Guide to Public Private Partnerships in Georgia
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Introduction to Public Private Partnerships

Georgia is the unique regional financial and economic center. Situated in the middle of Europe and Asia, the country offers easy access to the major European, Central Asian and Middle Eastern markets. Georgia offers ample investment opportunities with its stable, sustainable and growing economy, competitive tax and labor legislation, transparent and corruption-free government, liberal and free market-oriented economic policy. Georgia’s agile government institutions with their flexible administrative procedures are able to respond swiftly and efficiently to the ever-changing environment and adapt accordingly to the needs of markets and new trends. The country also has access to enormous markets including EU and China. Georgia’s leading position in the international rankings serves as a manifestation of country’s progress and successful development. As of 2020, Georgia is the 7th easiest country to do business in and the 4th safest country in the world.

To maintain and further strengthen the position of a country that is open, fair, and accessible to foreign investors, Georgia decided to introduce Public Private Partnerships (PPP) as the form of business-state relation. Public Private Partnership is a collaboration between a government and a private sector that aims at providing a high-quality public infrastructure or public services. The cornerstone of PPP is a recognition that both sectors have advantages in performing tasks and public needs will be more efficiently achieved by pinpointing and utilizing those strengths. By introducing PPP to its legal system, Georgia offers foreign investors set of procedures and frames, as well as specific guarantees for the protection of investments made. By granting certain rights to the private entity for the provision of public infrastructure or public services, PPP framework also provides a private actor with an opportunity to have enduring and sustainable income throughout the years. At the same time, by ensuring fair allocation of risks government utilizes best of the both worlds and with rigorous assessment process guarantees that public funds are spent well with a maximum value for money.

For all these purposes, in 2018, the Parliament of Georgia adopted the Law of Georgia on Public Private Partnership (the PPP Law) which was followed by a package of bylaws related to introduction and implementation of public private partnerships (PPPs) in Georgia. The PPP Law was initiated by the Government of Georgia (the GoG) and was drafted by the Ministry of Economy and Sustainable Development of Georgia (the Ministry of Economy).

In order to make PPP process smooth and effective the GoG created Public Private Partnership Agency (the Agency) which started operating in February 2019. The aim of the Agency is to facilitate fair and efficient cooperation between private and public sectors in order to achieve development agenda of the GoG. At all stages of its activity, the Agency promotes inclusive economic growth to help reduce poverty and boost sustainable development of the nation. Through smart regulatory approach, the Agency supports establishment of impact investment practices and responsible business environment.
PPP Objectives

Objectives of the Public Private Partnerships are the following:

- Enhance efficiency of projects
- Meet the public interests by creating, providing or improving public infrastructure and services
- Attract private financing
- Benefit from the know-how of a private partner
- Arrange fair sharing of risks between public and private sectors
- Enhance efficiency of public finances

Public-private partnerships may be carried out in any public infrastructure and public service sector except for mining, oil and gas sectors and related research-development and/or scientific research works.¹

¹ Decree No. 426 regarding Rules Related to Development and Implementation of the PPP Project dated 17 August 2018 (the Decree No. 426), Article 3.1, available at: https://matsne.gov.ge/ka/document/view/4304519?publication=0
Criteria for PPP Projects

The PPP is a partnership between the public and private sector, which is designed to facilitate provision of public services and/or public infrastructure serving the public interest. For the purposes of the PPP Law, the public service is a service to be received by society-at-large, which is usually provided by the state. The public infrastructure is a tangible and/or intangible asset, which serves a society-at-large or is used for the provision of public services.

Any PPP project shall meet the following criteria:

- **Financing**: Full or partial financing of PPP project by a private partner
- **Purpose**: Provision of public service or public infrastructure
- **Risk allocation**: Distribution of risks between public and private partners
- **Minimum term**: Not less than five years
- **Cost of the project**: Not less than GEL 5,000,000
Five Phases of the PPP Project

The implementation of the PPP encompasses the following steps:

1. IDENTIFICATION AND INITIATION
2. PREPARATION
3. SELECTION OF A PRIVATE PARTNER
4. IMPLEMENTATION
5. FOLLOW UP
PHASE 1: Identification/Initiation of the PPP Project

Depending on the initiator of the project, two types of PPP proposals exist. (Unsolicited project may be carried out only in the energy sector).³

**SOLICITED PROPOSALS**

The project is identified by the **relevant state Authority or the Agency**. For instance, in case the project is planned to be implemented in the energy sector, the Ministry of Economy and the Agency shall be involved in the process.

**UN SOLICITED PROPOSALS**

The **private initiator** may draft and submit to the relevant state authority the initiative on implementation of the PPP project. Relevant ministry shall assess the initiative proposal with the involvement of the Agency.

Both solicited and unsolicited projects undergo the following steps during the first phase:⁴

1. Preparation of PCN (as described below) by relevant state authority.
2. Submission of PCN by relevant state authority to the Ministry of Finance of Georgia (the Ministry of Finance) and the Agency for recommendation.
3. Issuance of conclusion by the Ministry of Finance and issuance of the recommendation by the Agency within one month from submission by the relevant authority.
4. Submission of conclusion from the Ministry of Finance and recommendation from the Agency by the relevant state authority to the GoG.
5. Decision of the GoG on approval, refusal or further revision of PCN.

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³ The Decree No. 426, Article 26, available at: https://matsne.gov.ge/ka/document/view/4304519?publication=0
⁴ The Decree No. 426, Articles 6-8, available at: https://matsne.gov.ge/ka/document/view/4304519?publication=0
Following initiation of the project either through solicited or unsolicited proposal, the competent state authority shall prepare a project concept note (PCN), which shall provide detailed information about projects:

**PROJECT CONCEPT NOTE**

- Preliminary assessment of needs of project implementation and its compliance with public interest and relevant state strategies;
- Preliminary assessment of the value of the project;
- Preliminary suggestion regarding form of the PPP and functions of public private partners; and
- Preliminary assessment of budget availability and fiscal risks.

During the decision at the first phase, the GoG shall take into account the following criteria:

- Strategic and public importance of the project
- Preliminary assessment of economic impact of the project
- Availability of public financing for the project
- Assessment of fiscal risks

If the positive decision is made by the GoG the project proceeds to the second (preparation) phase.
PHASE 2: Process of Preparation and Approval of the PPP Project

Following initial approval by the GoG during the first phase, the PPP project proceeds to the second stage that includes the following procedures:

- Preparation of financial, technical and economic analysis by the relevant authority.*
- Submission of results of research/analysis by the relevant state authority to the Ministry of Finance and the Agency.
- Adoption of decision regarding necessity and visibility on implementation of the PPP project by the Ministry of Finance within 45 days from submission by the relevant state authority.
- Submission of drafted documents/reports/analysis and report of the Ministry of Finance by the relevant state authority to the GoG.
- Decision of the GoG on approval, refusal or further amendment to the PPP project.

* In case of unsolicited proposals, private initiator may prepare financial, technical and economic analysis.®

® The Decree No. 426, Article 26.6, available at: https://matsne.gov.ge/ka/document/view/4304519?publication=0
During the phase 2, the competent body shall prepare financial, technical and economic analysis which shall include the following:

In case of unsolicited proposals, competent body might request all relevant studies to be made by the private partner. The Ministry of Finance with the involvement of the Agency and in cooperation with the international partners is working to develop new methodology and guidelines for the assessment of the above financial, technical and economic indicators, including analysis of value for money and fiscal risks.³

³ The Decree No. 426, Article 5, available at: https://matsne.gov.ge/ka/document/view/4304519?publication=0
PHASE 3: Selection of the Private Partner

Direct negotiation is possible only in the energy sector in case of unsolicited proposals. Generally, process of selection of the private partner is initiated by the competent body following the below procedures.⁸

- Establishment of the selection committee;
- Announcement of selection process by the selection committee;
- Submission of qualification documents by the potential private partners and assessment of qualifications of candidates by the selection committee;
- Request by the selection committee for proposals from the potential private partners and submission of proposals by the potential partners;

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⁸ The Decree No. 426, Articles 16-24, available at: https://matsne.gov.ge/ka/document/view/4304519?publication=0
Assessment of submitted proposals and selection of short listed candidates or selection of the winner by the selection committee;

Negotiation of terms of the agreement between the short listed candidates or winners and the relevant state authority;

Submission of agreed text of the agreement by the relevant state authority to the GoG;

Decision of the GoG on approval or further amendment of the PPP agreement;

In case of approval by the GoG, conclusion of the PPP agreement by the relevant state authority and private partner.
PHASE 4 AND PHASE 5: Implementation and Follow Up Assessment

Following approval by the GoG, the parties shall conclude respective PPP agreement. When negotiation/drafting PPP agreement the following main elements shall be taken into account:

| Subject of PPP, scope and specifics of the works to be performed and other issues related to provision of services or public infrastructure; |
| Terms and conditions related to transfer of property rights over public infrastructure or other property; |
| Term of the PPP agreement; |
| Any availability payment/performance-based compensation, and/or other payments (if any) to be made to the private partner; |
| Details of the payment to be made to the public partner; and |
| Rules related to termination of the PPP agreement. |

The PPP Law envisages possibility for the PPP agreement to provide various guarantees to the private partner as follows:

- Availability payment and/or performance based compensation
- Guarantees on consumption, consumers and income
- Guarantees for tariff and/or cost of public services
- Guarantees on the long-term procurement of certain types of goods and services at the determined price
- Transfer of land and/or grant of permits and licenses provided by Georgian legislation
- Grant of exclusive right to intellectual property
- Grant of exclusive right to maintain and/or operate a facility or to provide public service

Public partner and the Agency are entrusted with the authority to monitor implementation of the PPP projects.
# Procedure for Unsolicited Proposals

As set out above, private initiator is entitled to submit unsolicited proposal. The private initiator shall follow the following procedure:

<table>
<thead>
<tr>
<th>PRIVATE INITIATOR</th>
<th>STATE AUTHORITIES</th>
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<tbody>
<tr>
<td><strong>PHASE 1</strong></td>
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<tr>
<td>Drafts initiative proposal which shall also entail preliminary assessment (prefeasibility study) of suggested project, its potential and the opportunity to implement it as a PPP project.</td>
<td>Relevant authority prepares PCN and submits such PCN to the Ministry of Finance and the Agency.</td>
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<td>Submits initiative proposal to the relevant authority and the Agency.</td>
<td>Within 1 month the Ministry of Finance prepares conclusion and the Agency prepares recommendation on the PCN.</td>
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<td>The relevant authority submits PCN, conclusion of the Ministry of Finance and recommendation of the Agency to the GoG.</td>
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<td>The GoG makes decision on the PCN.</td>
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<td><strong>PHASE 2</strong></td>
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<td>In case of approval of the PCN by the GoG, the relevant authority may ask the private initiator to prepare financial, technical and economic analysis.</td>
<td>Relevant state authority requests the Ministry of Finance to prepare report on necessity and advisability of the PPP and the Ministry of Finance prepares such report within 45 days.</td>
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<td>Relevant state authority submits documents for approval to the GoG.</td>
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<td>The GoG makes decision on the implementation of the PPP.</td>
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<td><strong>PHASE 3</strong></td>
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<td>Direct agreement may be concluded with the private initiator in the energy sector.</td>
<td>In case the tender process is announced, private initiator may participate in the process as set out above.</td>
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The guide provides general framework and rules applicable to the public private partnerships in Georgia and does not constitute legal advice. Any interested person planning to participate in this process, shall review, consider and seek advice in relation to the laws and legislative acts specified in this document as well as any other regulations applicable to the public private partnerships in Georgia.

For further guidance or information, please visit www.ppp.gov.ge