tender.  Public-private partnership (PPP) – interaction between public and private partners for engaging a private partner by a public partner in designing, financing, construction, rehabilitation, reconstruction of infrastructure assets, as well as in management of existing or newly created infrastructure assets and/or in providing infrastructure services;  Infrastructure services – works and/or services **of social, economic or production/manufacturing/commercial nature,** including works and/or services provided with use of infrastructure asset and/or **on maintenance** of infrastructure asset;  Public partner - one or several executive state bodies; one or several executive local self-government bodies; state and municipal enterprises and institutions; joint-stock companies with 50% and more of voting shares belonging to the state; | Private partner means an individual entrepreneur, a legal entity **registered under the legislation of the Kyrgyz Republic**; a **legal entity registered under the legislation of a foreign country.**  Public-private partnership (PPP) means a **long-term (up to 50 years)** interaction between public and private partners for engaging the private partner by the public partner in designing, financing, construction,rehabilitation,reconstruction of assets, as well as the management of existing or newly created assets, including infrastructure assets;  **Infrastructure services** mean works and/or services provided using an infrastructure asset;  Public partner means executive state bodies, including ministries, state committees, administrative departments, and local state administrations, as well as executive local self-government bodies and municipal enterprises; |
| Article 13. Qualification stage  Para 3. One application for participation in the qualification stage is sufficient for holding a qualification. If only one application is submitted at the qualification stage on a major/large PPP project, this tender shall be declared as void and the tender committee shall hold a re-tender within 30 days from the date when the first tender was declared as void. During the re-tender on a major/large project one application for participation in the qualification stage is sufficient.  Article 1  13) Large/major PPP project - a PPP project with estimated investment in the amount of not less than 700 million Kyrgyz Soms; |  |
| **Article 14. Winning bidder selection**    1. At the stage of the winning bidder selection a public partner shall deliver the request for proposals for participation in tender and draft PPP agreement to qualified bidders. | Art.18 Private partner selection is carried out by tender process. The tender shall include three stages:    1) pre-qualification;  2) winning bidder selection;  3) conclusion of PPP agreement |
| **Article 15. Conclusion of PPP agreement**  1. The PPP agreement shall be concluded within 30 calendar days from the date of the publication of information on the winning bidder on the official PPP website. | Art.18  The PPP agreement shall be concluded within 60 calendar days after the winning bidder is publicly announced in mass media |
| **Article 16. Implementation, monitoring and evaluation of PPP project implementation**  2. A public partner shall conduct monitoring and evaluation of the PPP project implementation in accordance with the PPP agreement.  **Article 17. Initiation of a PPP project by an interested person - written more widely rather than in art. 20 of 2012 law** | Art 19  The authorized state body and state body for risk management also monitor and evaluate the PPP project. |
| ART. 18  When implementing a PPP project, parties to PPP agreement may additionally conclude other contracts with third parties. | **Article 21. Parties to PPP Agreement and law applicable to a PPP agreement** |
| Article 24. Project company    1. A private partner has the right to establish a project company to implement a PPP project in accordance with the legislation of the Kyrgyz Republic. | Article 29  1. The private partner announced as the winning bidder has a right to establish a project company to implement the PPP project in accordance with the legislation of the Kyrgyz Republic.  2. The public partner may act as a co-founder of the project company, provided that its shareholding shall not exceed one third of the equity of the project company and such shareholding is not prohibited by the legislation of the Kyrgyz Republic. The requirements for the public partner in the project company must be stipulated in the tender documents and the PPP agreement. |
| Article 25. 1. A private partner and project company have the right to borrow loans, credits to finance a PPP project.  3. Publicly or municipally owned property transferred to a private partner and/or project company for temporary possession and use, cannot be pledged, unless otherwise specified in the PPP agreement.  4. To finance a PPP project a private partner and/or project company have the right to conclude a financing agreement with a financial institution. | Article 30  1. The private partner and the project company have the right to borrow, obtain loans or credit or to use other methods of financing the PPP project.  3. The publicly or municipally owned property transferred to the private partner or project company for temporary possession and use, may be pledged, unless otherwise provided in the PPP agreement. |
| **Article 26. Term and extension of a PPP agreement**    The PPP agreement may be concluded for a period of up to 50 years. The period of the PPP agreement may be extended in cases specified in the PPP agreement. | **Article 21. Duration of PPP agreement**    1. PPP agreement may be concluded for a period up to 30 years depending on special features/particularities of PPP project implementation.  2. Duration of PPP agreement may be extended in cases provided by the PPP agreement. |
| **Article 24. Project company**  1. A private partner has the right to establish a project company to implement a PPP project in accordance with the legislation of the Kyrgyz Republic.  2. Termination of activities, pledge of property, transfer or pledge of shares of a private partner and/or project company, change of the authorized (equity) capital of the private partner and/or project company shall not be made without a prior written notice to the public partner, unless otherwise specified in the PPP agreement. | **Article 29. The Project Company**  1. The private partner announced as the winning bidder has a right to establish a project company to implement the PPP project in accordance with the legislation of the Kyrgyz Republic.  2. The public partner may act as a co-founder of the project company, provided that its shareholding shall not exceed one third of the equity of the project company and such shareholding is not prohibited by the legislation of the Kyrgyz Republic. The terms for the public partner’s participation in the project company shall be stipulated in the tender documents and the PPP agreement.  3. Termination of activities, mortgage of property, transfer or pledge of shares (participatory interests in property, equity interests) in the project company, change of the charter (equity) capital of the project company cannot be made without a prior written notice to the public partner and the authorized state body, unless otherwise specified in the PPP agreement. |
| **Article 21. Duration of PPP agreement**    1. PPP agreement may be concluded for a period up to 30 years depending on special features/particularities of PPP project implementation.    2. Duration of PPP agreement may be extended in cases provided by the PPP agreement. | **Article 26. Term and extension of a PPP agreement**    The PPP agreement may be concluded for a period of up to 50 years. The period of the PPP agreement may be extended in cases specified in the PPP agreement. |
| Article 20  2. In case of major/large PPP projects rights and obligations of a private partner and project company may be assigned/transferred to the financial institutions providing finance for the PPP project implementation upon prior written consent of a public partner. |  |
|  | **Article 33. PPP projects registry**    1. The authorized state body shall keep a registry of PPP projects.      2. The purpose of keeping the registry is to maintain the full, timely and accurate record of overall information on all PPP projects implemented in the Kyrgyz Republic.    3. The data contained in the registry shall be available to all interested parties. The rules for keeping the registry shall be adopted by the Government. |