



## Experience of Legal Regulation of Public-Private Partnerships Abroad and in Uzbekistan

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### ABSTRACT

For the stable economic and sustainable development of the country, it is very important that the state has sufficient opportunities and means to effectively implement large economically significant projects. and infrastructure projects. Considering that the state budget will not always be able to fully cover all these costs, it has to use various mechanisms, among which public-private partnership has shown its relevance today. As part of the use of this mechanism, it is important to develop not only the principles of economics and politics, but also to improve the legal side of this process.

### Keywords:

public-private partnership, infrastructure, private financial initiative, concession, privatization, models and legal regulation of public-private partnership.

At present, one can observe the experience of the developed countries of Europe and Asia, public-private partnership with clear legislative regulation plays a significant role in improving social infrastructure.

The UK was one of the pioneers of public-private partnerships in the early 1990s, although private financing of infrastructure existed earlier in the country. The UK government embarked on an extensive program of privatization of public utilities including telecommunications, gas, electricity, water and waste, airports and railways in the 1980s and early 1990s. In addition, there have been a small number of stand-alone transport infrastructure concessions where the concessionaire has relied on the end user's income to generate income rather than payments from the public sector.

The term "public-private partnership" is used

in the UK to describe various forms of public-private cooperation. The predominant form of public-private partnership in the UK was the PFI / PF2 project (Private Finance Initiative - translated as "private financial initiative"). PFI/PF2 is a project-financed entity in which a public sector procurer awards a contract through competitive bidding for the design, construction, financing and operation of specified public infrastructure.

The following government bodies play a major role in regulating public-private partnerships in the United Kingdom:

- Her Majesty's Treasury, which sets and controls fiscal and general policies, and approves the project's business cases;
- Office of the Cabinet of Ministers, which monitors the standards and efficiency of public

functions and procurement, and approves individual procurement routes and structures;

- IPA, which reports to the Treasury; Her Majesty and the Cabinet and supports the successful implementation of infrastructure and major projects. The IPA publishes national infrastructure development plans covering infrastructure policy over a five-year period;

- The National Infrastructure Commission, which evaluates and provides expert advice to the government on the country's long-term infrastructure needs and priorities;

- UKIB, which provides funding for local and private infrastructure projects;

- Purchasing authorities (eg central government departments and local governments) that structure and procure projects, award and manage contracts, and pay for services. These include departments and executive bodies of the central government, local governments and other state bodies;

- independent regulators, including those that regulate certain areas of activity (including environmental protection, health and safety and data protection) and certain sectors (such as gas and electricity, water, railways and communications);

- UK Government Investments, a company wholly owned by the UK Treasury, which coordinates the government's equity stakes in public companies, advises the government on corporate finance and controls UK corporate assets;

- planning authorities, which decide whether to give permission for the development of the project (the appropriate planning authority will depend on the size and location of the project); And

- The Comptroller and the National Audit Office, which carefully control government spending.

There is no specific public-private partnership law in the UK. Public-private partnership projects for the most part are promoted in accordance with the general legislative and general legal powers of the government and state bodies.

However, primary legislation is sometimes enacted to provide funding for public-private partnership projects. Local governments and other state bodies have powers granted by law that have generally proven sufficient to promote public-private partnerships. PPPs are subject to the same general legal requirements as other types of projects in the UK, including those relating to contracts, companies, competition, employment and tax law.

The UK as a whole has a common law system, which means that legislation and case law influences all commercial transactions and the principles underlying the allocation of risk. In the common law system, the interpretation of legislation (where its meaning is unclear) is also based on judicial precedent. This structure provides the clarity, consistency and flexibility that are important to investors.

Public-private partnership is not only developed in European countries, but has begun to be applied in developed Asian countries, such as Korea, Japan. In this regard, the Republic of South Korea has its best practices in terms of both economic management and legal regulation of the public-private partnership mechanism.

The huge demand for infrastructure facilities is created by the developing economy, which pays great attention to the sustainable development of the country, which is directly related to the provision of adequate infrastructure. and a clear example can be given in the practice of Korea. In the 90s, Korea began to launch a public-private partnership mechanism in infrastructure facilities such as roads and railways, seaports and airports. Korea has passed a solid law that can be seen as a political commitment to promoting public-private partnerships.

Infrastructure in South Korea is a popular destination for private investment, and Korea was the first public-private partnership country in the region. Projects are actively implemented by the BTO "Build-Transfer-Operate" (Build-Transfer-Operate) and BTL "Build-Transfer-Lease" (Build-Transfer-Leasing) models.

Although the institutional framework for a public-private partnership mechanism in Korea began to purposefully develop in the first half of the 1990s, the partnerships themselves were sometimes used much earlier due to existing legislation that covered highways and seaports.

Korea first enacted the Law on Promotion of Private Investment in Social Overheads in August 1994.

In December 1998, it was renamed the Law on Private Participation in Infrastructure.

In Korea, the "Public-Private Partnership Basic Plan", the PPP Implementation Guide, and the Ordinance "On Enactment of the Public-Private Partnership in Infrastructure Law" together constitute the institutional framework for regulating the public-private partnership mechanism.

The Law on Public-Private Partnership establishes 49 different types of infrastructure facilities that are eligible to participate in public-private partnership projects. These facilities are divided into 15 different categories including communications, water resources, energy, forestry, logistics, welfare, public housing, military housing, education, and tourism. This Law, in essence, determines the use of mechanisms such as BTL, BTO, BOT and BOO in the context of generally recognized types of public-private partnership procurement procedures.

The legal framework for public-private ownership in the Republic of Uzbekistan creates national legislation on concessions, privatization, large monopolies, competition, attraction of foreign investment, as well as reform of certain sectors and social economic statistics. In view of the fact that many public-private ownership projects have concessional content, national concession law is of great importance. In the Republic of Uzbekistan in 1955, among the first among the post-Soviet states, the Law "On Concessions" was adopted. This law regulates the organizational, economic and legal conditions for the provision of facilities for concession to foreign investors in the territory of the Republic of Uzbekistan.

However, until recently, there was no legislative basis for public-private partnership projects at the state level, necessary for the placement of private foreign investments in Uzbek public-private partnership projects. This lack of legislation has created insurmountable barriers to investment. For example, prior to the introduction of the PPP Law, there was no procedure for the transfer of PPP assets, which made PPP projects unattractive and unsustainable in the long term. There was also a lack of institutional support and there was low transparency regarding the powers of the various government agencies in relation to these projects.

And only in May 2019, the Law "On Public-Private Partnership" No. ZRU-537 entered into force. This Law established a number of fundamental principles applicable to the implementation of public-private partnership projects in Uzbekistan, which is an important step in setting the tone for protecting the rights of investors. These fundamental principles include:

- equality before the law of both public and private partners;
- transparency of the rules and procedures of public-private partnership;
- competitiveness and objectivity in choosing a private partner;
- non-discrimination;
- inadmissibility of corruption.

The scope of this Law is quite broad and is not limited to any particular industry or sector of the economy of Uzbekistan. A project can be implemented on the basis of a public-private partnership if it is aimed at solving an economic, social or infrastructural problem. And this problem should be significant for the development of the country and approved in this area by the competent authority.

Public-private partnership as a legal instrument of cooperation between the state and the private sector, aimed at solving social and infrastructural problems, for example, was first introduced to the legislative level by the Decree "On public-private partnership in the field of preschool education".

Since then, a number of regulatory by-laws have been adopted at the level of the President and the Cabinet of Ministers of Uzbekistan to regulate the procurement procedures for public-private partnership projects in certain sectors, such as healthcare, utilities, energy and transport.

To promote the development of public-private partnerships in Uzbekistan, a new state institution, the Agency for the Development of Public-Private Partnerships, was established under the Ministry of Finance by the Decree of the President of the Republic of Uzbekistan. From the first days of its establishment, the Agency began to actively promote public-private partnership projects, including through the development of a comprehensive legislative framework.

Despite the fact that the long-awaited changes to the Regulation "On Public-Private Partnership" were not adopted, and from 2020 to 2022 there were no noticeable regulatory changes within the framework of public-private partnership. But, the government has given preference to the public-private partnership mechanism as a legal instrument for the procurement of large infrastructure projects. For example, during 2022, 178 agreements on public-private partnership projects were signed, 25 public-private partnership projects were concluded, and tenders were held on 14 public-private partnership projects.

The Law "On Public-Private Partnership" does not provide for a specific list of state bodies that can act as a state partner in the relevant area of regulation. In this regard, the public partner for a public-private partnership project is determined on an individual basis. Typically, a public partner is either an organization that owns or manages public assets that are transferred to the private, or an organization that typically performs the activities expected of the private partner in a public-private partnership project.

In a public-private partnership project, a private initiator is a person who submits an offer to a potential public partner along with all the necessary documents. Any commercial

entity, including entities registered abroad, can initiate a public-private partnership project.

Projects within the framework of public-private partnership can be divided into two main types depending on their value - projects up to 10 million US dollars and more than 10 million US dollars. Based on the cost of the project, the order and stages of the implementation and regulation of the project are changed.

Legislation on public-private partnership will continue to develop. Significantly amend the Public-Private Partnership Regulations to reflect market needs and address legislative uncertainties, such as the controversial requirement to obtain government approval to modify or terminate a PPP agreement.

Having entered into force, the Law "On Public-Private Partnership" established a number of fundamental principles applicable to the implementation of public-private partnership projects in Uzbekistan, which is an important step in establishing the protection of investors' rights.

In addition, the government still needs to adopt new regulations on the introduction of rules for accounting for state obligations (both direct and conditional) under public-private partnership agreements in order to bring greater clarity to the procedure for distributing funds for budgetary financing of public-private partnership projects, as well as develop procedures for keeping a clear record and monitoring of the state's sovereign obligations under public-private partnership projects.

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