



Renewed Regulation on PPP: Key Insights

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On 30 October 2024, a revised version of the Regulation on the Procedures for Implementation of PPP Projects ([New Regulation on PPP](#)) was adopted by the Resolution of Cabinet of Ministers No.720. Designed to make PPPs more attractive for energy sector players and streamline the project execution procedures, the New Regulation on PPP, effective immediately, replaces the previous Regulation on PPP No.259 adopted in 2020 ([Old Regulation on PPP](#)).

Most of the changes are technical. They aim to eliminate internal inconsistencies in the by-law's text, bring it in compliance with superior-level legislative acts adopted in recent years, and enhance the quality of the drafting technique overall.

That said, several substantive amendments have been introduced that will significantly impact PPP project procurement procedures. The following review delves into these material provisions in greater detail.

PPP Eligibility Liberalization

The criteria for using the PPP mechanism have been relaxed:

- *Expanded Scope.* Previously, within the framework of PPP projects, private partners were limited to engaging only in those types of activities (services, works, and goods) that had traditionally been carried out by ministries, state committees, agencies, and local municipalities (i.e. state government bodies). Now, according to the New Regulation on PPP, services, works, and goods traditionally performed/produced by state-owned companies (i.e. state enterprises and legal entities with over 50% state ownership) can also be procured through the PPP mechanism.

In practice, this establishes solid legal grounds for using PPP in projects within the energy, transportation, and utilities sectors.

- *Higher quality or an Innovative Approach:* The New Regulation on PPP requires the PPP projects to satisfy at least one of the following criteria: (i) improve the quality of goods, works, or services; (ii) enhance their availability; or (iii) incorporate innovative solutions. This represents a more flexible framework compared to the Old Regulation on PPP, which mandated compliance with all three criteria for a project to qualify for implementation under the PPP mechanism.
- *Property Rights to PPP Object:* Previously, one of the conditions for launching a PPP project was that the public partner had to hold property rights to the PPP assets that are transferred to the private partner. This created legal barriers to the implementation of brownfield PPP projects, as public partners (typically a ministry or municipality) often did not directly own the PPP asset. Under the New Regulation on PPP, the requirement on the availability of property rights to PPP assets can be satisfied **either** by the public partner or by an entity controlling or controlled by the public partner.

- *Private Investments.* The requirement for mandatory private investment in PPP projects has also been relaxed. Now, a project can be realized as a PPP even if the private partner brings the best management practices to the project as an alternative to private financial investments.

However, a new criterion has been introduced, requiring PPP projects to have measurable KPIs.

Improvements in the Procedure for Initiating and Preparing PPP Projects

The New Regulation on PPP significantly revised the procedure for initiating PPP projects and the subsequent procedural steps related to the preparation and approval of project documents. In particular, the New Regulation on PPP now explicitly requires that for projects initiated by a private initiator, the draft PPP agreement must be prepared by the public partner. Previously, there was a gap in the legislation in this regard, and it was unclear which party's responsibility it was.

Additionally, it is now clarified that during the stage of Expression of Interest, which follows the initiation of the PPP project by the private initiator, interested third parties shall meet certain qualification criteria specified in Article 23 of the PPP Law. This new requirement is aimed at protecting the interests of the private initiators by creating a certain threshold for third-party participation in the tender.

Furthermore, specific requirements pertaining to the evaluation methods for assessing the technical and financial qualifications of bidders at the Request for Qualification (RFQ) stage have been amended to make them more accessible for consortia. Under the Old Regulation on PPP, only the lead member's experience was considered when assessing a consortium's technical qualifications. The New Regulation on PPP, however, introduces a broader approach, allowing the technical qualifications to be fulfilled by the collective experience of both the lead member and other consortium members, provided they hold at least a 20% stake in the consortium and the future project company. Besides, the financial evaluation of a consortium now considers the financial powers of all its members, weighted according to their respective shares in the consortium.

Regarding procedural matters, the following clarifications were introduced:

- *Tender Committee.* The tender committee must be formed at least 10 days prior to the tender call. Previously, the timeline for establishing the tender committee was undefined, leading to inconsistencies in practice. In addition, permanent sector-specific tender committees may now be established by the Cabinet of Ministers to streamline and professionalize project tendering.
- *Engagement of Consultants.* For projects exceeding USD 10 million, public partners are now mandated to engage local or foreign consultants to ensure expertise in project preparation and execution.

- *Reapproval of Project Concept Note.* If, at the outcome of the tender, it is found that the project value (which includes the capex and the opex of the private partner and the payments from the State Budget) is expected to be higher than projected, the public partner has to reapprove the project concept note in accordance with the established procedures.
- *Public Consultations.* The PPP Law mandates public consultations as a prerequisite for the implementation of PPP projects. The New Regulation on PPP further clarifies the procedure and duration of these consultations, specifying that they will be conducted online on the public partner's website and will last for 10 days. These consultations are designed to gather feedback from the community affected by the PPP project and must take place prior to the approval of the project concept note. Notably, the outcomes of these consultations are advisory in nature.

PPP Agreements

The New Regulation on PPP introduces the following new requirements with respect to the execution, effectiveness and extension of the terms of the PPP agreements.

PPP projects procured through direct negotiations require approval from the Committee for the Development of Competition and Protection of Consumer Rights. It remains unclear whether such confirmation is required when direct negotiations are conducted under decisions of the Cabinet of Ministers or the President.

Public partners must register PPP agreements with the PPP Registry held by the Ministry of Economy and Finance within three days of their execution. Amendments to or terminations of PPP agreements are also subject to registration.

PPP agreements (and any amendments and additions thereto) not duly registered in the PPP Registry **are invalid**.

These new requirements are intended to facilitate centralized oversight by the regulator and enhance control over the execution and implementation of PPP agreements.

Land Allocation

Under the PPP Law, land plots required for the implementation of PPP projects must be allocated to the public partner on a permanent use rights basis and subsequently leased to the private partner by the public partner. However, this requirement may conflict with provisions of the Land Code, particularly in cases where the public partner is not a government authority, institution, or state enterprise (for example, when the public partner is a joint-stock company authorized by the Cabinet

of Ministers). The reason for this is that, according to the Land Code, only government entities and state enterprises are eligible to receive land plots on a permanent use right basis.

The provisions of the New Regulation on PPP are intended to address this issue by introducing a new rule allowing the PPP land plots to be allocated to the government authorities, institutions or state enterprises acting for the benefit of the public partner when direct allocation of land plots to the public partner under permanent use rights basis is not permitted under the law. However, this provision of the Regulation on PPP cannot currently be enforced as it conflicts with Article 31 of the PPP Law.

The New Regulation on PPP provides a more comprehensive framework governing the procedure for allocating land plots and the corresponding payment obligations. Specifically, it stipulates the following:

- land plots shall be allocated to the public partner (or to an entity acting on behalf of the public partner) upon its request within three days of the registration of the executed PPP agreement in the PPP Registry;
- all expenses associated with the allocation of land plots to the public partner shall be borne by the public partner; and
- the private partner is exempt from paying land tax for the PPP land plots; however, the rent payable by the private partner shall be equivalent to the land tax rate.

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