PPP LAW

Law No. 691-VIQ of the Republic of Azerbaijan, *On Public Private Partnership*, of 9 December 2022 came into effect as of 27 December 2022. The Law broadens regulation of the partnership by establishing a framework for all public-private projects. With the new Law coming into effect, the earlier regulation, most notably:

- Law, *On Implementation of Investment Projects Related to Construction and Infrastructure Facilities under Special Financing*, of 2016 introducing the build-operate-transfer (BOT) model, and
- Presidential Decree providing for the terms of implementing projects under the BOT model, requirements for investors, specifics and terms of agreements made, and approving the rules to determine the value of goods and services generated from the investments

ceases to have effect.

A private-public partnership (PPP) is a joint activity of private and public partners based on an agreement on the provision, developing and managing the infrastructure, of public services. A public partner is a public authority and other agencies as well as a municipality and municipal enterprises. A private partner is any individuals and entities.

Where required by international undertakings or considerations of public safety of the Republic, participation in competitive procedures of listed foreign applicants or applicants from listed foreign jurisdictions, their ability to make offers as a part of a private initiative, or direct negotiations, can be restricted. PPP agreements with foreign counterparties, including persons they control, or involving foreign and international financiers can be governed by foreign law.

The Law introduces the competent authority, the Ministry of Economy. The Ministry determines the forms and methods of the Republic's participation in each PPP project. The authority also prepares for the approval of the Cabinet of Ministers annual lists of PPP projects that the Republic considers developing under the PPP model.

A PPP project is announced by the competent authority. Interested parties make their offers in response to the announcement in accordance with the set of competitive selection documents. Applicants may form joint ventures among themselves for the purposes of bidding.

Project offers are assessed based on the following criteria:

- amounts payable by a public partner to a private partner and how they are shared during a project's lifetime;
- state support and guarantees;
- term of the project where its implementation period is a part of an offer;
- forecast of results of work and compensation for damages related to failures to perform contractual obligations;
- technical, esthetic-functional, and innovative features of a project offer; and

- risk management measures offered by an applicant.

A PPP project is made for 49 years at most with particular project timelines determined by the competent authority. The authority also resolves on a participation in a project company of a public partner – such participation cannot exceed 49 percent of the equity of the company.

A private partner may benefit from guarantees specified in the competitive procedure documents, such as: (a) uninterrupted supply of goods, material, raw materials, and equipment for implementation of a PPP project; (b) secured minimal revenues of the project; (c) guaranteed offtake of the project's output; (d) subsidies and loans and invested funds; (e) guaranteed level of regulated prices; (f) exclusive rights to supply goods, works, and services in Azerbaijan or a part of it; and (g) cost recovery and compensation for lost profits.

A private partner would be compensated for an increase of costs and decline of revenues under a PPP agreement resulting from amendments to Azerbaijani legal and regulatory acts made after the PPP agreement. The amount of compensation can be specified in the PPP agreement.

To obtain financing, a private partner may provide security to project creditors. Encumbering a public partner's share of the project company can be made subject to observing undertakings of the Republic under international agreements. Where so specified in direct agreements with creditors, the competent authority has a preemptive right upon acquiring an encumbered asset.

At termination of a PPP agreement, an infrastructure built by a private partner remains its property or is alienated to a public partner. The public partner has a preemptive right or an obligation to purchase the infrastructure. If the infrastructure belongs to the public partner, it can be alienated to the private partner and, should that partner already manage it, it will have a preemptive right to purchase it.

State-owned land can be provided to a private partner under a lease or use right as well as contributed into a project company. Municipal and private land required for a PPP project can be acquired or leased by the Republic.

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