

## Legal Alert

# The Federal Law on PPPs

EY's Russian Tax & Law practice was named a **leading Tax firm in Russia** in "World Tax 2015," an annual guide published by the *International Tax Review*.

For the third year, EY has been named "**Tax Advisor of the Year**" in the SPEAR'S Russia Wealth Management Awards.

### A Long-Awaited Federal Law

The law on public-private partnerships (PPPs) and municipal-private partnerships (MPPs) in the Russian Federation and the introduction of amendments to certain legislative acts of the Russian Federation entered into force on 1 January 2016.

### The Fate of Regional Legislation

Regions will have to bring their legislation into line with the new PPP/MPP law by 1 July 2016.

### Concession Agreements

It follows from the PPP/MPP law that concession agreements are wholly outside its scope.

### Terminology

The law defines the following concepts: public-private partnership, municipal-private partnership, public partner, private partner, finance provider, direct agreement, operation of an object, maintenance of an object and others. In particular, not only a bank but any legal entity or partnership which lends to a private partner may be a finance provider.

EY has been named "Best Financial Advisor on Public-Private Partnerships" in the National Award in Infrastructure in Russia - ROSINFRA-2015.

EY's legal professionals are included in the 2015 global rankings published by Chambers & Partners under the PPP practice area

*Financial Advisor of the Year – Road Infrastructure Projects – 2014* (Russian State Company Avtodor Awards)

*Financial Advisor of the Year – PPP Projects – 2005, 2007, 2009, 2012* (Infrastructure Journal Awards)

One of the *best PPP projects* in Europe, Central Asia, the Middle East and North Africa in 2013 (Development, reconstruction and operation of Pulkovo Airport - Infrastructure Journal)

Western High-Speed Diameter was named as *Road Deal of the Year* in Europe (by Thomson Reuters)

*European Real Toll Road Deal of the Year* received award from *Project Finance* magazine in the 2012.

*Best Urban Development Project in Europe* in 2013 (World Finance Awards. Western High-Speed Diameter project)

EY received the 2012 European PPP Transaction of the Year award from Infrastructure Investor magazine

## Term of a PPP/MPP Project

The criteria by which the duration of a project and an agreement are defined are the project creation time, the volume of investment, the recoupment period and the time needed for a private partner to receive specified revenue. The law provides that a PPP/MPP agreement is to be concluded for **no less than three years**.

## Parties to PPP/MPP

Only a **Russian legal entity** may be a private partner in PPP/MPP projects. Foreign companies, partnerships and private entrepreneurs are excluded from direct participation in a PPP/MPP.

State enterprises, public-law companies and other organizations controlled by public entities may not act as private partners. All of the above may act on behalf of a public partner by exercising some of its rights and obligations.

## Main Obligations

The following are mandatory elements of a PPP/MPP agreement:

- 1) the construction and (or) reconstruction of the object by the private partner;
- 2) the provision by the private partner of all or part of the financing for the creation of the object;
- 3) the operation and (or) maintenance of the object by the private partner;

4) the acquisition by the private partner of title to the object;

5) an undertaking by the private partner to transfer the title to the object to the public partner upon the lapse of a period specified by the agreement if the amount of financing provided by the public partner exceeds the amount of financing provided by the private partner.

The public partner has the right to assume obligations for partial financing of the project and the provision of property and land to the private partner.

The private partner has the right to **pledge an object only to a finance provider** and only through a direct agreement.

## PPP/MPP Projects

The law provides that immovable property must form a part of partnership projects.

The law lays down an exhaustive **list of possible PPP/MPP objects**, which, in addition to traditional social and transport infrastructure objects, also include aircraft, site improvements, communications lines, underpasses and other objects.

## PPP vs State Contract

Before a decision is made to implement a project, an appraisal is made of its financial and socio-economic effectiveness. Also appraised is the **comparative advantage** of a PPP/MPP project as opposed to construction under a State contract.

## Private Initiative

Provision is made for **private initiative** for the execution of a PPP/MPP project. If, following the publication of an announcement of such a project under a PPP/MPP arrangement, no other private partner candidates come forward, a PPP/MPP agreement will be concluded with the proposal initiator without the conduct of a tender.

## Conclusion of an Agreement

As a rule, PPP/MPP agreements are concluded on the basis of a tender. The law contains an exhaustive list of grounds for concluding an agreement without a tender. It lays down the **procedure for the conduct of a tender** for the conclusion of a PPP/MPP agreement and a joint tender where a project is to be carried out in the territory of multiple public entities. The law lays down a list of fundamental conditions of a PPP/MPP agreement and the content of tender documentation.

## Land Issue

It is stipulated that the **land** needed for the implementation of a PPP/MPP project must be provided **without conducting a tender**, and amendments to this effect are made to the Land Code.

Amendments are also made to the Water Code, the Forestry Code, the Town-Planning Code, the Subsurface Resources Law, the Protection of Competition Law, the Electric Power Law and a number of other federal laws.

## Comparison of a Public-Private Partnership/Municipal-Private Partnership Agreement, a Concession Agreement and a Life-Cycle Contract with Reference to Key Criteria

Criterion	PPP/MPP Agreement	Concession Agreement	Life-Cycle Contract
<b>Parties to the agreement</b>	Only a Russian legal entity may be a private partner. State enterprises, institutions, public-law entities and other organizations controlled by public entities cannot be private partners.	The concessionaire may be a private entrepreneur, a Russian or foreign legal entity or two or more such legal entities acting under a partnership agreement without the formation of a legal entity.	A procurement participant must be an entity which meets Russian legal requirements for suppliers of goods, work and services being procured.
<b>Possible objects</b>	Immovable property or immovable and movable property. An exhaustive list similar to the list of concession agreement projects and additionally including, inter alia, site improvements underground installations, underpasses and reclamation systems.	Immovable property or immovable and movable property. An exhaustive list mainly including transport and engineering infrastructure and health-care, cultural, educational and sporting facilities.	Immovable property or immovable and movable property. An exhaustive list mainly including transport and engineering infrastructure and unique capital structures.
<b>Ownership</b>	The object may be privately owned and then transferred into public ownership.	The object is publicly owned.	The project is publicly owned.
<b>Financing</b>	Financed by the private partner with possible compensation for some costs.	Financed by the concessionaire with possible compensation for some costs.	Financed by the public entity.
<b>Pledging of object</b>	The private partner may pledge the object only to the finance provider and only on the basis of a direct agreement.	The object cannot be pledged. Only rights under the concession agreement may be pledged.	Not possible.
<b>Possibility of direct agreements</b>	Provided for.	Provided for.	Not provided for.
<b>Private initiative</b>	Provided for.	Provided for.	Not provided for.
<b>Competitive procedures</b>	Cases provided for where an agreement may be concluded without a tender. Competitive procedures are generally the same as for a concession agreement.	Cases provided for where an agreement may be concluded without a tender. The procedure for conducting a tender is laid down in the Law on Concession Agreements.	Carried out in accordance with procurement law (44-FZ and 223-FZ).
<b>Provision of land</b>	Special-purpose provision provided for.	Special-purpose provision provided for.	Not required.
<b>Special taxation regime</b>	No special regime.	Special taxation regime provides for: <ul style="list-style-type: none"> <li>▶ Exemption of Concessionaire from profits tax on income in the form of property and (or) property rights received under a concession agreement.</li> <li>▶ Right to tax depreciation of concession project.</li> <li>▶ Deductibility of concession fee for profits tax purposes</li> <li>▶ VAT exemption for transfer of property and (or) property rights under a c concession agreement</li> </ul>	No special regime.

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