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ECONOMIC COMMISSION FOR EUROPE

# **Public-Private Partnerships: Legislative Review**

## **Kyrgyz Republic**

### **2013**

## **ACKNOWLEDGEMENTS**

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## KYRGYZ REPUBLIC

In the past two decades the Kyrgyz Republic has been facing economic constraints to build, finance and operate its infrastructure (roads, schools, hospitals, public buildings, etc.) and provide better public services to its citizens. The low quality of infrastructure facilities and public services lays a heavy burden on the community in terms of its low productivity and low standards of living. In response to this the Government of the Kyrgyz Republic decided to improve infrastructure services by developing public-private partnerships (PPPs) in the country. According to international best practice it is known that a framework for successful implementation of PPP projects shall have two main objectives, such as: (i) creating an enabling environment for private sector participation in infrastructure development; and (ii) ensuring consistency in preparing and executing PPP projects in all infrastructure sectors. Thus, this article provides a general summary on how basic prerequisites for developing PPPs and attracting private investors into infrastructure projects are met in the country:

*Policy certainty.* The Kyrgyz Government has expressed its interest in establishing and promoting PPPs in its National Strategy on Sustainable Development of the Kyrgyz Republic for the period of 2013-2017.

*Legal certainty.* For the private investments in infrastructure a comprehensive and consistent legal framework is essential that establishes a clear and predictable environment within which investors will build, finance and operate PPP projects. Understanding the latter a new Law “On public-private partnerships in the Kyrgyz Republic” was adopted on February 22, 2012. The law identifies, among other, a PPP concept, a scope of application of PPP projects, competence of authorized state agencies responsible for state regulation of PPPs, a procedure for holding tender, types of government guarantees and support to be provided to a private partner and/or project company. Later in 2013 the Kyrgyz Government adopted two regulations, which specify the process of undertaking tender, preparing tender documents, as well as rules on tender commission, namely: the Procedure “*On preparation of rules on conducting tender and tender documentation on public-private partnerships projects in the Kyrgyz Republic*” and the Regulation “*On tender commission for selection of private partners on public-private partnerships projects*”.

*Institutional arrangements.* Effective and efficient institutional arrangements are another prerequisite for successful implementation of PPP projects. As of the date of this article there are two main government bodies, namely (i) the Ministry of Economy of the Kyrgyz Republic, which is the main authorized state agency responsible for developing and promoting PPPs in the Kyrgyz Republic and (ii) the Ministry of Finance of the Kyrgyz Republic - responsible for coordinating the PPP projects involving the provision of government financial support from the republican (state) budget.

*Preparation of pipeline projects.* The Ministry of Economy screened and identified the best PPP candidates in the urban, transport and health sectors.

*Education and promotion of PPPs.* To promote the concept of PPPs and educate public on how PPPs work a number of seminars, trainings, conferences have been organized since 2009 with the assistance of international organizations as ADB, IFC, UNECE, JICA, etc.

There are a number of measures that still need to be further considered and undertaken to develop PPPs in the Kyrgyz Republic. The above mentioned components of PPPs should continue to be improved in the direction of maximizing benefits from PPPs.

## 1. MAIN LAWS DEALING WITH PPPS

1. Constitution of the Kyrgyz Republic, effective from June 27, 2010;
2. Civil Code of the Kyrgyz Republic Part I dated May 8, 1996 No. 15 and Part II No. 1 January 5, 1998;
3. Law of the Kyrgyz Republic “On investments in the Kyrgyz Republic” No. 66 dated March 27, 2003 (the Law on Investments);
4. Law of the Kyrgyz Republic “On public-private partnerships in the Kyrgyz Republic” No. 7 dated February 22, 2012 (the Kyrgyz PPP Law);
5. Procedure “On preparation of rules on conducting tender and tender documentation on public-private partnerships projects in the Kyrgyz Republic” adopted by the resolution of the Government of the Kyrgyz Republic dated January 28, 2013 No. 39;
6. Regulation on tender commission for selection of private partners on public-private partnerships projects adopted by the resolution of the Government of the Kyrgyz Republic dated January 28, 2013 No. 39 (the Regulation on Tender Commission);
7. Resolution of the Government of the Kyrgyz Republic “On designation of authorized public agencies in the sphere of public-private partnerships” dated September 14, 2012 No. 616 (Resolution on PPP Public Agencies).

## 2. ESTABLISHMENT

### A. PPP institutional requirements

The Kyrgyz PPP Law identifies four main government institutions that are responsible for the state regulation of projects in the sphere of PPPs, which are:

- *The Government of the Kyrgyz Republic* (the Kyrgyz Government);
- *An authorized state agency*, which is established by the Kyrgyz Government for the purposes of developing and promoting PPPs in the country (the PPP Unit). Under to the Resolution on PPP Public Agencies the Ministry of Economy of the Kyrgyz Republic acts as an authorized state agency;
- *A public risk management unit* that is authorized by the Kyrgyz Government to develop a state policy on management of project implementation risks (the Risk Management Unit). Pursuant to the Resolution on PPP Public Agencies the Ministry of Finance of the Kyrgyz Republic acts as the Risk Management Unit; and
- *Public partners*, which include the Government of the Kyrgyz Republic, executive public agencies, including line ministries, state committees, administrative agencies and local state administrations, as well as executive bodies of local self-government, and municipal enterprises in the Kyrgyz Republic.

From the perspective of potential investors, it is worth mentioning that one of the main responsibilities of the public partner is to identify and initiate PPP project taking into account the government and municipal programs and plans on PPP promotion, socio-economic development, industry development, and other programs for development of separate territorial units. It shall be, however, noted that the Kyrgyz Government may initiate a PPP project provided that the infrastructure facility is considered as socially important and/or the amount of investments to be made into the project has reached the minimum

threshold set by the Kyrgyz Government<sup>1</sup>. Therefore, the contracting authority may be represented either by the Kyrgyz Government or other public partner bodies.

As for the power to award PPP projects, this right was given to tender commissions, which are established either by the Kyrgyz Government or by one of the bodies within the meaning of the public partner (*for details on the tender commission see 3C*).

## **B. Right to do PPP in specific sectors**

The PPP arrangements under the Kyrgyz PPP Law can be applied to infrastructure facilities and infrastructure services in the following sectors:

1. generation, transmission and distribution of electric and heating power (energy);
2. processing, storage, transportation, transmission and distribution of oil and natural gas;
3. automobile, railway, water, air, urban electric transport;
4. roads and railways (including bridges and tunnels);
5. public utilities and public services;
6. medical, medico-preventive and other health care services;
7. education, upbringing, culture and social services;
8. mobile, landline communications and telecom services;
9. tourism, recreation and sports;
10. water resources; and
11. other sectors involving the provision of services to a wide range of consumers.

The given list is not exhaustive; therefore other sectors that involve the provision of services to a wide range of consumers can be also developed through PPP projects. However, the law states explicitly that PPP arrangements cannot be applied to relationships arising in connection with the use of mineral resources, public procurement and privatization, as well as to infrastructure facilities and infrastructure services that are specified in the list to be issued by the Kyrgyz Government<sup>2</sup>.

## **3. PROCUREMENT**

### **A. Selection procedure:**

The private partners for PPP projects are selected only through a competitive selection, namely the tender process<sup>3</sup>, which consists of two phases: (1) pre-qualification/pre-selection and (2) selection of a tender winner.

The pre-qualification phase is carried out to identify private partners who have sufficient capabilities and qualifications necessary to implement prospective PPP project. An invitation to participate in pre-qualification is published by the tender commission in mass media and on official website of the authorized public agency (PPP Unit)<sup>4</sup>. Once the invitation is published, the tender commission makes sure

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<sup>1</sup> As of the date of this Review, the Kyrgyz Government has not adopted any guidelines how the infrastructure facility will be considered as socially important, nor has any minimum threshold been defined.

<sup>2</sup> As of the date of this Review no such list has been approved or adopted by the Government.

<sup>3</sup> Article 20 of the Kyrgyz PPP Law

<sup>4</sup> The text of the invitation shall be in state (Kyrgyz) and official (Russian) languages and if necessary in foreign languages as well.

that the rules for undertaking the tender (including its two phases) and the tender documentation are publicly available.

The public partner will collect the bids for participation in pre-qualification within 30 calendar days following the date of publication of the invitation and within another 30 calendar days evaluate qualification of each bidder. Based on the evaluation results, the tender commission will send an invitation to pre-qualified bidders to participate in the next phase, i.e. in the selection of a winner of the tender. However, should the number of pre-qualified bidders be less than two, the whole tender process will be declared ineffective.

The tender winner selection phase is commenced on the date when pre-qualified bidders receive an invitation to participate in the second phase of the tender process. The pre-qualified bidders are given 30 calendar days to submit their proposals, which will be evaluated by the tender commission during a period not more than 60 calendar days. The proposals are evaluated in two stages as well. At the first stage, the tender commission assesses whether the proposal meets the minimum requirements for the project given in the tender documents. Only proposals meeting the given requirements will be evaluated based on the social and financial-economic criteria set out in the tender documents. The decision on tender winner shall be announced within 5 business days from the date when such decision is adopted.

## **B. Selection criteria**

The Kyrgyz PPP Law does not set forth the selection criteria for potential private partner to participate in a tender for a prospective PPP project, possibly due to the fact that for each PPP project to be initiated in the Kyrgyz Republic there will be prepared certain rules to undertake tender and tender documentation. However, taking into account the two-stage tender procedure, it can be assumed that selection criteria will be divided into two groups, such as general pre-qualification criteria and proposal assessment criteria. As for the assessment of submitted proposals it shall be noted that such assessment will be undertaken in two steps as well: *at the first step*, the tender commission will assess whether the proposal meets the minimum requirements for the project set forth in the tender documents, while *at the second step*, the tender commission will evaluate the successful proposals based on the social and financial-economic criteria set out in the tender documents.

## **C. Bid or Selection committee**

Once a decision on initiating a PPP project is adopted by a relevant public partner (i.e. line ministries, state agencies, municipal authorities, etc.<sup>5</sup>), the same public partner will form an ad hoc tender commission to select a private partner for the particular project. However, in respect of the Government-approved projects, the tender commission is formed and approved by the Kyrgyz Government. If requested, the authorized public agency (PPP Unit) may assist the public partner, including the Kyrgyz Government, in forming the tender commission and preparing the pre-qualification rules and tender documents<sup>6</sup>.

The tender commission shall include a representative of the authorized public agency (i.e. PPP Unit), a specialist having experience and knowledge in respect of the relevant infrastructure facility, a specialist in the field of economy or/and finance, a specialist in the field of law, and a representative of the local

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<sup>5</sup> According to Article 1 of the Kyrgyz PPP Law the Public Partner means the Government of the Kyrgyz Republic, executive public agencies, including ministries, state committees, administrative agencies and local state administrations, as well as executive bodies of local self-governments, and municipal enterprises.

community to be directly affected by the PPP project. The overall number of the members of the tender commission shall be odd and be at least 5 members, who may be subject to qualification requirements approved by the PPP Unit and must not have a conflict of interests in respect of the reviewed project(s). The tender commission members may not be the person who<sup>7</sup>

- (i) is an applicant to a tender process or a staff member of such applicant (i.e. private company, consortium, etc.);
- (ii) is an owner of a private company participating in the tender;
- (iii) has property rights and/or other interests in the PPP project;
- (iv) has close relative(s) who are owners (final beneficiary) of the private company.

The activity of the tender commission is carried out on a voluntary basis. The meeting of the tender commission is legitimate under the condition that at least two-thirds of all members of the tender commission participate in the meeting. Decisions at such commission are adopted by simple majority vote of all members participating in the meeting.

#### D. Unsolicited proposals

A private company or consortium may approach the public partners or the Kyrgyz Government with a proposal to initiate a PPP project<sup>8</sup>. The proposal must be enclosed with the preliminary feasibility studies (FS), a document confirming the costs of preparing the preliminary FS, statement of reasons for applying a PPP mechanism to a selected infrastructure facility, environmental impact assessment of the project, main conditions of the PPP agreement, and other documents relevant to the proposed project.

The public partner after thorough revision of the project proposal must within 60 days either accept or reject the proposal, which leads to the following:

- In the event of rejection, the public partner notifies the author of the proposal with enclosed reasons for rejection, and returns to the private partner all the originals and copies of the documents submitted to the public partner<sup>9</sup>.
- In the event of acceptance, the public partner adopts a decision to initiate a PPP project and notifies the PPP Unit followed by forming a tender commission (*for further details on the tender commission see 3C*) and preparing tender rules and tender documents.

The selection of the private partner for a PPP project initiated through an unsolicited proposal will be also conducted through a competitive selection process consisting of two stages: (1) pre-qualification/pre-selection and (2) selection of a winner of the tender (*for details on the tender process see 3A*). However, if the author of the PPP project proposal does not win the tender, the winner of the tender shall reimburse the author for the costs of preparing the preliminary FS.

#### E. Availability of standard tender documents

As of the date of this Review there are no any standard tender documents in relation to PPP projects.

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<sup>7</sup> Article 2.9 of the Regulation of Tender Commission

<sup>8</sup> Article 17 of the Kyrgyz PPP Law

<sup>9</sup> All documents and information provided by the author of the PPP project proposal shall be kept confidential and must be used only for the purpose of assessment of the author's proposal, unless the public and private partners agree otherwise.

## 4. OPERATION

### A. Government support<sup>10</sup> and guarantees

Under the Kyrgyz PPP Law the public partner may provide or assist in providing either government financial or government economic<sup>11</sup> support to the private partner and/or project company as follows:

- i. *The government financial support*<sup>12</sup> may be provided using the funds of the state and/or municipal budget, the special fund resources or other resources not prohibited by Kyrgyz legislation, in the following forms:
  - loans on preferential terms necessary for the implementation of a PPP project;
  - bank guarantees;
  - guarantees securing the performance of the public partner's obligations;
  - tariff subsidies;
  - partial financing of costs incurred in the course of the implementation of the PPP project;
  - tax exemptions and/or tax deferments and/or tax payment installments;
  - customs duties exemptions and/or deferments and/or installments.
- ii. *The government economic support* may be provided in the following forms:
  - provision of the rights to movable or immovable property in addition to the rights to an infrastructure facility;
  - assistance in obtaining licenses, permits, authorizations;
  - provision of easements in respect of publicly and/or municipally owned movable or immovable property;
  - provision of the right to generate revenues from other types of activities not directly associated with the implementation of the PPP project;
  - setting discounted lease payments for use of the publicly and/or municipally owned property;
  - provision of exclusive right to engage in the activity to the extent permitted by the executed PPP agreement;
  - provision of other kinds of support to the extent not contradictory with Kyrgyz legislation.

Additionally to protect private investments made into the PPP project, the private partner and the project company are guaranteed the following<sup>13</sup>:

- non-interference by the public partner with the business of the private partner and project company;
- protection from nationalization or any other measures of similar effect (*for details see 5.B.*);
- the right to freely possess, use and dispose investments made into the PPP project and returns on investments for the purposes not prohibited by Kyrgyz legislation;
- the right to freely convert the national currency of the Kyrgyz Republic into any other foreign currency and freely repatriate profits received (*for details see 4.B.*);

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<sup>10</sup> Government support may take various forms. Generally, any measure taken by the Government to enhance the investment climate for infrastructure projects may be regarded as governmental support. Government support measures, where available, are typically an integral part of governmental programmes to attract private investment for infrastructure projects. (UNCITRAL Legislative Guide pg 45.)

<sup>11</sup> Article 13 of the Kyrgyz PPP Law

<sup>12</sup> Article 12 of the Kyrgyz PPP Law

<sup>13</sup> Article 14 of the Kyrgyz PPP Law



- the right to reimbursement of losses incurred as a result of illegal action (inaction) of public and/or municipal authorities or their officials, who caused damages to private investor and/or project company on the terms prescribed by the PPP agreement;
- the right to revision of the terms and conditions of the PPP agreement or early termination of the PPP agreement; and
- the right to reimbursement for damages caused by the adoption of certain legal acts entailing worse conditions for the private partner and/or project company to implement their PPP project in comparison to agreed conditions in the PPP agreement.

## B. Repatriation of profits

According to the Kyrgyz PPP Law the private partner and/or the project company has the right to freely possess, use and dispose investments made into the PPP project and repatriate the proceeds of their investments<sup>14</sup> in a freely convertible currency.

The investor, who originally imported into the Kyrgyz Republic the property and information in a documentary or in an electronic form as an investment, has also a right to export them without being subject to quota/restriction, licensing, and other requirements of non-tariff measures of foreign trade.

The private partner as an investor under the Law on Investments has a right to freely use the income derived from their activities in the Kyrgyz Republic and invest in any form into activities not prohibited by legislation of the Kyrgyz Republic, including the activities subject to licensing.

## C. Project agreement: mandatory clauses

The PPP agreement shall contain the following mandatory provisions:<sup>15</sup>

- subject and scope of the PPP agreement;
- rights, obligations and liability of the parties;
- term of the PPP agreement;
- minimum volume, manner of provision and standards of quality of infrastructure services to be rendered in the process of operation of the PPP project, as well as mechanisms of payment for such services;
- terms and conditions of financing the PPP project;
- types and conditions of providing government financial and economic support, if the latter is provided;
- distribution of risks between the parties to the PPP agreement<sup>16</sup>;
- guarantees of performance of the agreement in respect of construction and operation;
- procedure for application of tariffs or charges for rendering the infrastructure services, as well as methods and formulas of calculation of such tariffs or charges;
- manner of possession and use of the infrastructure facility transferred by the public partner to the private partner;

<sup>14</sup> The proceeds of investments made in the Kyrgyz Republic may include, but not limited to, the following: (a) the profits gained on investment in the form of dividends, interests, and other forms of income; (b) the funds received by investor after partial or complete termination of investment activity in the Kyrgyz Republic or after disposal of investments, property and proprietary rights.

<sup>15</sup> Article 22 of the Kyrgyz PPP Law

<sup>16</sup> Instructions and general guideline principles in respect of the procedure for determination and distribution of risks between the public and private partners shall be developed and adopted by the authorized public agency

- methods of securing the performance of the obligations of the parties;
- procedure for monitoring and assessment of the implementation of the PPP project;
- insurance requirements for the PPP project;
- procedure for assignment of rights under the PPP agreement to financial institutions;
- procedure for return to the public partner of the infrastructure facility and other rights conferred in connection with the performance of the PPP agreement as of the moment of expiration of the agreement;
- environmental, health and safety requirements for the PPP project implementation;
- procedure for resettlement and payment of respective compensations in case if the PPP project involves the resettlement of citizens;
- actions of the parties in case of occurrence of force majeure events;
- procedure for compensation of damages inflicted by the adoption of regulatory legal acts worsening for the private partners the PPP project conditions as compared to agreed terms under the PPP agreement;
- terms and conditions of amendment and termination of PPP agreement, including the grounds for early termination of PPP project and procedure for compensation of damages inflicted by the early termination of PPP project;
- governing law and resolution of disputes arising out of PPP agreement and associated with PPP project implementation.

Upon the agreement of the parties the PPP agreement may contain other provisions to the extent not contradicting the Kyrgyz legislation.

#### D. Tariff setting and tariff control<sup>17</sup>

The Kyrgyz PPP Law is silent about the tariff setting and tariff control in PPP projects, however, the parties are obliged to agree on procedures for application of tariffs or charges for rendering the infrastructure services, including the methods and formulas of calculation of such tariffs and/or charges<sup>18</sup>. However, in practice most of the charges and tariffs for the public services are set either by a relevant government regulator or state enterprises and collected by both from consumers.

#### E. Security interests<sup>19</sup>

The project company under the Kyrgyz PPP Law may take loans, credits or use other methods of financing the PPP project<sup>20</sup>. For the purposes of the latter the private partner may pledge its own property (including proprietary and non-property rights<sup>21</sup>) and use other methods of securing the obligations without consent of the public partner. According to the Civil Code of the Kyrgyz Republic the performance of one's obligations can be secured, in addition to pledge, by the following means, such as penalty, retention of a property, surety, guaranty, downpayment and other means, stipulated by legislation

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<sup>17</sup> Certain industries attractive for private investments are of significant social and economic importance for the state (e.g., utilities, power and natural gas supplies). As a consequence, the state continues to ensure its control over industries (primarily over pricing). One of the key tools of such control are tariffs – that is, maximum levels for payments which customers should make for the service provided to them are being established (A Practical Guide to PPP in Europe. Russia. pg. 301)

<sup>18</sup> Article 22 of the Kyrgyz PPP Law

<sup>19</sup> Lenders would generally aim at obtaining security interests that allow them to foreclose and take possession of a project they can take over and operate either to restore its economical viability with a view to reselling at an appropriate time or to retaining the project indefinitely and collecting an ongoing revenue.

<sup>20</sup> Article 30 of the Kyrgyz PPP Law

<sup>21</sup> Article 10 of the Law on Investments

and agreement.<sup>22</sup> As for the property owned by public or municipal authorities and transferred to the private partner for temporary possession and use, it can be pledged as well, unless otherwise agreed in the PPP agreement.

## **5. ADJUSTMENT**

### **A. Step-in right**

The Kyrgyz PPP Law introduces the step-in rights of lenders by allowing the assignment of rights and obligations of the private partner and the project company to financial institutions that are providing finance for the implementation of the PPP project, provided that prior written consent of the public partner is obtained<sup>23</sup>.

### **B. Expropriation/nationalization and compensation**

As a measure of protection of private investments made through PPP projects, the Kyrgyz PPP Law establishes a state guarantee to protect the property of the private partner and the project company from nationalization or any other measures of similar effect. The Law on Investments of the Kyrgyz Republic<sup>24</sup> also states that investments shall not be subject to expropriation (nationalization<sup>25</sup>, requisition, or other equivalent measures, including action (inaction) taken by authorized government bodies of the Kyrgyz Republic that has resulted in seizure of investor's funds or investor's deprivation of the possibility to use the results of his/her investment).

In exceptional cases involving public interest, investments may, however, be expropriated in a nondiscriminatory manner upon payment of prompt and adequate compensation of damages incurred by the investor. The compensation shall be equivalent to the fair market value of all or part of the expropriated investment, including the loss of profits, as of the date of the decision on such expropriation; be calculated in a freely convertible currency; be paid without delay; include interest at the London Interbank Offered Rate (LIBOR) in US Dollars from the date of expropriation; be fully realizable; and be freely transferable.

However, should the investors have a claim regarding the expropriation, including the calculation of his/her investments and payment of compensation, such investor has a right to prompt review by appropriate judicial or other competent authorities of the Kyrgyz Republic, without effecting the manner of compensation to the investor.

### **C. Termination of the project agreement and compensation**

The PPP agreement can be terminated in the following cases:

- upon expiration of the term of the agreement;
- by mutual written agreement of all parties to the agreement;

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<sup>22</sup> Article 319 of the Civil Code of the Kyrgyz Republic

<sup>23</sup> Article 25 of the Kyrgyz PPP Law

<sup>24</sup> Article 6 of the Law on Investments

<sup>25</sup> It shall be noted that the nationalization of property owned by individuals and legal entities is allowed, provided that a relevant law on such nationalization is adopted in accordance with the Constitution of the Kyrgyz Republic, with appropriate compensation of damages (the cost of the property and other losses occurred due to such nationalization). Article 288 of the Civil Code of the Kyrgyz Republic

- by one of the parties to the agreement in the manner stated by the agreement;
- by decision of a body or person authorized by the parties to resolve disputes;
- in the event the project company or private partner is liquidated, or declared bankrupt (insolvent).

By default the termination of the PPP agreement under Kyrgyz PPP Law leads to certain implications, unless otherwise agreed by the parties, such as transfer of facilities and assets from the private partner/project company to the public partner, training of public partner personnel, as well as nonstop rendering of ancillary services and supply of resources, if necessary. However, the early termination of the PPP agreement by any of the parties entails an obligation to reimburse the other party for incurred damages. The instances of termination of the PPP agreement as well as a manner of compensation of the damages are one of the obligatory conditions in the PPP agreement.

#### D. Dispute resolution

The disputes related to PPPs can be settled as follows depending on the subject matter:

1. Disputes arising out of (a) the procurement of the private partner, as well as (b) the provision by the private partner or the project company of services to beneficiaries in the course of implementation of the PPP project are settled in the courts of the Kyrgyz Republic. However, upon public partner's demand, either the private partner or the project company may establish easy and efficient mechanisms to resolve disputes with the beneficiaries of the services by means of pretrial dispute resolution.
2. Disputes related to the execution, performance and termination of the PPP agreement can be settled by negotiation as agreed by the parties in the PPP agreement. In the event of failure to resolve the dispute through negotiations, parties to the PPP agreement may determine the courts or arbitral tribunals of the Kyrgyz Republic or international commercial arbitration institutions as the venue for settling their disputes.

Under the Law on Investments any of the parties to an investment dispute<sup>26</sup> may initiate a settlement by recourse to:

- The International Centre for Settlement of Investment Disputes under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States or procedures regulating use of additional means for the Centre's Secretariat hearing;<sup>27</sup> or
- Arbitration or a provisional international arbitration tribunal (commercial court) established under the arbitration procedures of the UN Commission for International Trade Law (UNCITRAL).

As for the recognition and enforcement of decisions the Kyrgyz Republic has joined the following treaties under which an interested party may address a claim to a court of the Kyrgyz Republic on recognition and enforcement of a decision issued by a court or arbitration court of another country:

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<sup>26</sup> The investment dispute is a dispute between an investor and the state bodies, their officials and other participants of the investment activity.

<sup>27</sup> The Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965 was ratified in 1997.

- UN Convention on Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958, joined by the Kyrgyz Republic in 1995;
- Convention on Legal Support and Legal Relations between the CIS Countries on Civil, Matrimonial, and Criminal cases of 22 January 1993, ratified by the Kyrgyz Republic in 1995. In 2004 the Kyrgyz Republic also ratified the Convention on Legal Support and Legal Relations on Civil, Matrimonial and Criminal Cases of 7 October 2002;<sup>28</sup>
- A number of bilateral agreements on mutual legal support with Azerbaijan, Iran, India, China, Latvia, Mongolia, Russia, Kazakhstan, Uzbekistan, and other nations.

Currently the Kyrgyz Republic recognizes and enforces:

- Decisions of other countries' arbitration courts established under the arbitration rules of the UN Commission for International Trade Law (UNCITRAL);
- Decisions of the courts of Armenia, Belarus, Kazakhstan, Latvia, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan on civil, matrimonial, and criminal cases;
- Decisions of the arbitration, economic and business courts of Azerbaijan, Moldova, Kazakhstan, Russia, and Tajikistan.

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*The Review was prepared as of April 4, 2013.*

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<sup>28</sup> The 2002 Convention has superseded the 1993 Convention. However, the 1993 Convention continues to apply to the relations between the Kyrgyz Republic and a member state to this Convention, if the 2002 Convention has not been given effect to the latter.