
PUBLIC-PRIVATE PARTNERSHIP IN BELARUS

In the near future investors will be able to go for investment projects in Belarus not only on the basis of [investment](#) and concession agreements but also on the basis of **public-private partnership agreements (PPP)**. The Law on public-private partnership (“the Law” or “the PPP Law”) was adopted for transparent realization of this mode of investment and enters into force on 2 July 2016. You can [follow our website](#) to monitor the latest changes in PPP legislation and other areas of law.

Definition of public-private partnership

PPP projects mean mutually beneficial cooperation between a public and a private partner in any of the public sectors of the economy. The financing, profit and risks are divided between the partners. The Law provides the opportunity to realize projects with infrastructures in almost all sectors of the economy (a list of sectors is open): e.g., **roads and transport, energy, public health, telecommunications, agribusiness, social services, education, culture, transportation of oil and gas.**

How to be a private partner in a PPP project in Belarus

A private partner in a PPP project can be a **legal entity (also a foreign legal entity)** (with the exception of legal entities of which 50 per cent of the shares belong to the Republic of Belarus or its administrative territorial units), **a foreign entity which is not a legal entity, or an individual entrepreneur**. The public partner in a PPP project could be:

- The Republic of Belarus represented by a state body or other public organization authorized by the President of the Republic of Belarus or Council of Ministers;
- administrative territorial units¹ represented by the local executive and regulatory body (executive committee).

The private partner is usually selected on a competitive basis. The authority (or other authorized organization) sets up a tender commission. Members of the commission can be representatives of the authorities and public organizations, public associations, associations of legal entities and other organizations. The tender will consist of two stages: preliminary selection of the bidder and choice of the winner. During the preliminary selection checks will take place on whether the bidder is under liquidation, reorganization, if the bidder's assets are seized, if the bidder has his **own** (not borrowed) money in the amount set in the tender documentation and other formal requirements as required by legislation and (or) tender documentation. The second stage sees selection of the winner of the tender. The winner is the bid with better conditions in comparison with other bids. If only one bidder submits a bid, the tender commission considers it. If the only bid complies with the tender requirements, an agreement on public-private partnership can be concluded under conditions offered by the bidder.

What projects are offered for PPP

Opportunities are available to submit bids for the [following public-private partnership projects](#):

1. Road resurfacing M-10: the road from the border of the Russian Federation – Gomel – Kobryn – 109.9 km – 184.5 km.
2. Trunk road construction in Gomel of 41.35 km in length with a bridge across the river Sozh.
3. Construction of Beshenkovichi hydroelectric power station (33 MW-130 million kilowatt•hour) on the river Zapadnaya Dvina of the Vitebsk region.
4. Construction of a waste incineration plant at Bobruisk.

You may find information on actual investment projects with a search for potential investors and more details on the above mentioned PPP projects [at our website](#).

¹ The opportunity to conclude a PPP agreement not only with the Republic of Belarus but also with its administrative territorial units distinguishes PPP as an institution from an investment agreement according to Decree no 10, 6.08.2010. In the latter case the public party can be only the Republic of Belarus represented by an executive committee.

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Public-private partnership agreement

A public-private partnership agreement is concluded with the winner of the tender. Planning, building, financing and **maintenance of the infrastructure** can be regulated by this agreement. The agreement also includes property rights matters regarding the infrastructure. In general, cooperation between state and private partners is carried out on the basis of almost all internationally-recognized investment models: e.g., BOT (Build, Operate, Transfer), BOOT (Build, Own, Operate, Transfer), BTO (Build, Transfer, Operate).

Loans from international finance institutions such as the IFC and EBRD or syndicated loans are usually attracted to **finance** PPP projects. Bigger projects are often financed by means of project finance, which is different from traditional finance models of particular companies. The establishment of new PPP projects will stimulate use of the above mentioned finance resources in Belarus. Besides, a project can be financed from own and borrowed money of the private partner, state and (or) local budget funds. Payback on investments will be carried out from sale of goods, works or services as well as payments from budget funds according to the PPP agreement. The value of the private partner's profit is also to be negotiated.

The important thing to note is that **project risks** between public and private partners **should be divided**. Private partners who aim to increase their profit can underestimate financial, juridical and other risks. Because of this it is recommended to engage advisers who will assess risks with consideration for the particular PPP project and help to negotiate the agreement with the most beneficial content for the private partner. The possibility to involve an adviser is provided in the PPP Law.

Guarantees of private partner rights

The private party receives all the guarantees generally provided to investors (e.g. money transfer, protection of property against nationalization). Moreover an opportunity will be available to set a "grandfather clause" in the agreement – a world practice in investor protection, which means that **subsequent negative legislation will not apply to investors instead of the law applicable when the agreement was made**.

bnt attorneys-at-law is an international law firm based in 10 Central and Eastern European countries.

We will be glad to assist you in realization of your public-private partnership projects in Belarus.

Contact persons:



Egor Zelianouski LL.M. (Münster)

egor.zelianouski@bnt.eu

Certified Lawyer

+375 17 203 94 55

bnt legal & tax | Minsk



Valeria Kazlovich

valeria.kazlovich@bnt.eu

Graduate Lawyer

+375 17 203 94 55

bnt legal & tax | Minsk