

## Contractual regulation of public private partnerships

Over the past three decades, there have been significant changes in the global economy, both in terms of technical progress and organizational changes in the management of enterprises. Government agencies are increasingly faced with the increasing need to find sustainable financing for development and to provide the infrastructure necessary to support the growing population and economy. Countries are faced with the problem of meeting the needs of growing urbanization, the rehabilitation of aging infrastructure, the need to expand engineering and communication networks to new population groups, etc. In addition, the provision of infrastructure services often occurs due to the current deficit, which is covered only through subsidies, creating an additional outflow of public resources.

In combination with the limited financial capacity of most states, the need to address the above problems requires the mobilization of capital from the private sector, most often for investment in infrastructure. The effective organization of many public services through public-private partnerships - public-private partnerships (PPPs) - has become a viable alternative to the traditional scheme in which services are provided exclusively by the state or the private sector. With the right approach, PPPs are in a position to mobilize previously unused private sector resources at the local, regional or international levels. The private sector's goal of participating in PPPs is to profit from its capabilities and expertise in business management (utilities in particular). The private sector requires compensation for its services through fees for services rendered, as a result, receives a corresponding return on invested capital.

At the moment, there seems to be no clear definition of the concept of PPP, and it includes a set of forms of medium- and long-term interaction between the state and business for solving socially significant tasks on mutually beneficial terms. The Organization for Economic Cooperation and Development defines PPPs as: "... an agreement between the state and one or more private partners according to which private partners fulfill the delivery of services in the form in which the state's objectives in relation to this service and correspond with the objectives of generating profit for private partners, and in which the effectiveness of achieving these objectives depends on the significant distribution of risk to the burden of private partners. "

Public-private partnerships (PPPs) are, in fact, a formal public agreement between public and private sector organizations for the delivery of services to a company or the performance of certain works for it, according to which risks, revenues and responsibilities are common to all participants in the partnership.

The concept of PPP has a large scope, but its use is especially important at various stages of infrastructure projects, where a socially acceptable allocation of responsibility for the design, financing, construction, management, maintenance or operation of infrastructure facilities is required. PPP increasingly becomes the choice of society in cases where the market is not able to provide society with socially important goods and services.

Formally, Public Private Partnerships are created on the basis of a contract or a set of contracts, where private individuals, called private partners, undertake to develop and supply a clearly defined type of service. The work ordered by the state body in the PPP framework is of socially important importance and for this reason there is interest of the state body in it. A private partner (or partners) is responsible for performing work at predefined stages of project implementation. The government agency focuses on determining the objectives for which the project is directed, the acceptability of the price and the desired quality of the services ordered, monitoring the progress of the project, and other contract terms.

The legal framework for PPP in the Republic of Uzbekistan creates national legislation on concessions, privatization, natural monopolies, competition, attracting foreign investment, and reforming certain sectors of the social and economic infrastructure. In view of the fact that many PPP projects have a concession basis, national concession legislation is of great importance. In the Republic of Uzbekistan in 1995, one of the first among the post-Soviet states was the Law "On Concessions". This law regulates the organizational, economic and legal conditions for granting facilities for concession to foreign investors on the territory of the Republic of Uzbekistan.

The concession is a field of civil law relations and regulates the operational aspects of PPP, that is, the property relations between the concession bodies and the concessionaire.

The Concession Law does not provide for specific measures of state support for concessionaire activities, but in accordance with Article 3 of the Law of the Republic of Uzbekistan "On guarantees and measures to protect the rights of foreign investors" certain guarantees are provided for foreign investors, namely: "if the subsequent legislation of the Republic of Uzbekistan aggravates the investment conditions, then to the foreign investors within ten years from the date of investment the legislation that was in effect on the date of investing is applied Bani".

The guarantee begins when acquiring concessions, including concessions for the exploration, development, extraction or use of natural resources - from the date of registration of the concession contract in accordance with the procedure established by law. Guarantees for investors participating in socially significant projects are also spelled out in the production sharing agreement (PSA). This is one of the forms of PPP and is an effective mechanism for attracting foreign investment in the development of mineral deposits in the Republic of Uzbekistan. The basic provisions on the conclusion of the PSA are set out in the law "On Production Sharing Agreements" of December 7, 2001 (hereinafter - the PSA Law). This Law regulates the relations that arise in the process of concluding, executing and terminating production sharing agreements when investing in prospecting, exploration of deposits and extraction of minerals on the territory of the Republic of Uzbekistan.

Investors, as well as their contractors and subcontractors, are exempt from payment of all types of taxes and other mandatory payments established in the Republic of Uzbekistan, connected only with carrying out prospecting and exploration works in the subsoil areas specified in the agreements. During the term of the agreement, the investor pays taxes and other obligatory payments in accordance with the legislation, with the exception of the types of work specified above. In general, this type of PPP is widely used in the Republic of Uzbekistan, so in 2011, investment blocks on the basis of the PSA carried out geological exploration of oil and gas.

Certain types of partnerships, especially in strategically important projects, receive the position of so-called natural monopolies, which is regulated in the Law on Natural Monopolies. This law refers to natural monopolies pipelines for transportation of hydrocarbon raw materials, production and transportation of electricity and heat, railways, postal services, water and sewerage, as well as air navigation services, ports, airports, and transport terminals. The main instruments of state regulation are price regulation, identification of consumers subject to mandatory servicing and / or establishing a minimum level of their provision with monopoly services.

Resolution of the Cabinet of Ministers of the Republic of Uzbekistan of 04.07.2009 № 186 "On measures to organize the activities of private operators and timely payment for electricity." This decree was designed to attract investment in the infrastructure sector and provides for the approval of:

- Provisions on the procedure for conducting a competitive selection of investors to create private operators that perform functions to collect payment for electricity from consumers;

- Provisions on the procedure for carrying out activities by private operators that perform functions to collect payment for electricity from consumers.

These Regulations define the procedure for carrying out activities by private operators that perform functions to collect payment for electric power from consumers, as well as transferring to private operators the function to collect payment for electricity from consumers.

In addition to the traditional areas of partnership in the industrial infrastructure sectors of the government of the United Kingdom, the United States, France, Germany, Spain, Italy,

Canada, Australia and the countries of Central and Eastern Europe have begun to actively contract with the private sector to provide social services: health, education, skills development, support for socially vulnerable groups, and overcoming social differentiation in society.

Educational institutions, medical centers and hospitals, street lighting are the main objects of PPP programs, based mainly on concession models and management contracts.

In the Republic of Uzbekistan, the branches of the social sphere, primarily health care and education, are constantly at the center of the state's attention. There is a potential interest in participating in "social" projects, both in the production and marketing of services that have a steady mass demand, in business. Nevertheless, the experience of PPP in the social sphere is extremely limited.

There is a wide scope for the implementation of PPP projects in the field of education. To date, the main types of PPP projects in the field of education are the creation of joint universities (for example, Westminster International University in Tashkent), the publication and circulation of books and manuals for the public education system by private publishing houses, as well as the organization of private preschool institutions.

There is also a partnership between the state and private companies, within which a private developer in exchange, upon obtaining permission to build their own commercial real estate, undertakes to build, reconstruct or modernize certain socially significant properties that belong to or will belong to the state or local khokimiyat.

Another promising area of implementing PPP mechanisms, as one of the most attractive for business, is the sphere of sanatorium-resort services, preventive treatment and recreation. In these activities, profit making is most obvious. The development of such recreational zones favorably affects the investment climate of the country, contributes to an increase in the flow of investment.

The examples given in the previous chapter testify to the viability of the idea of introducing PPP mechanisms in the conditions of Uzbekistan, and at the same

time, there are serious obstacles to the full utilization of the PPP potential in the country. The scale of private investment in PPP projects is incomparable with the magnitude of the "investment gap" in infrastructure, reaching several percent of GDP.

Large private investment in infrastructure is still limited mainly to the telecommunications sector, which is the least risky for investors. During the implementation of large-scale projects, there are difficult to overcome conflicts between the parties, fraught with the cancellation of agreements reached and the emergence of private investors and operators from partnerships. Projects at the micro level are easier to implement and give tangible benefits, but remain isolated undertakings that are unable to radically improve the situation in the country's communal economy.

In order to create an enabling environment for the implementation of PPP projects in Uzbekistan, it is necessary to improve the legislative framework, adopt a number of new regulatory documents and amend the existing legislation.

Interaction of government agencies and private deposits for public benefit.

For example, in the city-state of Athens in the 4<sup>th</sup> century BC, prominent citizens made major contributions in order to stage public festivals and religious events and to build public buildings and monuments. Some centuries later, when the Roman army conquered large parts of Europe and the Mediterranean region, civilians worked hand-in-hand with the army to exploit the new territories and build needed infrastructure.

Public-private partnerships have a long history in the development of many of the leading states in which the principle, where the government and political leaders need to use and maintain private business - to promote scientific progress and innovation for the benefit of society.

One of the first examples of PPP in the New World took place in 1742, when Benjamin Franklin founded the American Philosophical Society of Philadelphia, which, together with the House of Representatives of Pennsylvania sponsored the creation of the University of Pennsylvania, the first medical school in the British colonies. The purpose of this cooperation was to provide all citizens with access to agriculture, science and medicine. Other, more well-known project, which brought together the business world and in the public interest, - the construction of the Paris metro: tunnels were built the city, and tracks, energy, signaling and rolling stock were provided by the Belgian entrepreneur.

In today's economic environment, PPPs are defined as contractual agreements between a public agency or public-sector authority and a private-sector entity that allow for greater private participation in the delivery of public services, or in developing an environment that improves the quality of life for the general public. Under such a legal construction, the partners share risk, reward, and responsibility for a shared investment.

These partnerships are not simply tools for funding projects, but they require full commitment from all partners for the entire undertaking. The PPP legal construction can cover three types of arrangements.

Firstly, it can be used to introduce private-sector ownership into state-owned businesses through a public listing or the introduction of an equity partner.

Secondly, it can become a private finance initiative, where the government takes advantage of private-sector management skills by awarding long-term franchises to a private-sector partner, which assumes the responsibility for constructing and maintaining the infrastructure and for providing the public service.

Thirdly, it can cover the selling of government services to private-sector partners, which can better exploit the commercial potential of public assets. In these three arrangements, the private-sector consortium typically forms a special

company—called a ‘special purpose vehicle’ (SPV)—to develop, build, maintain, and operate the assets for the contracted period. In cases where the government has invested in the project, it is usually—but not always—allotted an equity share in the SPV. Within the PPP, it is the SPV that signs the contract with the government and with subcontractors to build the facility and then maintain it.