

LEGISLATIVE UPDATE: MONGOLIA ADOPTS NEW LAW ON PUBLIC AND PRIVATE PARTNERSHIP

On 9 December 2022, the Parliament of Mongolia adopted the *Law of Mongolia on Public and Private Partnership* (the “**PPP Law**”). The PPP Law came into effect on 1 July 2023, replacing the existing *Law of Mongolia on Concession* (the “**Concession Law**”) dated 28 January 2010. The introduction of the PPP Law signifies Mongolia’s commitment to reforming and modernizing the principles and terms of public and private partnership (the “**PPP**”) in line with international standards and best practices.



The PPP Law is designed to promote private sector participation and investment in PPP projects, ultimately expanding business opportunities for private entities. By reforming the fundamental principles and terms of PPPs, the legislation aims to foster long-term and efficient PPPs while facilitating the successful implementation of infrastructure projects.

Below we highlight some of the key regulations introduced by the PPP Law.

1. THE SCOPE OF THE PPP LAW

The PPP Law establishes the framework for PPPs in Mongolia, primarily focusing on the fields of public infrastructure and state services. However, certain sectors and activities are excluded from the scope of the PPP Law. These include defense, banking, various financial market services, and profit-orientated mineral exploration and mining (with the exception of providing public services through mining infrastructure).

Under the PPA Law, the Government has the responsibility of approving public infrastructure projects and determining the sectors and directions for the implementation of PPPs.

2. TYPES OF PARTNERSHIP AGREEMENTS

Depending on the nature of the project to be implemented through a PPP, the partnership agreements may have the following types:

- (a) design and budget, build, use, and transfer
- (b) build, use, and transfer
- (c) build, transfer, and use
- (d) build, rent, use, and transfer
- (e) build, own, use, and transfer
- (f) rent and lease for public service provision
- (g) operation and maintenance implementation
- (h) renovate, possess, use, and transfer
- (i) management implementation; and
- (j) other types of partnership agreements determined through a comprehensive analysis of the project’s specific requirements.

Entering into a “build and transfer” agreement with a direct transfer condition and a short implementation period, indistinguishable from budget investment and implementation through partnership outlined in the Concession Law, is strictly prohibited under the PPP Law.

The term of the partnership agreement in a PPP project may vary depending on the project’s specific characteristics and requirements, and it can extend for a maximum duration of 30 years. The parties may extend the term of the partnership agreement one time for up to a further 10 years with the approval of the Government.

3. PPP PARTNERS

Public sector partners in PPP projects can be either (i) the Ministries of Mongolia, (ii) Governors of Provinces and the Capital City, or (iii) state-owned legal entities or entities with significant state or local ownership, while private sector partners in PPP projects can be either foreign or domestically invested legal entities responsible for the implementation of the PPP project.

4. PPP PROJECT PHASES

The law outlines that a PPP project encompasses the following stages:

- (a) the planning stage involves project assessment and analysis to determine whether the project will be implemented through a PPP arrangement;
- (b) the evaluation stage entails analyzing and assessing the PPP project, which is included in the development policy document, to evaluate its feasibility for implementation through a PPP approach;
- (c) the decision-making stage involves making a definitive decision to proceed with the implementation of the PPP project based on the evaluation outcomes;
- (d) the partner selection stage focuses on the process of selecting the private sector partner(s) that will be involved in the project;

- (e) the negotiation and agreement stage involves engaging in negotiations and signing a partnership agreement;
- (f) the implementation stage pertains to the actual execution and realization of the PPP project;
- (g) the evaluation stage encompasses the evaluation and monitoring of PPP project implementation;
- (h) the final stage relates to the termination of the partnership agreement, acquisition, and registration of partnership items in the state or local property portfolio.

5. SELECTION OF PRIVATE PARTNERS

The selection process for private partners comprises two stages: (i) preliminary selection; and (ii) competitive selection.

During the preliminary selection stage, project proposals submitted by private sector participants will be evaluated. Participants that meet the requirements will be shortlisted and eligible to proceed to the competitive stage.

In the competitive stage, a model partnership agreement will be prepared, subject to approval by the Ministry of Economy and Development. A working group will engage in negotiations with the selected participant to finalize the terms of the partnership agreement. Further, necessary approvals for the conclusion of the partnership agreement will be obtained from the Ministry of Finance and the Government.

6. GOVERNMENT GUARANTEES AND STATE SUPPORT MEASURES

Under the PPP Law, the Government is authorized to provide various guarantees and state support for projects implemented through PPPs.

Government guarantees include:

- (a) a guarantee to fund the PPP project from the state budget in the event of a violation of the main terms of the partnership agreement or its related agreements;

- (b) a guarantee to purchase and use goods, works, and services created during the implementation of the PPP project;
- (c) a debt guarantee for loans necessary to facilitate the implementation of the PPP project.

Furthermore, the Government, based on its decision and within the framework of the partnership agreement, can offer various forms of support to private sector partners, which may include:

- (a) granting rights to possess or use land in accordance with the Land Law of Mongolia
- (b) providing tax benefits and exemptions as stipulated by relevant laws
- (c) allocating a portion of project financing from the budget, as outlined in the partnership agreement
- (d) providing necessary public infrastructure and public services required for the implementation of projects beyond those created through the PPP project; and
- (e) offering support in other forms prescribed by law.

7. TRANSFER OF RIGHTS UPON TERMINATION OF PARTNERSHIP AGREEMENT

Upon the termination of the partnership agreement, it is a requirement for the private sector partner to transfer and relinquish possession of all movable and immovable property, innovations, know-how, intellectual property, technical documents, and rights associated with the project activities to the public partner.

8. TRANSPARENCY AND MONITORING OF PPP PROJECT IMPLEMENTATION

In accordance with the PPP Law, project operations, information, and reporting of the Partnership are required to be transparent to the public, subject to the provisions outlined in laws on confidentiality and the contractual agreement between the involved parties.

The central state audit authority is assigned the responsibility of auditing various aspects

related to the implementation of the PPP Law. This includes auditing the planning of PPP projects, the selection process of private sector partners, the implementation of PPP projects, and the fulfillment of obligations outlined in the partnership agreement.

9. SUMMARY

The adoption of the PPP Law represents a significant update aimed at reforming and modernizing the principles and terms of public and private partnerships in Mongolia. It signifies a commitment to enhancing the environment for private entities to contribute to the development of public infrastructure and state services. The provisions of the law aim to foster transparency, efficiency, and accountability in PPP projects.

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