

Kazakhstan - Opportunities for PPPs in 2019

Shaimerden Chikanayev
Advocate

A decorative graphic consisting of several horizontal lines of varying lengths and colors (teal, white, and light blue) extending from the right side of the slide towards the center.

WHY KAZAKHSTAN?

- There is lack of budget financing and high demand for investments in public infrastructure
- Strategic geographical location (e.g. China's Belt and Road initiative, a door to the Eurasian Economic Union, a single market of 183 million people)
- Generally good legal framework (special PPP Law and Concession Law)
- Strong political will of the President and Government to support PPPs
- Kazakhstan's climbed the World Bank's Ease of Doing Business index and is now ranked 28th
- Strong support of Kazakhstan by MDBs (EBRD, ADB, IFC, IDB, EABR, AIIB) attracting private and international financial investment

WHAT IS LEGAL FRAMEWORK FOR PPPs?

- Please refer to general overview of the legal framework of PPPs in Kazakhstan:

https://gratanet.com/laravel-filemanager/files/3/PPP_Kazakhstan.pdf

- Please refer to unofficial translations of the PPP Law and Concessions Law:

<https://gratanet.com/publications/law-of-the-republic-of-kazakhstan-on-public-private-partnership-unofficial-english-translation>

<https://gratanet.com/publications/law-of-the-republic-of-kazakhstan-on-concessions-unofficial-english-translation>

Concession Law v PPP Law

Bankability Requirement	Concession Law	PPP Law
Legislative certainty – limited service BTO	✗	✓
Ability for a consortium to nominate SPV	✓	✗
Access to tax concessions	✓	✗
Clear right to terminate	✓	✗
International arbitration by Kazakh SPV	✓	✗
Protection against currency exchange risk	✓	✓
Direct negotiations (no tender required)	✗	✓
Ability to select foreign governing law	✗	✓

What to expect in 2019?

- 1) Light Rail transit in Almaty - \$ 242 mln
- 2) Almaty railway bypass - \$ 249 mln
- 3) Shymkent bypass toll road - \$ 500 mln
- 4) Asfendiyarov medical university in Almaty - \$ 72 mln
- 5) Karaganda medical hospital - \$ 145 mln
- 6) Almaty 1,265-beds medical hospital - \$ 304 mln
- 7) Turkestan medical regional center - \$ 147 mln
- 8) Petropavlovsk hospital - \$ 120 mln
- 9) Nur-Sultan hospital - \$ 144 mln
- 10) Kyzylorda passenger terminal at “Korkyt Ata” international airport - \$ 19,3 mln
- 11) Kyzylorda college with dormitory - \$ 8 mln

#1 - Light Rail transit in Almaty

- **Contractual structure** – 22.7 km light rail transit to be implemented under the PPP Law as a DBFOM. 50%/50% cofinancing by public and private partners.
- **Current status of the project** – first stage of the tender is almost completed. Out of 9 submitted applications, 4 prospective private partners have been qualified. Tender documentation is under development. The second stage should begin in 2019.
- **Tentative timeline:**
 - August 2018 – tender announcement, first stage of the tender;
 - 2019 – second stage of tender;
 - 4 years – construction period;
 - 19 years – operation period.
- **Public partner** – Akimat (mayor) of Almaty.
- **Potential private partner** – consortia ITOCHU, Makyol, CAF (Japan, Turkey, Spain), Enka (Turkey), CMEC (China), Alstom, Gulermak, Marubeni, Meridiam (France, Japan, Turkey).
- **Potential lenders** – IFC, ADB, EBRD, ECAs.

#2 - Almaty railway bypass

- **Contractual structure** – 74 km railway to be implemented under the PPP Law as a Build-Transfer-Operate.
- **Current status of the project** – first stage of the tender is almost completed. Both prospective private partners who submitted their applications have been qualified. Tender documentation is under development. The second stage should begin in 2019.
- **Tentative timeline:**
 - November 2018 – tender announcement;
 - 2019 – tender;
 - 2020-2022 – construction;
 - Operation period – 26 years.
- **Public partner** – Ministry of Industry and Infrastructure Development (“MIID”).
- **Potential private partners** – Two Kazakhstani-Chinese consortia.
- **Potential lenders** – EBRD, IFC, ADB, ECAs etc.

#3 - Shymkent bypass toll road

- **Contractual structure** – 254 km length four road bypasses around Saryagash and Shymkent to be implemented as Build-Transfer-Operate.
- **Current status of the project** – Preparation for the project is almost completed and about to be announced.
- **Tentative timeline:**
 - 2019 – tender announcement;
 - 2019-2023 – construction period;
 - 2023-2038 – operation period.
- **Public partner** – MIID.
- **Potential private partners** – Korean investors, including Korean Overseas Infrastructure & Urban Development Corporation (KIND), and construction companies.
- **Potential lenders** – EBRD, IFC, ADB, ECAs etc.
- **Technical assistance** – Asian Development Bank.

#4 - Asfendiyarov Medical university in Almaty

- **Contractual structure** – 300-bed hospital to be implemented under the Concession Law as a Build-Transfer-Maintain.
- **Current status of the project** – tender documentation is under development.
- **Sources of cost recovery and income generation** – availability payment (compensation of operational costs, compensation of investment costs, remuneration for operation).
- **Tentative timeline:**
 - 2019 – tender;
 - 2021 – 2037 – concession period.
- **Public partner**– Ministry of Healthcare (“MoH”).
- **Potential private partners** – Korean investors, including Korean Overseas Infrastructure & Urban Development Corporation (KIND); Broad Street Capital Group (USA); Ronesans Healthcare (Turkey), and other construction and (or) healthcare companies.
- **Potential lenders** – EBRD, IFC, ADB, ECAs, etc.
- **Technical assistance** – European Bank for Reconstruction and Development.

#5 - Karaganda Medical Hospital

- **Contractual structure** – 300-bed hospital to be implemented under the Concession Law as a Build-Transfer-Maintain.
- **Status of the project** – tender documentation is under development.
- **Tentative timeline:**
 - 2019 – tender;
 - 2021-2041 – concession period.
- **Sources of cost recovery and income generation** – availability payment (compensation of operational costs, compensation of investment costs, remuneration for operation).
- **Public partner** – MoH.
- **Potential private partners** – Korean investors, including Korean Overseas Infrastructure & Urban Development Corporation (KIND); Broad Street Capital Group (USA); Ronesans Healthcare (Turkey), and other construction and (or) healthcare companies.
- **Technical assistance** – Asian Development Bank.

#6 - Almaty 1,265-bed Medical University

- **Contractual structure** – 1,265-bed hospital to be implemented under the PPP Law as a Build-Transfer-Maintain.
- **Status of the project** – request for expression of interest is published. Economic conclusion of the Ministry of National Economy is issued. Drafting of tender documentation is about to be started / have been started.
- **Tentative timeline:**
 - 2019 – tender;
 - 20 years – concession period.
- **Public partner**– MoH.
- **Potential private partners** – Korean investors, including Korean Overseas Infrastructure & Urban Development Corporation (KIND); Broad Street Capital Group (USA); Ronesans Healthcare (Turkey), and other construction and (or) healthcare companies.
- **Technical assistance** – International Finance Corporation (tbc).

#7 - Turkestan medical center

- **Contractual structure** – 610-bed multidisciplinary medical regional center to be implemented under the PPP Law as a Build-Transfer-Maintain.
- **Status of the project** – request for expression of interest is published. The tender documentation is to be drafted.
- **Sources of cost recovery and income generation** – availability payment (compensation of operational costs, compensation of investment costs, remuneration for operation).
- **Tentative timeline:**
 - tbc.
- **Public partner** – MoH.
- **Potential private partners** – YDA Holding, BI Construction Turkestan LLP and other construction and (or) healthcare companies.

#8 - Petropavlovsk hospital

- **Contractual structure** – 500-bed multidisciplinary medical regional hospital to be implemented under the PPP Law as a Build-Transfer-Maintain.
- **Status of the project** – request for expression of interest is published. The tender documentation is to be drafted.
- **Sources of cost recovery and income generation** – availability payment (compensation of operational costs, compensation of investment costs, remuneration for operation).
- **Tentative timeline:**
 - 2019 – tender;
 - 3 years – construction period;
 - 12 years – operation period.
- **Public partner** – MoH.
- **Potential private partners** – YDA Holding and other construction and (or) healthcare companies.

#9 Nur-Sultan hospital

- **Contractual structure** – 600-bed multidisciplinary medical city hospital to be implemented under the PPP Law as a Build-Transfer-Maintain.
- **Status of the project** – request for expression of interest is published. The tender documentation is to be drafted.
- **Tentative timeline:**
 - tbc.
- **Public partner** – MoH
- **Potential private partners** – Ronesans Healthcare (Turkey) and other construction an (or) healthcare companies.

#10 - Kyzylorda passenger terminal at “Korkyt Ata” International Airport

- **Contractual structure** – passenger terminal at “Korkyt Ata” international airport in Kyzylorda to be implemented under the PPP Law as a Build-Transfer-Maintain
- **Status of the project** – first stage of the tender is almost completed. BI Civil Construction LLP has been qualified as a prospective private partner. Tender documentation and feasibility study are under development.
- **Tentative timeline:**
 - November 2017 – tender announcement
 - July 2018 – repeated tender announcement
 - 2019 – tender
 - 12-18 months – construction period
 - over 3 years – operation period
- **Public partner** – Akimat of Kyzylorda region
- **Potential private partners** – BI Civil Construction LLP.

#11 - Kyzylorda college with dormitory

- Concession project.
- **Contractual structure** – 600-places college with 200-places dormitory to be implemented under the Concession Law as a Build-Transfer-Maintain.
- **Status of the project** – drafting tender documentation.
- **Sources of cost recovery and income generation** – availability payment (compensation of operational costs, compensation of investment costs, remuneration for operation).
- **Tentative timeline:**
 - 2019 – tender;
 - 2019-2029 – concession period.
- **Public partner** – Akimat of Kyzylorda region
- **Potential private partners** – construction companies.

Success comes from experience and experience comes from bad experience

1. Non-defined contract with Republic of Kazakhstan on construction and operation of the inter-regional power line 'North Kazakhstan – Aktobe Region' (2005) - several of the enterprises expected to use the power line were out of action or operating below full capacity.
2. Non-defined contract with the Republic of Kazakhstan on construction and operation of the railway 'Shar–Ust-Kamenogorsk Station' (2005) - the railway has seen lower than expected freight volumes. Infrastructure bonds default in 2008.
3. Concession agreement on the Passenger Terminal of International Airport in Aktau City (2007) - problems with getting adequate tariffs as a natural monopoly.
4. BAKAD (2018) – negative perception of some officials in the Government and MPs because currency risk is fully on the State side. Because of BAKAD no more toll roads as PPPs in a near future?

Lessons Learned: Don'ts

1. Bad structuring of PPP projects.
2. Lack of proper balance of the risk sharing between an investor and the State.

What are remaining hindering obstacles for PPPs?

- Continuous and piecemeal changes to the PPP legislation.
- Poor PPP project selection and preparation by state authorities (mainly because of lack of competence in the regions and/or lack of relevant state officials that are ready to take over the responsibility for making necessary decisions).
- Uncontrolled growth of “fake” PPPs and concessions in the provinces (i.e. there is quantity, but there is no quality of PPP projects).
- Lack of long-term and cheap Tenge financing (local capital market is dead, Kazakh commercial banks are not ready to finance PPPs).

2018 Year in Review

- A number of subordinate acts and changes in the PPP Law and Concession Law were introduced in 2018.
- More than 192 PPP agreements have been signed in just one year (mainly small and “service” type PPPs in education (kindergartens) and healthcare) – i.e. high risk that most of them are “fake” PPPs.
- BAKAD finally reached commercial close, but it seems now it has problems with financial closing?
- Some uncertainty in the PPP market, which was driven by the increasing attention that state authorities (mainly because of negative perception of how PPP develops), in the Ministry of Finance and some of the MPs) were paying to the PPP projects.

Outlook

- Amalgamation of the Concession Law and PPP Law.
- There will be fewer projects with availability payment (i.e. with compensation from the budget of all investor costs incurred in the project).
- There will be more real “infrastructure” PPPs, instead of “fake” service type PPPs. Less kindergartens, more utilities, transport and healthcare PPPs.
- Decrease of KPIs for regions from 5 to 3 projects per year as a minimum.
- Smaller size of projects and use of fully packaged products (i.e. templates etc.).
- Revival of infrastructure bonds as a source of debt financing for PPPs.
- Defaults, litigations and invalidation of many badly structured and “fake” PPP/concession agreements and tenders.

GRATA KZ - PPP Team



**Shaimerden
Chikanayev**
Partner

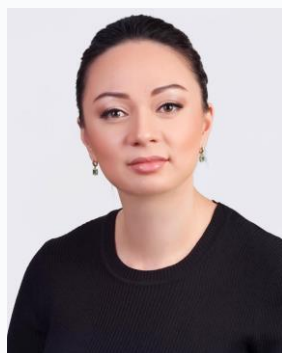
Hong Kong
Almaty

Mob. in Hong
Kong: +852
53782382

Mob. in Almaty: +7701 787 8020

E-mail:

schikanayev@gratanet.com



**Marina
Kahiani**
Partner

Almaty

Mob.: +7701
725 1269

E-mail:

mkahiani@gratanet.com



**Lola
Abdukhaly
kova**

Counsel
Nur-Sultan

Mob.: +7701
888 7680

E-mail:

labdukhalykova@gratanet.com



**Dinara
Otegen**
Associate
Almaty

Mob.: +7778
204 1663

E-mail:

dotegen@gratanet.com



**Dilbar
Kasymova**
Associate
Almaty

Mob.:
+7701 031 2168

E-mail:

dkasymova@gratanet.com



**Sabina
Rysbekova**
**Junior
Associate**
Almaty

Mob.: +7 747
783 0307

E-mail:

srysbekova@gratanet.com



Shaimerden Chikanayev

Advocate, Partner, GRATA Law Firm

Almaty, Kazakhstan

Hong Kong, China

E-mail: schikanayev@gratanet.com

Mobile in Hong Kong: +852 53782382

Mobile in Almaty: +77017878020

