

# New PPP Mechanisms in Russia

January 2016

Authors: [Maxim Kobzev](#), [Ekaterina Logvinova](#), [Irina Degtyar](#)

## General information

Until recently, Federal Law No. 115-FZ "On Concession Agreements dated 21 July 2005 (the "Concession Law") was the main legislative act in Russia governing the procedure for the implementation of public-private partnership (PPP) projects at the federal level. However, concession legislation limits the structuring of PPP projects to a model according to which the right of ownership of a facility remains with the public authority.

At the same time, a number of constituent entities of the Russian Federation set forth their own legal framework that also envisages PPP models based on the principle of transferring the ownership of a created facility to an investor (a project company). Accordingly, certain mechanisms of regional legislation, while providing greater flexibility for project participants, were not fully supported by the provisions of federal legislation. This contributed to the adoption of special federal regulations on PPP projects.

On 1 January 2016, Federal Law No. 224-FZ "On Public – Private Partnership, Municipal – Private Partnership in the Russian Federation and Amending Certain Legislative Acts of the Russian Federation" (the "PPP Law") entered into force. In addition, according to the Ministry of Economic Development to date all regulations, clarifying certain provisions of the PPP Law, have been adopted.<sup>1</sup>

The PPP Law will coexist with the current concession legislation, creating the legal framework for the use of PPP forms (models) that also allow transferring the ownership of a facility to an investor (a project company). This will provide the possibility for market participants to choose the most beneficial form for the implementation of a PPP project and, consequently, increase the number of such projects implemented on the market.

Below we provide a brief overview of the key provisions of the PPP Law. We also provide a comparative analysis of the key provisions of the PPP Law and the Concession Law as Annex I to this overview.

## 1. PPP Agreement. PPP Forms (Models)

Pursuant to the PPP Law, a public – private partnership agreement is defined as a civil law agreement concluded between the public partner and the private partner for the period of no less than three years<sup>2</sup> based on the principles of resource consolidation and risk allocation between the parties to the agreement (the "PPP Agreement"). The subject of the PPP Agreement will depend on the specific combination of mandatory and optional elements thereof.

In particular, the mandatory elements of the PPP Agreement are as follows:

- the private partner undertakes to build and/or reconstruct a facility under the agreement;
- the private partner undertakes to wholly or partly finance the (re)construction of the facility under the agreement;

<sup>1</sup> <http://economy.gov.ru/minec/about/structure/depinvest/20160113>

<sup>2</sup> The maximum term of the PPP Agreement is to be established taking into account the period for creating the facility under the agreement, the amount of the investment in the creation of the facility, the investments repayment period and the period for the private partner to receive profit as defined by the agreement.

- the private partner undertakes to operate and/or provide technical maintenance of a facility under the agreement;
- the public partner undertakes to ensure the transfer of the ownership title to the facility to the private partner subject to the encumbrance of the facility under the agreement.
- By agreement of the parties the PPP Agreement may also include the following optional elements:
- the private partner undertakes to design a facility under the agreement;
- the private party undertakes to wholly or partly finance the operation and/or technical maintenance of a facility under the agreement;
- the public partner undertakes to partly finance the private partner' construction of a facility under the agreement and finance the operation and /or technical maintenance of such facility;
- the private partner undertakes to transfer the facility to the public partner after a certain period of time as defined in the agreement, but no later than by the expiration date of the agreement.
- The PPP Law sets forth a legal framework for structuring projects using a variety of models that are internationally recognized for implementing PPP projects, including:
  - BOO "Build-Own-Operate"
  - DBOO "Design-Build-Own-Operate"
  - BOOT "Build - Own - Operate - Transfer"
  - DBOOT "Design - Build - Own - Operate - Transfer"
  - BOT "Build - Operate- Transfer"
  - DBOT "Design - Build - Operate - Transfer."

## 2. Parties to the PPP Agreement

Pursuant to the PPP Law, the parties to the PPP Agreement are the public partner and the private partner.

### 2.1 Status of the Public Partner

The public partner may be the Russian Federation (represented by the Russian Government or a federal executive body authorized by it), a constituent entity (i.e., a region) of the Russian Federation (represented by the supreme regional executive body or a regional executive body authorized by it) or a municipality (represented by the head of the municipality or other authorized local self-government body). Certain rights and obligations of the public partner may be delegated to other governmental authorities and/or legal entities. The Government determines the scope of such rights and obligations.<sup>3</sup>

### 2.2 Status of the Private Partner. Restrictions

Unlike the Concession Law, the PPP Law establishes more stringent requirements for the private partner. In particular, it contains a number of restrictions in relation to participants of PPP projects who may act as private partners:

- the private partner must be a Russian legal entity; however the PPP Law does not regulate the indirect participation of foreign companies in a project (e.g., as shareholders in the private partner);

<sup>3</sup> Government Resolution No. 1366 approving the list of certain rights and obligations of the public partner that may be delegated to the governmental authorities and/or legal companies authorised by the public partner pursuant to the federal laws, other legislative acts of the Russian Federation, legislative acts of the constituent entities of the Russian Federation or municipal legislative acts, dated 12 December 2015.

- 
- the private partner must comply with special requirements established by the PPP Law (e.g., no arrears in mandatory payments to the budget, the possession of all licenses and permits necessary for the implementation of the PPP Agreement);
  - the private partner may not be a state or municipal unitary entity or institution, public-law company or other legal company or economic partnership under state control.<sup>4</sup>

### 2.3 Engagement of Third Parties to PPP Projects

Particular attention should be paid to the procedure for the private partner to engage third parties in order to fulfill its obligations under the PPP Agreement (e.g., project designers and contractors). Engagement of third parties is only possible with the written consent of the public partner and to the extent permitted by the terms of the PPP Agreement. If the consent provides a list of particular third parties, the private partner and the third parties may not engage other parties to fulfill their obligations. At the moment, there is a need for further clarification or guidelines on who would be a "third party" for the purposes of the PPP Law.

## 3. PPP Agreement Facilities

The PPP Law sets forth a broad but exhaustive list of property that may be considered a facility under the PPP Law including, in particular, privately owned highways, transportation (except subways), ports, airports, healthcare facilities and social service facilities. The PPP Agreement cannot concern property exclusively owned by the state or municipality and which cannot be alienated to a private owner.

The facility to be reconstructed must be owned by the public partner at the moment of entering into the PPP Agreement and cannot be encumbered by third party rights at the moment of transfer to the private partner. Moreover, the PPP Law prohibits the transfer to the private partner of a facility under the PPP Agreement which at the time of execution of the PPP Agreement belongs to a state or municipal enterprise or a municipal budgetary institution.

## 4. Ownership of a PPP Facility

Pursuant to the PPP Law, a public partner must ensure the transfer to the private partner of the title to the facility under the PPP Agreement. This is certainly one of the advantages of the PPP Agreement. At the same time, the following limitations should be taken into account:

- the private partner may acquire title to the facility under the PPP Agreement only as long as it is encumbered in favour of the public partner. The encumbrance should be registered simultaneously with the registration of title to the facility;
- the private partner may not dispose of the facility it has title to prior to the expiry of the term of the PPP Agreement (except for replacement of the private partner under the PPP Agreement);
- the private partner may not pledge the facility under the PPP Agreement (except where the facility or rights under the PPP Agreement is/are used as a means of securing the private partner's obligations to the financing party in accordance with a "direct agreement"); and
- if the volume of financing by the public partner and the market value of the property contributed by the public partner (or rights thereto) exceed, in aggregate, the volume of expenses of the private partner, the ownership of the facility under the PPP Agreement should be transferred to the public partner upon the expiry of the term of the PPP Agreement.

Should the PPP Agreement be subject to early termination requiring the private partner to transfer to the public partner the title to the facility under the PPP Agreement, the title should be transferred to the public partner provided compensation from the public partner for the amount private partner's expenses minus the public partner's and third parties' losses caused by the early termination. In the event of early termination of

---

<sup>4</sup> "Control" means the following: (i) the right to dispose of, directly or indirectly, more than 50% of the total number of votes attached to the voting shares (stakes) making up the charter capital of the controlled entity; (ii) the right or authority to determine the resolutions approved by the controlled entity; and (iii) the right to appoint the single-person executive body and/or more than 50% of the composition of the joint executive body or more than 50% of the composition of the board of directors (supervisory board) or other joint governing body of the controlled entity.

---

the PPP Agreement based on a court decision due to the private partner's breach of its obligations, the facility should be transferred to the public partner without compensation.

In the implementation of PPP projects, an important aspect of the protection of the rights of the investor and, indirectly, its lenders/creditors is the possibility to compensate the actual expenses incurred in the implementation of the PPP project in the event of its early termination. Accordingly, with respect to these matters, the provisions of the PPP Law may require additional clarifications.

## 5. Financing of a PPP Project. Security

### 5.1 Borrowed Financing

As a rule, PPP projects involve loans. Therefore the PPP Law contains a number of provisions designed to improve the investment appeal of PPP projects.

#### Definition of a "Financing Party"

In particular, the PPP Law offers a clear definition of the "financing party", which refers to a legal entity or an association of two or more persons operating without establishing a legal entity under an agreement on joint cooperation, such persons providing the private partner with fee-based loans for a specific term.

#### Definition of a "Direct Agreement"

The PPP Law also contains a definition of a "direct agreement" meaning a civil law agreement among the public partner, the private partner and the financing party governing the manner of the parties' interaction during the term of the PPP Agreement. A direct agreement specifies the rights of the financing party to influence the implementation of the project in the event of the private partner's failure to perform its obligations. In particular, a direct agreement may contain provisions concerning a pledge and provide a procedure for replacing the private partner if it fails to perform provisions of the PPP Agreement (including replacement without a tender).

#### Pledge of a Facility or Rights under the PPP Agreement

Provided a direct agreement has been executed, the private partner is entitled to pledge the PPP Agreement facility and/or its rights under the PPP Agreement as a way of securing its obligations to the financing party. However, a pledge on the property can only be enforced if, for at least 180 days from the date grounds arise for enforcing the pledge, the private partner has not been replaced or if the PPP Agreement has not been terminated early under a court ruling. In the event of enforcement against the pledged property, the public partner has the preemptive right to purchase the pledged property at a price equal to the indebtedness to the financing party.

#### Replacement of the Private Partner

Unless otherwise provided for under a direct agreement or the PPP Law, if the private partner fails to perform or improperly performs its obligations to the financing party, the private partner should be replaced by way of a tender conducted by the public partner. The private partner can be replaced without a tender in the event of a material breach of the PPP Agreement and/or harm (or threat to cause harm) to human life or health and/or the initiation of bankruptcy proceedings with respect to the private partner. Such cases require a decision of the body that approved the resolution on the implementation of the project with due regard for the opinion of the financing party.

### 5.2 Budget Financing

The public partner may undertake obligations to partly finance the creation of a facility or to finance its operation or technical maintenance. In accordance with the PPP Law, budget financing should be provided in the form of subsidies only. At the same time, the PPP Law makes it possible to enter into the PPP Agreement for a term exceeding the term of the relevant law on the budget for the relevant fiscal year and the planned period under Russian Federation budget law. However, if budget funds are involved, the decision on the implementation of the PPP project may only be approved on the condition that the use of such funds is provided for under the relevant regulatory laws.

---

## 6. The Procedure for Entering into the PPP Agreement. Tender Selection Criteria

Generally, the procedure for entering into PPP Agreements is largely similar to the procedure for the entering into concession agreements. As a rule, implementation of a PPP project is initiated by the public partner by way of preparing and conducting a tender for the right to execute the PPP Agreement. A closed tender should be conducted if the agreement is entered into regarding a facility for which the information about it constitutes a state secret.

In addition, the PPP Law permits joint tenders by two or more public partners to implement one PPP project; based on the tender results, each public partner enters into a PPP Agreement with the winner of the joint tender. Unlike the Concession Law, which establishes an exhaustive list of grounds for conducting a joint tender, the PPP Law contains no such provision and makes it possible to conduct joint tenders any time the participants are interested in implementing a PPP project.

The PPP Law also governs the procedure for conducting a tender for the right to enter into a PPP Agreement, sets the requirements for tender documentation and defines the criteria for evaluating bids. However, despite the similarity in the stages, the PPP Law establishes somewhat lengthier general periods for the procedure leading to the execution of the PPP Agreement due to the need to have a PPP project approved by the relevant authorities (including due to the additional criteria for tender selection).

### 6.1 Tender Selection Criteria

Tender selection criteria may include: (i) technical requirements; (ii) financial/economic requirements and (iii) legal requirements (e.g., risks assumed by the parties to the PPP Agreement, including obligations assumed by the private partner in the event of insufficient income from the operation of the facility or increased costs connected with the implementation or operation of the facility).

The effectiveness of a PPP project and its comparative advantages are essential conditions for making a decision on the implementation of the relevant project. In particular, effectiveness is evaluated by the relevant competent authority on the basis of the following criteria:

- financial effectiveness of the PPP project and
- socio-economic effect of the implementation of the PPP project.

A project's comparative advantages are identified on the basis of the ratio between:

- the expenditure of budgetary funds in the implementation of PPP projects and expenditures in the implementation of a government contract and
- the volume of the obligations assumed by the public partner due to risks connected with the implementation of a PPP project or under a government contract.

Guidelines for the evaluation of project effectiveness and identification of comparative advantage are approved by the Ministry of Economic Development of the Russian Federation.<sup>5</sup>

Another criterion for selecting the private partner in a tender is the volume of private investment for the performance of the PPP Agreement. If the PPP Agreement provides for partial financial support for the project from the public partner, the maximum amount of such planned financial support will be among the tender criteria.

### 6.2 Private Initiative

As an alternative to the selection of a private partner, the PPP Agreement may be entered into by way of private initiative.

Private initiative involves the investor independently designing and submitting proposals for the implementation of a PPP project to the public partner using a form determined by the Russian Government.<sup>6</sup>

---

<sup>5</sup> Order of the Ministry of Economic Development of the Russian Federation No. 894 approving the guidelines for the evaluation of PPP projects effectiveness and identification of comparative advantage, dated 30 November 2015.

---

The investor also has to provide a bank guarantee in the amount of at least five percent of the total value of the expected project financing. Please note that the Concession Law contains no requirement for the provision of such guarantee. The applicant only needs to show that it has or is capable of raising at least five percent of the funds necessary for the project.

Before submitting a proposal to the public partner preliminary negotiations may be held between an applicant and the public partner related to preparing a proposal in accordance with the procedure established by the Russian Government.<sup>7</sup>

The public partner should consider the investor's proposal and make a decision to forward the proposal to the competent authority for an evaluation of the project's effectiveness and comparative advantage or decide that the project is not feasible.<sup>8</sup> If the latter is the case, the PPP Law contains an exhaustive list of grounds for ruling that the proposed project is not feasible.

If the competent authority renders a positive opinion with respect to the project's effectiveness and its comparative advantage, the public partner should make a final decision on the implementation of the PPP project and publish such decision on the official Russian Federation website for auction announcements. If no applications for participation in the tender are received from other potential bidders within 45 days, the public partner may enter into the PPP Agreement with the initiator of the project. Stages for the implementation of provide initiate are provided in Annex II to this overview.

Further clarification may be needed regarding the procedure for the compensation of an investor's expenses if the PPP Agreement is executed with a third party not being the original initiator of the project.

## 7. Granting of Land

The PPP Law establishes a procedure similar to that specified by the Concession Law for granting a plot of land to a private partner without conducting a separate tender.

In particular, the PPP Law provides that the private partner may be allowed to lease the land required for the activities specified in the PPP Agreement without a tender. Under the PPP Law, the procedure for entering into an agreement for the lease of land is less time-consuming and such agreements can be entered into within 15 days from the date the PPP Agreement is signed, provided that the plot of land already exists (under the Concession Law, the time limit is 60 days).

Title to land is held by the public partner and, as of the moment of its transfer to the private partner, it must be free and clear of third party rights. The land should be provided for the duration of the PPP Agreement. At the same time, the private partner may not:

- transfer its rights under the land lease agreement to other parties or sublet the land unless otherwise provided for under the PPP Agreement or lease agreement;
- acquire title to the land underlying the facility under the PPP Agreement prior to the expiration of the term of the PPP Agreement.

---

<sup>6</sup> Government Resolution No. 1386 approving the form of a proposal for the implementation of a PPP project as well requirements concerning the information contained in the proposal, dated 19 December 2015.

<sup>7</sup> Government Resolution No. 864 approving the procedure for conducting preliminary negotiations related to the preparation of a proposal on the implementation of a PPP project between the public partner and an applicant, dated 20 November 2015.

<sup>8</sup> Government Resolution No. 1388 approving the rules for the public partner's review of a proposal for the implementation of a PPP project, dated 19 December 2015; Russian Government Resolution No. 1309 approving the rules for the competent authority to conduct negotiations related to reviewing a proposal for the implementation of a PPP project to evaluate the project's effectiveness and define its comparative advantages, dated 3 December 2015; Order of the Ministry of Economic Development No. 863 approving the procedure for conducting negotiations related to reviewing a proposal for the implementation of a PPP project between the public partner and an applicant, dated 20 November 2015.



---

## 8. Guarantees of the Rights of the Private Partner under the PPP Agreement

The guarantees provided to the private partner are one of the key aspects where significant investments are made in long-term infrastructure projects. The PPP Law provides for guarantees to be granted to the private partner in the event of an unfavorable change of law directly affecting a PPP project or overall change of macroeconomic conditions.

In particular, in the event a change of law has led to an overall increase of the burden imposed on the private partner or to a deterioration of its position, the public partner is obliged to take measures to assure a return on the private partner's investment and to enable the private partner to obtain gross earnings at least in the amount initially provided for under the PPP Agreement. Such measures include the following:

- increase of the financial security for the obligations of the public partner;
- increase of the effective term of the agreement with the consent of the private partner;
- increase of the of expenses assumed by the public partner in order to create and/or provide technical maintenance and/or operate the facility under the agreement;
- provision of additional public or municipal guarantees to the private partner.

In addition, the private partner may request amendments to the terms of the PPP Agreement if, during the effective term of a PPP Agreement under which the private partner sells its products to customers, performs work or renders services at regulated prices (rates) or prices subject to increases, such regulated prices or rates or their increases are revised (including subject to changes in the long-term parameters of regulation of the private partner's operations) and fail to conform to the parameters provided for under the PPP Agreement.

However, those provisions do not apply if the terms of the PPP Agreement are changed due to the enactment of federal laws to protect the constitutional system or national defense or security. In addition, the terms of the agreement are not subject to change in the event of a change of law concerning relations involved in subsoil protection or protection of the environment or human health.

In addition, the PPP Law obliges the public partner to provide the private partner with assistance in obtaining mandatory permits or approvals from the authorities as required in the course of concluding and performing the PPP Agreement.

## 9. Conformity of Regional Laws to the PPP Law

In connection with the adoption of the PPP Law, all regional PPP laws are to be brought into compliance with the provisions of the PPP Law by 1 July 2016, which unifies the terminology and establishes the principal rules for implementing PPP projects in Russia. Please note that the preparation, conclusion, performance and termination of concession agreements will continue to be governed by the Concession Law..

## Annex I

### COMPARATIVE ANALYSIS OF KEY PROVISIONS OF THE PPP LAW AND THE CONCESSION LAW

The PPP Law	The Concession Law
<b>Models for Implementing PPP Projects</b>	
Different models are possible, including: <ul style="list-style-type: none"> <li>• Build –Own – Operate (<b>BOO</b>)</li> <li>• Design – Build – Own – Operate (<b>DBOO</b>)</li> <li>• Build – Operate – Transfer (<b>BOT</b>)</li> <li>• Build – Own – Operate – Transfer (<b>BOOT</b>)</li> <li>• Design – Build – Own – Operate – Transfer (<b>DBOOT</b>)</li> <li>• Design – Build – Operate – Transfer (<b>DBOT</b>)</li> </ul>	Build– Operate – Transfer ( <b>BOT</b> )
<b>Model Form of the Agreement</b>	
Not provided.	Optional model concession agreements are approved by the Russian Government in relation to certain facilities.
<b>A Minimum Period of Validity of the Agreement</b>	
Not less than three years.	Not established.
<b>Parties to the Agreement</b>	
The private partner must be a Russian legal entity. The private partner cannot be: <ul style="list-style-type: none"> <li>• a state or municipal unitary enterprise;</li> <li>• a state or municipal institution;</li> <li>• a public – law company or other legal company established on the basis of special laws;</li> <li>• an economic partnership and other legal company (or a subsidiary) under state control;</li> <li>• a non-commercial organization in the form of a fund.</li> </ul>	The private partner (concessionaire) may be: <ul style="list-style-type: none"> <li>• a foreign legal entity;</li> <li>• a Russian legal entity;</li> <li>• two and more legal entities acting as a simple partnership (under an agreement on mutual activities);</li> <li>• an individual entrepreneur.</li> </ul>
The public partner may be: <ul style="list-style-type: none"> <li>• the Russian Federation represented by the Russian Government or a federal executive</li> </ul>	The public partner (grantor) may be: <ul style="list-style-type: none"> <li>• the Russian Federation represented by the Russian Government OR a federal</li> </ul>



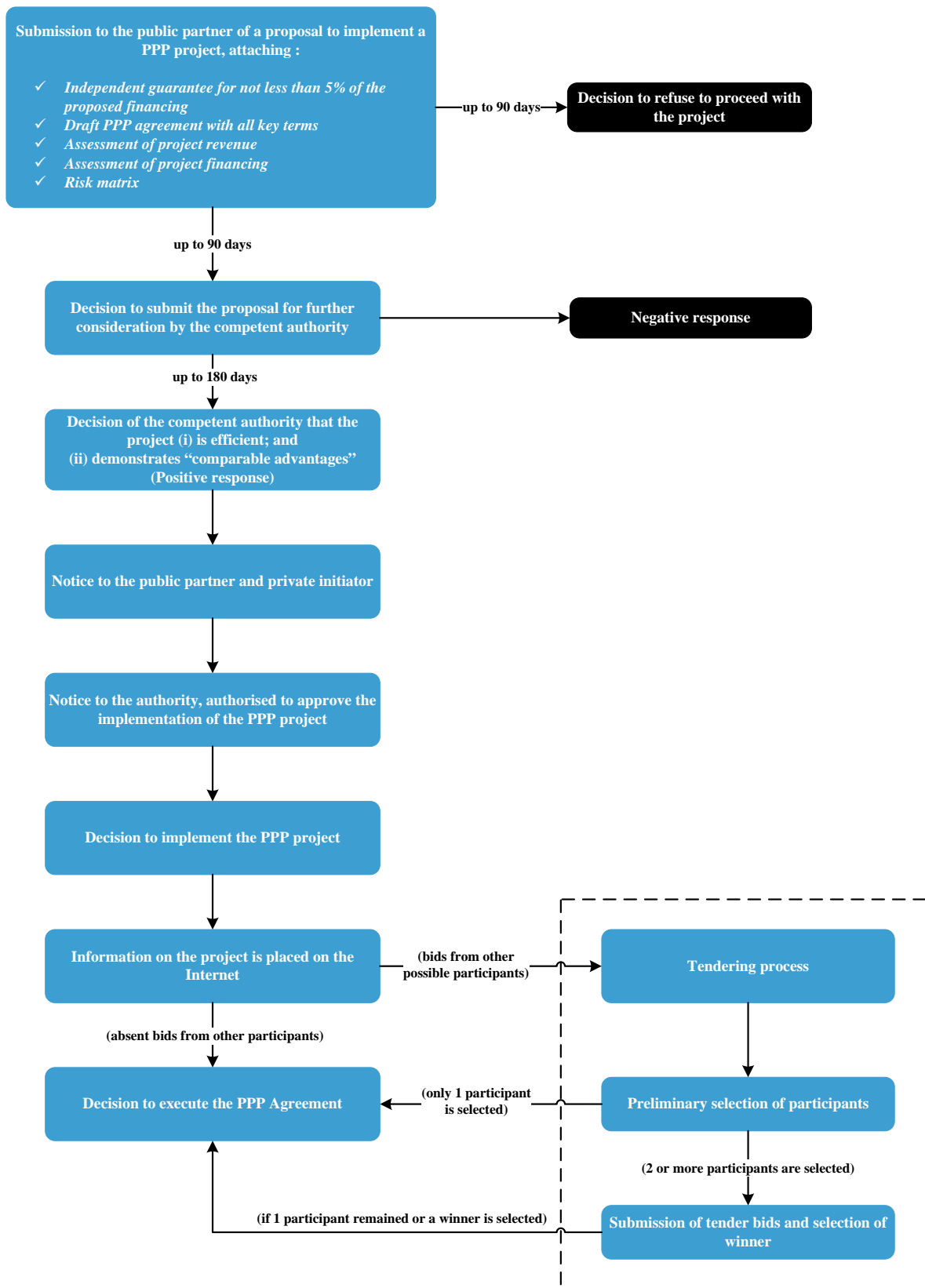
The PPP Law	The Concession Law
<p>body authorized by it;</p> <ul style="list-style-type: none"> <li>• a constituent entity of the Russian Federation represented by the supreme relevant executive body or an executive body authorized by it;</li> <li>• a municipality represented by its head or an authorized local self-government body.</li> <li>• Certain rights and obligations of the public partner may be delegated to other governmental authorities and/or legal entities, including state budgetary enterprises and unitary institutions, in relation to <u>any</u> types of facilities. The scope of such rights and obligations is determined by the Russian Government.</li> </ul>	<p>executive body authorized by it ;</p> <ul style="list-style-type: none"> <li>• a constituent entity of the Russian Federation represented by the relevant executive body;</li> <li>• a municipality represented by a local self-government body.</li> <li>• Certain rights and obligations of the public partner may be delegated to other governmental authorities and legal entities, including the state company Rosavtodor, state budgetary entities and unitary enterprises in relation to certain types of concession facilities.</li> </ul>
<p><b>Ownership Right to a PPP Facility</b></p>	
<p>As a general rule, the private partner acquires the right of ownership of the PPP facility.</p> <p>However, the PPP facility must be transferred to the public partner if the amount of public partner's capital investment in the creation of the PPP facility exceeds the amount of the private partner's expenses.</p>	<p>The concession grantor has or will have the right of ownership of the concession facility.</p> <p>However, the concessionaire may purchase the concession facility on a preferential basis if it is put up for sale by the concession grantor, subject to the concessionaries' proper performance of the terms of the concession agreement.</p>
<p><b>PPP Facility</b></p>	
<p>The PPP facility cannot be property which may be exclusively owned by the state or a municipality and cannot be alienated to a private owner. In particular, unlike concession facilities, the following property may not be considered as PPP facilities: subways, heat, gas, electricity or water supply and water disposal facilities, highways (except privately owned), or seaport infrastructure facilities that may only be in the federal ownership.</p>	<p>Unlike PPP facilities, the following property may not be considered as concession facilities: aircrafts, stationary or floating platforms and artificial islands, underwater and underground technical facilities, linear communication facilities, ameliorative systems and facilities related to the production, processing and storage of agriculture products.</p>
<p><b>Pledge of the PPP Facility</b></p>	
<p>The private partner may not pledge the PPP facility except when the private partner uses the facility to secure the performance of its obligations to the financing party. For this purpose, the public partner, the private partner and the financing partner must enter into a direct agreement.</p>	<p>Concession facility may not be pledged.</p>
<p><b>Assignment of Rights/ Pledge of Rights under the Agreement</b></p>	
<p>Rights under the PPP Agreement may not be assigned except for certain cases.</p>	<p>Rights under a concession agreement may be assigned at any stage of the implementation of a concession project with the prior consent of the concession grantor.</p>

The PPP Law	The Concession Law
The private partner may not pledge its rights under the PPP Agreement except when the private partner uses such rights to secure the fulfilment of its obligations to the financing party under a direct agreement.	The concessionaire may not pledge its rights under the concession agreement except when the concessionaire uses such rights to secure its obligations to lenders. For this purpose, the concessionaire, the lender and the grantor must enter into a separate agreement which determines their rights and obligations.
<b>Budget Financing</b>	
In the form of subsidies only.	In the form of both subsidies and budget investments.
<b>Private Initiative</b>	
The procedure for entering into the PPP Agreement by way of private initiative may take approximately 300 days total (without a tender).	The procedure for entering into a concession agreement by way of private initiative may take approximately 150 days total (without a tender).
The applicant initiating the conclusion of the PPP Agreement has to provide a bank guarantee in the amount of at least five percent of the total value of the project financing.	The applicant, initiating the conclusion of a concession agreement, only needs to show that it has or is capable of raising at least five percent of the funds needed for the project.
<b>Assessment of Effectiveness and Comparative Advantages for Implementation of PPP Project</b>	
This is envisaged by the PPP Law. In particular, the authorized body reviews the PPP project in order to assess its effectiveness (financial effectiveness and social and economic effect) and define its comparative advantages (ratio between the expenditure of budgetary funds and volume of the obligations assumed by the public partner for the implementation of the proposed PPP project and a governmental contract).	There is no such requirement under the Concession Law.
<b>Risks allocation</b>	
Risks are allocated in the PPP Agreement.	Mandatory allocation of certain risks on the basis of the Concession Law.
<b>Tax regime</b>	
At the moment, the Tax Code does not contain any special provisions in relation to the PPP Agreements.	The Tax Code specifically regulates concession agreements.
<b>Public partner's Control over Execution of the Agreement</b>	
The PPP Law specifies the procedure for the public partner's exercise of control over the private partner's execution of the terms of the PPP Agreement. The procedure is established by the Russian Government. <sup>9</sup>	The Concession Law does not specify the procedure for the grantor to exercise control over the concessionaire's execution of the terms of a concession agreement.

<sup>9</sup> Government Resolution No 1490 approving the procedure for the public partner's exercise of control over the PPP Agreement, dated 31 December 2015.

The PPP Law	The Concession Law
Dispute Resolution	
The PPP Law does not contain any special provisions in relation to dispute resolution.	Dispute resolution by state courts, state commercial courts and Russian arbitration tribunals.

## Annex II



---

White & Case LLC  
4 Romanov Pereulok  
125009 Moscow  
Russia

**T** +7 495 787 3000

In this publication, White & Case means the international legal practice comprising White & Case LLP, a New York State registered limited liability partnership, White & Case LLP, a limited liability partnership incorporated under English law and all other affiliated partnerships, companies and entities.

This publication is prepared for the general information of our clients and other interested persons. It is not, and does not attempt to be, comprehensive in nature. Due to the general nature of its content, it should not be regarded as legal advice.