

Infrastructure and public private partnerships

General approach

Over the last decade, infrastructure and public private partnership (“PPP”) projects have been of great interest to both the public sector and private investors.

The number of PPP projects in Russia continues to increase consistently, mainly due to regional projects, especially in the communal utilities (including water, wastewater, waste management) and energy sectors. The Russian Government is planning to invest RUB 2.9tn (EUR 38.7bn) in infrastructure by 2020. Around 25-30% of this sum is supposed to finance PPP projects that will be additionally co-financed by private investors.



RUB 75 = EUR 1

*notional exchange rate used for convenience

High profile projects like the Western High-Speed Diameter (one of the largest PPP projects in Europe), the M4 Toll Road, the Pulkovo Airport, the M-1 Odintsovo By-Pass and the Moscow-Saint Petersburg Toll Road projects have been successfully implemented and have already been operating well for a few years.

But the large number of new PPP projects has not come without shortfalls. Many large-scale PPP projects

have been postponed, suspended indefinitely, converted into public procurements or even cancelled (e.g. the Moscow-Saint Petersburg High-Speed Rail project (VSM-1), the Neva Water project, the Orlovsky Tunnel, the Palace of Arts on Vassilevsky Island, the Nadex light train in Saint Petersburg, the Lena River Bridge project, etc.).

Also, some consumers have complained about the quality of services that they have been receiving under some PPPs. Some granting authorities have also been complaining about the poor quality of PPP applicants, leading them to cancel some of their tenders. It has been reported¹ that the number of lawsuits over PPPs has increased in 2017, and this trend is expected to continue in future.



As a result, there have been repeated calls from Russian authorities (especially the Federal Anti-monopoly Service and the Ministry of Construction, Housing and Utilities) to create legal mechanisms

¹ www.vedomosti.ru/economics/articles/2017/12/27/746650-voprosov-k-rinku-kontsessii

that would help better control the screening of candidates, the implementation of PPPs and ensure a better quality of services provided.

It is also worth mentioning that there is a dualistic trend in the nature of PPP projects. Most of the high profile deals that involve a significant amount of investment are tailor-made to the needs of a particular project, well prepared by teams of qualified specialists and involve very competent investors, contractors and representatives of authorities. On the other hand, regional and especially municipal projects are much less sophisticated, which results in lower quality and moderate outcomes of such projects, and also makes the benefits of PPPs less obvious for regional and local authorities.

At the same time, growing volumes of mid-market and small PPP projects, especially in communal services, motivate some investors to develop standard-form documents to increase the average quality of projects and make them a standard financial service ready for replication. Sberbank of Russia is one of the most active players in the area of developing standard solutions, as it has a lot of representative offices in almost every region of Russia and would like to use this network to its advantage by enabling regional managers to actively finance PPP projects on the basis of standard documents developed at its headquarters.

There is also a healthy pipeline of infrastructure and PPP 'mega' projects in Russia, including the Eastern High-Speed Diameter in Saint Petersburg and *TsKAD* (Central Ring Road) around Moscow, as well as many regional projects, which shows that the PPP sector is far from stagnant.

The adoption of a new federal law on PPP in July 2015, which had been debated for several years, was a significant milestone in the development of the PPP legal framework in Russia. The first PPP projects within the framework of the federal PPP law were successfully launched in 2018.

Russian federal and regional authorities alike are becoming increasingly engaged in the development of PPP. At the federal level, Russia's lower chamber of parliament (the State Duma) operates a PPP council. The Ministry of Economic Development is the government body responsible for PPP policy in Russia. Several federal ministries also manage PPP councils, including the Ministry of Culture, the Ministry of Public Health, the Ministry of Finance and the Ministry of Construction, Housing and Utilities (the latter two Ministries have been especially active in recent years). At the regional level, most regions have adopted their own PPP laws which will remain in effect until 2025, notwithstanding the adoption of the federal PPP law.

The trend over recent years shows that Russian authorities view the PPP sector

as a leading tool for infrastructure development and for attracting private (both domestic and foreign) investment. Even though some regional authorities with little experience in the PPPs remain sceptical, the federal Government is actively advocating this instrument, including situations in which the Government declines to provide co-financing for regional infrastructure, unless it is a PPP.

Key PPP legislation

Federal PPP legislation

At the federal level, PPP projects are regulated by:

- Federal Law No. 224-FZ “On Public-Private Partnership, Municipal-Private Partnership in the Russian Federation and on Amendments to Certain Laws of the Russian Federation” dated 13 July 2015 (the “**PPP Law**”);
- Federal Law No. 115-FZ “On Concession Agreements” dated 21 July 2005 (the “**Concession Law**”);
- the Civil Code of the Russian Federation (the “**Civil Code**”);
- the Land Code of the Russian Federation and laws regulating land;
- the Town Planning Code of the Russian Federation and laws regulating construction activity;
- the Budget Code of the Russian Federation (the “**Budget Code**”) and associated regulations (e.g. Russian Government Decree No. 18 “On Procedure for Management of the Fund of National Welfare of the Russian Federation” dated

19 January 2008); and

- laws and decrees regulating specific industries (e.g. Federal Law No. 257-FZ “On Motorways” dated 8 November 2007).

PPP Law

The PPP Law was adopted in July 2015 and entered into force on 1 January 2016.

Generally, the PPP Law is aimed at unifying the principles regulating PPPs, defining the powers of public authorities when entering into partnerships with the private sector and specifying the procedures for entering into PPP arrangements.

In particular, the PPP Law includes the following provisions that help define, characterise and regulate PPPs:

- While the PPP Law does not set out an exhaustive list of forms for implementing PPP projects, it nevertheless allows for private ownership over the infrastructure facilities (thus enabling BOO, BOOT and other standard PPP models based on private ownership). This is in contrast to the Concession Law which requires the state to retain ownership over the infrastructure facilities.
- PPP is defined as the cooperation of a public partner (the Russian Federation, a region of the Russian Federation or a municipal authority) and a private partner (a Russian legal entity) on the basis of a PPP agreement entered into pursuant

to a tender procedure and aimed at increasing the quality and availability of public services by attracting private investment.

- A PPP project may be initiated either by the public or the private partner; thus providing investors with a right to enter into a PPP agreement through a non-tender private initiative procedure.
- Major Russian state-controlled PPP market players (such as state banks VEB.RF, Sberbank, VTB, Gazprombank and state investment funds such as the Russian Direct Investment Fund) are expressly prohibited from controlling more than 50% in a private partner. As a result, they will need to enter in consortia with private entities, including foreign investors, to finance PPP projects under the PPP Law. It should be noted that there have been calls to ease this rule since the PPP Law entered into effect.
- A PPP agreement is to be signed for a minimum of three years.
- PPP agreements regulated by the PPP Law are distinct from concession agreements, which are implemented on the basis of the Concession Law, and the PPP Law does not apply to concession agreements.
- The list of objects under PPP agreements (the “**Objects**”) is exhaustive and includes, in particular, private roads, bridges, roadside utilities, public transportation (excluding metros), railways, pipelines, sea and river ports, airports, electricity generation plants, public health facilities, social infrastructure and, since 2016, agricultural and industrial facilities – which is expected to promote investments in those two sectors. Any infrastructure that cannot be held in private ownership according to Russian law is excluded from the scope of regulation of the PPP Law and may only be subject to a concession agreement.
- Under a PPP agreement, the private partner must (re)construct the Object, fully or partially finance such (re)construction as well as operate and/or maintain the Object. The private partner may also be required to prepare the design documentation, and fully or partially finance the operation and/or maintenance of the Object.
- As a general rule, the private partner remains the owner of the Object after the PPP agreement expires provided, however, that the amount of financing provided by the private partner exceeds the financing of the public partner.
- If, during the effective term of a PPP agreement, the applicable federal, regional and/or local laws and regulations are amended and this adversely affects the private partner, then the parties must review the provisions of the PPP agreement in order to restore the economic balance initially envisaged by the parties, as well as the property and financial interests of the private partner.

The PPP Law also generally defines such matters as the preparation of the PPP agreement, the content of the tender documentation, the tender procedures and control over the implementation of PPP projects. Under the PPP Law, some aspects of the implementation of PPP projects are to be regulated by subordinate legislation adopted by the Russian Government.

Despite the adoption of the PPP Law, some important issues still remain unresolved.

First of all, the PPP Law only applies to the types of Objects expressly listed therein. For example, public utilities (heat, water and gas supply facilities) are not mentioned in the PPP Law and, thus, the relevant PPP projects can only be implemented under the Concession Law. As a result, some proposals aimed at broadening the scope of the PPP Law are tabled regularly.

Secondly, the PPP Law does not expressly provide guarantees for the return on investment, some limited income guarantees are mentioned only for those projects where the activity of the private partner is regulated and prices (tariffs) are fixed by public authorities, such as in waste infrastructure projects.

Concession Law

The Concession Law was adopted in 2005. Since 2005, it has been repeatedly amended in order to make it more practical to implement concession projects in various sectors.

The Concession Law applies to certain types of infrastructure such as roads and roadside utilities, pipelines, sea and river ports, airports, public utilities, railways, subways and other public transportation, and public health facilities.

The Concession Law sets out the general rules for entering into concession agreements, including the tendering rules and the material terms that these agreements must include.

In July 2014, the legislator introduced new amendments to the Concession Law (which entered into force on 1 February 2015 and on 1 May 2015). These are primarily aimed at providing additional guarantees to the concessionaire. In particular, it is now possible for an investor to initiate a concession project and enter into a concession agreement without a tender through a private finance initiative. The grounds on which the grantor may decline the offer of an investor to enter into a concession agreement are limited by law. Furthermore, a change of concessionaire is now permitted before the conceded object is commissioned (subject, however, to the grantor's consent), which was previously expressly prohibited.

On 1 January 2017, long-debated amendments to the Concession Law entered into force to attract new investment projects in public utilities, including the heating, water and wastewater sectors.

Regional PPP legislation

Over the last decade, most Russian regions have adopted their own regional PPP laws in order to provide options for implementing PPP projects based on private ownership over the infrastructure objects. At the time, private ownership based schemes were either not provided for under federal law, or expressly prohibited by the Concession Law. The most notable example is the Saint Petersburg PPP law of 2006.

Significant regional projects implemented under the Saint Petersburg PPP law include the Western High-Speed Diameter and the Pulkovo Airport.

Whilst other Russian regions have followed Saint Petersburg's example by adopting their own regional PPP laws, the adoption of the new federal PPP Law in July 2015 has significantly affected this practice.

Under the PPP Law (which is a federal law), the regional PPP laws may remain in force, but will have to be brought in line with provisions of the PPP Law by 2025.

In the meantime, all PPP projects implemented since 2016 are regulated by the PPP Law and not regional PPP laws. As a result, regional PPP laws remain applicable for the PPP projects that were initiated before 2016 and generally such projects are "grandfathered" by the PPP Law itself.

Alternative schemes or quasi-PPP

Alternative PPP schemes have been implemented in the past on the basis of other legislation, such as the investment contracts of the Budget Code, long-term leases with investment undertakings governed by the Civil Code, and public-private joint ventures based on the privatisation legislation as well as general civil and corporate law principles. These alternative schemes have always been questionable from a legal perspective and some courts applied the Concession Law or the so-called "Public Procurement Law"² with respect to such contracts, resulting in the cancellation of many projects. With the new PPP Law, the legality of some alternative schemes (i.e. those not provided for by the PPP Law or the Concession Law) is even more questionable, with the exception of those options expressly provided for by other federal legal acts or quasi-PPP projects that are managed not by the state authorities, but by the state-controlled companies like FSUE Rosmorport or SC Russian Highways.

For example, the Public Procurement Law provides for the conclusion of life-cycle agreements for the (re)construction and operation of infrastructure. This option is available in Russia since Government Decree No. 1087 dated 28 November 2013 which provides that life-cycle

² Federal Law No. 44-FZ "On the Contractual System for the Procurement of Goods, Works or Services for State and Municipal Needs" dated 5 April 2013.

agreements may be used for the design and construction of roads, ports, communal utilities, waste management, rail objects as well as for the procurement of aircrafts, vessels and transport vehicles, including railway and subway cars. At the same time, in 2014, partially to avoid the application of the Public Procurement Law, the city of Moscow lawfully provided financing to its controlled enterprise, the Moscow Metro, which is not subject to the Public Procurement Law and may conduct more flexible tender procedures that still protect the best interests of the state, while making projects more attractive for investors and financing institutions. As a result of an open tender held by the Moscow Metro, several life-cycle contracts for the financing, manufacturing and maintenance within the 30 years period for more than 1,000 railcars were signed. Those agreements and tenders were based on best practices of the PPP market and general provisions of the Civil Code.

Another PPP-like instrument that is under development is the 'infrastructure mortgage'. The exact details of this new mechanism remain subject to further elaboration; however, it has been announced by politicians at the highest level, including the President³.



Despite plans to introduce this new instrument by 2019, it has not yet been implemented.

Russian PPP environment Governmental commitments

The Russian authorities have adopted several programmes aimed at modernising infrastructure, including roads, railways, airports, power generation plants, as well as healthcare and social infrastructure.

The Government provides support to private investors in order to attract foreign investment. For instance, it co-finances and/or guarantees PPP projects. It also provides tax credits and other benefits prescribed for special economic zones⁴.

Transport

The Ministry of Transport is the state body responsible for the development and investment policy in all areas of transport. Each means of transport (roads, airports, railways, etc.) is under its supervision and is managed by a specialised entity, which, in turn, reports to the Ministry of Transport.

³ www.gazeta.ru/businessnews/2017/06/02/n_10126973.shtml

⁴ Please see the relevant section of the Tax system chapter on page 67.

Some PPP transport projects which will be implemented within the coming years in Russia include:

- the Moscow-Kazan high-speed rail link⁵;
- the transport project Europe-West China;
- sections 3 and 4 of the Central Ring Road (“TsKAD”) in the Moscow Region;
- road bridges in the Moscow Region;
- a private parking system in Saint Petersburg;
- a private tram in Saint Petersburg;
- a high-speed tram in Samara;
- a railway link from Saint Petersburg’s centre to Pulkovo airport; and
- the further modernisation of Moscow’s airports (first of all Sheremetyevo, in respect of which a concession agreement has been signed, and then Domodedovo and Vnukovo), as well as of the airports of Vladivostok, Irkutsk, Omsk and Oryol (Yuzhny).

Roads

The state company Russian Highways is responsible for, amongst other things, PPP projects in relation to federal roads. Under its activity programme for 2010-2021, as approved by the Government⁶, Russian Highways will be allocated RUB 1.42tn (EUR 19.9bn) to (re)construct highways, develop new international routes and create a chain of multifunctional road service zones through PPP projects. Most PPP projects are planned to be implemented under long-term investment as well as concession agreements and operation & maintenance contracts.

Railway

JSC Russian Railways (“RZD”) operates a monopoly in the Russian railway sector and is currently implementing a number of investment projects, such as the reconstruction of the Baikal-Amur and Trans-Siberian railway links and the Moscow-Kazan High-Speed Rail project (VSM-2).

The design of the Moscow-Kazan High-Speed Rail project was completed in 2017 as a procurement for RZD and was financed by the state. Concession agreements for the construction and operation of some sections of the Moscow-Kazan rail link will be entered into, which alongside state financing will require a significant amount of private investment. Construction was expected to begin in 2018. According to public estimates⁷,



the total value of the project will exceed RUB 1tn (EUR 13.3bn). That said, it is now highly likely that this project will be cancelled due to unfavourable traffic and projected income analysis. Instead, a toll automobile road will be built to Kazan, and the VSM-1 high-speed rail

⁵ Status unclear.

⁶ Order No. 2146-r of the Government of the Russian Federation dated 31 December 2009 (as amended).

⁷ www.eng.hsrail.ru/hsrail-Moscow-Kazan/project-profile/

project between Moscow and Saint Petersburg will be revived.

The VSM-2 project was supposed to become part of an even more ambitious project, the “Silk Road Initiative”, aimed at creating a high-speed rail link between Europe and China through Russia. Even if VSM-2 is cancelled, the Silk Road Initiative may still be implemented in the future.

On the positive side, two major railway projects were signed in 2018 involving:

- a concession agreement regarding the Kyzil-Kuragino railroad with total amount of investments of approx. RUB 192bn (EUR 2.6bn); and
- a concession agreement regarding the Obskaya-Salekhard-Nadym railroad, which is a part The Northern Latitudinal Railway, with total amount of investments of approx. RUB 113bn (EUR 2.6bn).

RZD’s general director and president Oleg Belozеров, who was appointed in 2015, has significant experience in PPP transport projects (as he was previously the head of the Federal Road Agency). It is therefore expected that RZD will more actively use PPP mechanisms for its infrastructure projects, including for the construction of new railway links and the modernisation of existing railway links.

Communal utilities

Utilities have long been a successful and receptive area for private investment and are thought to offer a great

potential for foreign investment. As an inheritance from the Soviet Union, Russia received a large number of publicly-owned housing and utility facilities, most of which are in poor condition, requiring urgent repair or modernisation.

The Government – and especially the Federal Ministry of Construction, Housing and Utilities which is implementing a programme for the development of communal utilities by 2020 – is actively attracting private investment into the communal utilities sector. The Government is ensuring long-term commitments of the state towards investors and tariffs to cover both capital and operational expenses, as well as guaranteed profit. In some sectors where tariffs cannot cover both capital and operational expenses (e.g. waste management), additional state financing is available.

It is expected that by 2020 more than 80% of communal utilities companies will be operated by private operators based on concession agreements and other contractual arrangements with the state.

Waste management

Waste management is likely to be a pressing issue in the coming years, since a significant number of existing waste disposal facilities are waste dumps and quite a few of them are reaching maximum capacity. Some of such dumps are poorly managed, which sometimes results in toxic fumes.

That said, there is a need for private investment in waste management, including investment in modern means of disposal and recycling.

The Concession Law was amended in 2015 to include industrial waste facilities as potential objects of concession agreements (previously only facilities operating with household waste could be the subject matter of concessions).

There is currently a debate as to whether concessions or PPPs would only be effective if the private partner also becomes a regional waste management operator⁸. However, this cannot be legally guaranteed because regional waste management operators are selected via separate tenders.

At the same time, it is possible to implement some quasi-PPP projects based on contracts with regional operators without an additional concession or PPP agreement. For example, the subsidiaries of the Rostekhnologii state corporation won tenders to become the regional operator for significant amounts of waste treatment in the Moscow Region and Tatarstan.

By May 2019, a new state corporation, the Russian Ecological Operator, should be incorporated. It will be responsible for coordinating efforts on waste treatment at a federal level, re-cultivating existing waste dumps. It will also accumulate know-how and participate in investment projects related to waste treatment.

This state corporation may be expected to play a role similar to that of SC Russian Highways in the management of automobile roads.

Power (heating and electricity sector)

Tariffs in the heating sector in Russia are traditionally relatively high compared to those in other sectors, while the equipment used is old and inefficient. This makes this sector open for private investors, including foreign investors and producers of modern equipment. As a result, there are currently many regional projects of different scale (from one to several districts) being at various stages of implementation.

Many of the existing plants are combined heating and electricity producing plants, which generates an additional source of income. Those projects using renewable energy sources, such as biogas, biomass and peat can further benefit from green tariffs granted by the state as an incentive for renewable energy, which can be three to five times higher than the standard market price for electricity.

By-product electricity generated by waste treatment plants to be constructed in Russia is also considered as renewable energy.

⁸ This means that the private partner basically becomes the default waste management operator for the region, and it provides waste management services to all customers of the region. Thus, the status of the regional operator guarantees demand and cash flow.

Water and wastewater

Under the law on water supply and wastewater treatment⁹, infrastructure in this field must remain within the public property domain. That means that the new PPP Law is not applicable to this type of facility and instruments available for private investment into this sector are limited to concession agreements, long-term lease agreements and other quasi-PPP models where ownership is not transferred to the investor.

In 2013, the Russian President instructed¹⁰ the Government to ensure the transfer, in the coming years, of the management of facilities of all inefficient municipal and state utility companies in the water and wastewater sector to private operators under concession agreements. This has already given rise to an increasing number of regional infrastructure projects, including concessions in Volgograd, Elista, Ryazan, Voronezh, Saratov and other cities, some with a population of more than one million.

Amendments to the Concession Law effective from 1 January 2017 are expected to increase the number of concession projects in water and wastewater infrastructure.

The most significant and long-awaited projects that are expected to be implemented in the future are a concession over Saint Petersburg Vodokanal and the partial privatisation of Mosvodokanal, which are the largest Russian communal utilities companies.

Housing

In 2015, a law on capital renovation of housing¹¹ introduced a new fee for capital renovation of apartment buildings which must be paid by all urban population. The fees are accumulated either by state-controlled regional funds responsible for the renovation of housing in specific regions, or by municipalities which contract directly with companies for renovation works with respect to particular housing objects. Such funds will in the future become the resource for financing capital repairs of the apartment buildings.

Apartment buildings are currently not mentioned among possible objects of concession or PPP projects. However, the Russian Government may be developing plans for attracting financing for capital repairs. Given the existing trends, this mechanism might be of a PPP or of a quasi-PPP nature.

Healthcare sector

The recent decrease of budget financing for medical equipment in Russia and the market's tremendous potential are among the factors that are potentially conducive of opportunities for market players in the healthcare sector, and in particular for foreign equipment producers and investors that have know-how in the operation of facilities for high-technological medical care.

⁹ Federal Law No. 416-FZ dated 7 December 2011.

¹⁰ Instruction of the Russian President No. Pr-1479 dated 6 July 2013.

¹¹ Federal Law No. 271-FZ dated 25 December 2012.

The authorities may sometimes only be interested in attracting investments for the reconstruction of existing facilities, while already existing state enterprises will take care of day-to-day operations and provide medical care services. That sort of concession or PPP project is, economically speaking, more similar to a real estate investment.

Investment in healthcare infrastructure is also actively supported by the Government through long-term commitments to buy the services of private operators of infrastructure facilities through state social security funds, as well as through the implementation of life-cycle agreements.



Please see the *Alternative schemes* or *quasi-PPP* section above.

There are already a number of successful healthcare infrastructure projects in Russia, some of which are implemented by foreign investors. More projects are about to take off in the near future in Moscow, Saint Petersburg, the Leningrad Region, Vologda, Udmurtia, Ulyanovsk, Novosibirsk, Samara and other major regions of Russia, including a number of nuclear medicine projects in major Russian cities such as Moscow, Rostov, Tomsk, etc.

One of the new trends is creating medical clusters, such as the Medical Cluster in Skolkovo and the International Moscow Medical Cluster, which will

provide different benefits for their respective residents.

Social infrastructure

PPP projects in social infrastructure are primarily initiated in the regions, such as the construction of retirement homes in the Moscow Region and in Buryatia, several sport facilities in the Nizhny Novgorod Region, a college for gifted children in Omsk, education facilities in the Pushkinsky District of Saint Petersburg and the construction of 25 kindergartens in Tomsk.

The main obstacles for investors in this field are the return on investment and lack of available guarantees. Given that the payment profile of consumers is relatively low, the cash-flow of social projects is usually based on the availability of payments made by the relevant state authorities (grantors).

Financing

The state corporation VEB.RF is the Russian development bank primarily responsible for developing and funding PPP projects in Russia. VEB.RF provides financing for projects deemed to be of primary importance to the Russian Government and which are carried out on a PPP basis. There are a variety of methods which allow VEB.RF to participate in infrastructure projects, such as providing guarantees, suretyships and loans, as well as through equity finance.

Investment and commercial banks involved in PPP projects remain Russian for the most part, with Sberbank, VTB

and Gazprombank (all of which are state-owned) leading the way, together with Russian pension funds, such as Leader. However, the PPP Law that came into force on 1 January 2016 (which prohibits state-controlled entities from having more than 50% control over a private partner) requires these major state-owned players to enter in consortia with private investors to implement PPP projects. This development is expected to benefit private investors in Russian infrastructure in view of the stable market position and resources of these major players. Unlike PPPs, concessions are not affected by such restriction, so far.

Legal issues

Some of the innovations that have been introduced, including within the framework of the Civil Code reform, have brought the PPP legal environment in Russia one step closer to international best practices in the fields of PPP and project finance. These include concepts such as:

- options;
- independent guarantees;
- security deposits;
- pre-contractual liability;
- the reimbursement of losses arising from the occurrence of certain events specified in a contract (the intended equivalent of the English law concept of an “indemnity”); and
- representations (“*zavereniya ob obstoyatelstvakh*”) (an intended equivalent of “representations” and “warranties” as used in contracts under English law).

Despite these legal developments, further amendments to the current civil legislation are still required in order to address the concerns of financing organisations and increase the bankability of PPP projects in Russia.

It is also worth noting that PPP projects in Russia are generally structured based on market practice and experience accumulated by market players. At the same time, the legislation is rather broad and usually does not elaborate in sufficient detail various aspects of PPP projects, which leaves room for interpretation and negotiations.

Most of the time, any disputes are settled amicably through negotiations because all the parties involved are interested in the success of the project. It means that there are rather few court rulings available that could bring light on the potential interpretation of the PPP legislation.

In the past years there have been three major landmark disputes:

- a dispute over the Orlovsky Tunnel;
- a dispute over the Kaga-Sterlitamak-Magnitogorsk automobile road tender; and
- a dispute with LLC Glavnaya Doroga (a concessionaire for a toll road).

The takeaways from these cases are rather mixed. On the one hand, some of the instruments that are crucial for PPP projects (like ‘special circumstances’ allowing cost and time relief) have been confirmed as viable, which is very

positive. On the other hand, PPP related disputes have, for unclear reasons, been exempt from commercial arbitration (both international and domestic) because the courts considered them of public importance. Each of these disputes came as a shock to the market and the whole PPP community, as they have shown that even concepts that seem well established for experienced investors may at any moment be criticised and sometimes challenged in court by some authorities who only occasionally deal with PPPs (like the Federal Anti-monopoly Service), unless such legal concepts are expressly provided for in the legislation.

Prospects for infrastructure projects

A number of PPP projects in various sectors have already been announced or are expected in the coming years.

Russian federal and regional authorities have recognised the need to develop infrastructure projects on a PPP basis. These authorities have already taken some positive steps to create the legal framework necessary to attract both foreign and domestic investors to this type of projects, such as the adoption of the PPP Law and amendments to the Concession Law enabling private finance initiatives. These factors will likely help support current initiatives and possibly create new opportunities in the Russian infrastructure market.

» Developing infrastructure is one of the major challenges and priorities in Russia. To reinforce positive trends of private financing into infrastructure, innovations are constantly introduced to the Russian legislation, including within the framework of the Civil Code reform.

This ongoing effort has already made the PPP legal environment in Russia acceptable for investment and brought it much closer to international best practices in the fields of PPP and project finance.