## Legend:

“+” – positive developments;  
“-” – negative developments;  
“N” – neutral developments.

<table>
<thead>
<tr>
<th>Provision</th>
<th>Evaluation</th>
<th>Dentons Commentary</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Definition, at the federal-legislation level, of the concepts of: “PPP,” “PPP Project,” “financing party,” “direct agreement” and other area terminology consistent with the internationally-recognized understanding of such concepts (with the stipulations provided below).</td>
<td>+</td>
<td>This is definitely a positive development, insofar as, firstly, it clearly discloses the nature of the arrangement to all interested parties, and secondly, it makes it possible to “speak the same language” with all potential project participants.</td>
</tr>
<tr>
<td>2. Classification of PPP Agreements as civil-law contracts.</td>
<td>+</td>
<td>In view of the stipulation in PPP agreements of public-partner obligations, which could not be unambiguously classified as civil by virtue of their very nature (for instance, obligations associated with tariff regulation), the issue of the legal nature of PPP agreements in and of themselves and the legality of the use of civil mechanisms to protect the rights of private partners (forced discharge of obligations, collection of damages, etc.) was highly contentious. Following adoption of the PPP Law, in which PPP agreements are classified as civil contracts, we believe this issue has been resolved, and now, when implementing PPP projects, investors will be able to rely on the means and measures for protecting their interests envisioned by RF civil law.</td>
</tr>
<tr>
<td>3. Restriction of the group of parties qualified to serve as, and participate on the part of, private</td>
<td>- / N</td>
<td>On the one hand, this restriction is a negative development, insofar as it limits the group of parties qualified to serve as private partners, thereby disqualifying foreign legal entities (despite the fact that the greatest</td>
</tr>
</tbody>
</table>

---

4 Art. 3, PPP Law  
5 Clause 3, Art. 3, PPP Law
partners within the scope of PPP projects to Russian legal entities.\textsuperscript{6}

interest in participating in Russian PPP projects has historically been demonstrated precisely by “foreigners”) as well as associations of legal entities (whether Russian and/or foreign) acting without benefit of the formation of a separate legal entity.

On the other hand, in practice, the direct conclusion of a PPP agreement and further implementation of the project frequently entails the creation of a special-purpose vehicle (SPV)\textsuperscript{7} in the form of a Russian legal entity; so, although this development creates certain inconveniences (necessity of creating an SPV at the project initiation and tender stage), on the whole, it does not prevent foreign legal entities from indirectly participating in project implementation.

At the same time, the requirements established in the PPP Law mandating the private partner’s holding of the requisite clearances/permits (see Item 8 below), coupled with the requirements established within the scope of tender documentation imposed on the professional and business attributes of tender participants (i.e. the SPVs themselves, as opposed to their founders), raises doubt as to the expediency of creating SPVs for specific projects. It is entirely possible that the group of potential participants qualified to take part in certain PPP projects will be reduced to long-established Russian companies.

The PPP Law also restricts the group of parties able to participate in PPP agreements “on the part of the private partner” (for instance: state and municipal unitary enterprises and institutions, business associations controlled by governmental units, etc.). That said, large Russian banks like Sberbank, VTB, VEB, will not be able to participate in an SPV’s capital if percentage of such participation interest exceeds 50 percent (theoretically this limitation may be overcome by creating second-tier subsidiaries for participation in an SPV).

In addition, the PPP Law does not directly address just what participation in PPP agreements “on the part of the private partner” entails. Proceeding from an analysis of the other provisions of the PPP Law, we presume that this is intended to mean exercising the rights and discharging the obligations of the private partner under the respective agreement (i.e. the private partner’s transfer of its rights and obligations to the parties mentioned above, whether in whole or in part), as opposed to any interaction by such parties with the private partner (for example, in the form of the provision of consulting services).

\textbf{4. Definition of the concept of “financing party” and ability to conclude “direct agreements”}

+ Insofar as the attraction of financing, as a rule, constitutes at least 60-70 percent of the total funds that the private partner is expected to invest in the project, the legally-defined status of the financing parties in PPP projects.

\textsuperscript{6} Clause 5, Art. 3, PPP Law; Clause 2, Art. 5, PPP Law

\textsuperscript{7} A good example would be the project involving the construction/reconstruction of Pulkovo Airport facilities, implemented “via” Northern Capital Gateway LLC.
between the public partner, private partner and financing party.\(^8\)

<table>
<thead>
<tr>
<th>5. Necessity of substantiating “comparative advantage” over the implementation of the projects within the scope of standard state/municipal-contract mechanisms prior to the adoption of a decision to proceed with PPP-project implementation.(^9)</th>
<th>- / N</th>
</tr>
</thead>
<tbody>
<tr>
<td>The method for evaluating this “comparative advantage” is slated to be approved by the RF Government at a later date, at which time it will become possible to provide a fuller analysis of this development. However, if this method should proceed from the standpoint that “comparative advantage” is treated first and foremost as the least burden on the budgets of the respective levels within the scope of the PPP project in comparison with a state/municipal contract, this development would be viewed as negative. This stems from the fact that the distinctive traits of a PPP project lie not only in financial expediency, but also in attraction of the specialized expertise of the private partners involved and distribution of the associated risks according to the principle “each party assumes the risks that it is most adept at handling;” thus, PPP could well turn out to be the optimal implementation format for certain projects – despite the fact that, from the standpoint of budgetary load in certain instances, PPP projects may be more “expensive” than those implemented under a state/municipal contract. If this supposition proves to be correct, the need to substantiate “comparative advantage” would emerge as a serious obstacle to the use of PPP mechanisms in Russia in cases where such mechanisms truly prove essential to project viability, albeit more expensive than other forms of implementation. If, on the other hand, in formulating its method of evaluating “comparative advantage,” the RF Government takes the aforementioned provisos into consideration, this development will emerge as nothing more than an additional procedural stage, fraught with added time and, quite possibly, financial costs in the preparation of PPP projects, but unlikely to result in any serious barrier to project implementation. It should also be mentioned that, in the practical implementation of PPP projects within the framework of regional legislation, we have come up against the need to substantiate the comparative advantage of a PPP project over a state contract (albeit in the absence of any formal requirements as to the content of such a substantiation or criteria as to its evaluation), which did not result in any serious difficulties in terms of project preparation.</td>
<td></td>
</tr>
</tbody>
</table>

| 6. Delineation of the concepts of “technical maintenance” and “operation” with respect to + |
|---|---|
| This delineation of obligations with respect to the subject matter of PPP agreements is undoubtedly positive and should promote greater “flexibility” in project structuring. |

\(^8\) Clauses 6, 7, Art. 3, PPP Law

\(^9\) Clause 8, Art. 3, Clauses 3, 5, Art. 8, Art. 9, PPP Law
<table>
<thead>
<tr>
<th>7. Ability for several public partners to participate in a PPP project (“combined tender”) and option for the competent authorities and/or legal entities to exercise certain rights and discharge certain obligations of the public partner.</th>
<th>+ / -</th>
<th>In and of itself, this ability should be viewed as a positive, insofar as it widens the scope of PPP-project implementation possibilities and makes it possible to implement sweeping PPP projects across the territory of several governmental units. Permission is granted, pending the RF Government’s establishment of the respective list, for some of the public partner’s rights to be exercised, and some of its obligations to be discharged, by the competent authorities and/or legal entities – for instance, by specialized organizations created by governmental units for the purposes of handling tasks in the transport-infrastructure area, etc. This development should be welcomed, since it is clear that such authorities/organizations are better equipped to execute the rights and obligations of public partners within the scope of their respective powers. The PPP Law defines the range of terms that must be included in the agreements concluded by public partners on the holding of a combined tender, which is a good reference framework for their administration – even in regions lacking much experience in this area – while refraining from establishing an exhaustive list, allowing for greater flexibility in tailoring combined tenders for specific projects. On the other hand, the private partner’s obligation to conclude a separate PPP agreement with each public partner is ambiguous, giving rise to numerous questions as to the liability of said public partners under such agreements, the potential ramifications of agreement termination with one of the public partners, etc. In our opinion, it would be more expedient to envision the public partner as a grouping of several governmental units in such cases (i.e. to use the civil-law concept of plurality on the part of the public partner).</th>
</tr>
</thead>
<tbody>
<tr>
<td>8. Inclusion in the list of requirements imposed on the private partner of a mandate stipulating its holding, in accordance with applicable RF law, of the appropriate licenses to engage in certain types of activity, self-regulating organizations’ admissions to perform the work envisioned by the agreement and any other permits required for performance of the agreement.</td>
<td>N / -</td>
<td>In our opinion, this requirement is phrased somewhat incorrectly, insofar as the private partner/special-purpose vehicle would not be required to hold said permits/admissions in the event of its retention, for project-implementation purposes, of contractors in possession thereof. We doubt that, in each and every case, the SPV would be willing to procure all of the necessary permits/admissions on its own, and suppose that, in practice, the requirement stipulated above would be highly unlikely to pose a serious hindrance to the implementation of PPP projects. Nevertheless, in the event of a literal interpretation of this requirement on the part of the public authorities making the decision as to the implementation of PPP projects, the grouping of potential participants vying for the right to conclude PPP agreements would be dramatically restricted.</td>
</tr>
</tbody>
</table>

---

10 Clauses 9, 10, PPP Law  
11 Clause 12, Art. 3, Art. 20, PPP Law  
12 Subclause 4, Clause 8, Art. 5, PPP Law
Furthermore, the PPP Law does not decisively answer the question of the stage at which the potential private partner must hold the required admissions/permits. The provisions of the PPP Law dealing with this issue are subject to varying interpretation. If it turns out that the admissions/permits are required at the early stage of bid submission on project implementation within the scope of a private initiative and/or application filing for tender participation, this would greatly restrict the range of possible private partners (clearly, the obtainment by the SPV of the respective admissions before its participation in project implementation is finalized would be commercially inexpedient).

9. The PPP Law restricts the possible forms of PPP-project implementation by listing the compulsory elements of a PPP agreement, such as: “the construction and/or reconstruction of the subject matter of the agreement with the private partner” and “the origination, on the part of the private partner, of title to the subject matter of the agreement – provided said subject matter’s encumbrance” (with the possibility, upon expiration of the period stipulated by the PPP agreement, of title transfer to the public partner).  

   This provision restricts the possible forms of PPP, reducing them to only those forms envisioning the construction/reconstruction of the subject matter of the agreement and origination of the private partner’s title thereto following its creation.

   In international practice, the number of possible forms of PPP-project implementation is far broader and encompasses much more than construction/reconstruction involving origination of the private partner’s title to the subject matter of the agreement. Even at the level of regional legislation, St. Petersburg legislation for example, numerous forms of PPP are encountered – some entirely unrelated to construction/reconstruction of the subject matter of the agreement – that nonetheless meet PPP criteria. For example, one of the PPP forms used in St. Petersburg involves the public partner’s granting to the private partner of the exclusive rights or property (subject matter) stipulated in the agreement for the purposes of the private partner’s provision to consumers, in the manner and on the terms set forth in the PPP agreement, of goods, works and/or services using the subject matter of the agreement. Clearly, following the PPP Law’s entry into force, the implementation of PPP projects in such formats will become impossible.

   In our view, it would be more expedient for the PPP Law to establish an open-ended list of the elements of a PPP agreement and provide that the respective executive body of the Russian Federation, RF constituent entity or RF municipality is free to establish other forms of PPP (elements of PPP agreements).

   With regard to the “agreement subject-matter’s encumbrance” mentioned in the PPP Law, this provision does not cause us particular concern, insofar as a similar encumbrance is envisioned with respect to concession agreements – the Unified State Register of Real-Estate Rights and Related Transactions (EGRP) will contain an entry indicating that the given item is the subject matter of a PPP agreement, while the substance of said encumbrance is disclosed in the PPP Law and respective PPP agreement.

10. The PPP Law explicitly envisions the public partner’s co-financing of the private partner’s

   In essence, the respective provisions of the PPP Law are analogous to the “concession-grantor payment” already envisioned with respect to concession agreements. Needless to say, the possibility of imposing

---

13 Clause 2, Art. 6, PPP Law
creation, operation and/or technical servicing of the subject matter of the PPP agreement.\(^{14}\) Some of the expenses entailed under the PPP project on the public partner and securing the public partner’s obligations (through state/municipal guarantees), as explicitly provided by the law, is worthy of a positive assessment. Moreover, it is clear from the PPP Law that the volume of such PPP-project financing by the public partner can even exceed the level of financing by the private partner.\(^{15}\)

11. Ability to pledge the subject matter of the PPP agreement in favor of financing parties in the case of direct agreement.\(^{16}\) + This ability reduces the risks assumed by financing parties in the implementation of PPP projects, thereby enhancing the investment attractiveness of such projects for financial institutions.

12. Establishment of an exhaustive list of objects suitable for PPP agreements. Possibility to conclude PPP agreements with respect to several objects.\(^{17}\) -/+ In our opinion, in view of the volatile business environment and economic situation, it is less than prudent to set a finite list of objects suitable for PPP agreements, insofar as, in the event of the emergence of new socially-significant areas appropriate for the implementation of such projects, the need would arise to amend the PPP Law in order to expand the list in each case of the emergence of such new objects. In our view, it would be more expedient to establish general criteria governing the determination of potential agreement objects (social significance, etc.) and introduce an open-ended list of such objects.

However, in view of the fact that the list of potential objects, as envisioned by the PPP Law, is rather broad, we believe that in the foreseeable future, the finite nature of the list, as is, should not give rise to significant problems in terms of the implementation of PPP projects in Russia. We should emphasize that the PPP Law excludes certain items that can serve as the subject matter of concession agreements from serving as the subject matter of PPP agreements, such as, among others: facilities involved in the generation, transmission and distribution of thermal power, housing and public-utility facilities, subway facilities and highways (with the exception of private roads). That said, it is also possible to conclude PPP agreements with respect to certain items not eligible for the conclusion of concession agreements: private roads, aircraft, stationary and/or floating (offshore) platforms, artificial islands, reclamation systems.

The permissibility of concluding PPP agreements with respect to several objects is, in our opinion, a positive norm that broadens the scope of PPP-project structuring and complex-project implementation.

13. Obligation of the public partner to consider private-partner proposals with respect to amending the material terms of a PPP agreement and establishment of the procedure + Consolidation (if only partially) of the principle of full reimbursement of the private partner’s expenses entailed in implementation of a PPP project can certainly be viewed as a positive development, insofar as the availability of such compensation mechanisms is one of the key factors underlying the investment attractiveness of PPP projects for private partners. The same holds true for the mechanisms protecting the

---

\(^{14}\) Subclause 3, Clause 3, Art. 6, PPP Law; Clause 5, Art. 12, PPP Law

\(^{15}\) Clause 4, Art. 6, PPP Law. Please note that in this case, the subject matter of the PPP agreement is subject to transfer into the ownership of the public partner upon expiration of the timeframe specified therein.

\(^{16}\) Clause 6, Art. 7, PPP Law

\(^{17}\) Art. 7, PPP Law
for making such amendments; determination of the procedure for early termination of a PPP agreement and the ramifications of such early termination, in due consideration of compensation for the private partner’s expenses.\(^{18}\)

<table>
<thead>
<tr>
<th>14. Ability to substitute the private partner under a PPP agreement, inter alia, without the holding of a tender.(^{19})</th>
<th>+</th>
<th>This ability is another factor dramatically impacting the investment attractiveness of PPP projects for financing parties, insofar as it provides them with additional guarantees that the project in which they are investing will be open to continuation – even in the event of the default of the initial private partner.</th>
</tr>
</thead>
<tbody>
<tr>
<td>15. The procedure governing the private initiative behind PPP projects has been hammered out, but the Law still fails to envision compensation for the private partner’s expenses in the event that, as a result of the tender held within the scope of such private initiative, the PPP agreement is concluded without the participation of the private partner preparing the project (so-called “unclaimed bid.”)</td>
<td>+/-</td>
<td>Given the limited resources available to governmental units in terms of the preparation of PPP projects (where such preparation is commonly a labor-intensive and high-cost endeavor insofar as it assumes the participation of technical, financial and legal experts), the availability of a private-initiative procedure could increase the usage frequency of PPP mechanisms in the implementation of socially-significant projects. However, given the fact that, as was mentioned above, the preparation of PPP projects entails significant cost outlays, in the absence of the guaranteed compensation of such expenditures, the willingness of private partners to prepare and initiate projects independently is unlikely to be substantially higher in comparison to the status quo prior to the adoption of the PPP Law. Another negative aspect of the private-initiative procedure envisioned by the PPP Law is the obligation of the private partner coming forward with such an initiative to provide an independent guarantee issued by a bank or other lending institution (bank guarantee) in an amount of not less than 5 percent of the total volume of the project's projected financing. Given that a bank guarantee is an expensive instrument, and that compensation for the expenses of the party coming forward with the initiative is not envisioned by the PPP Law in the event of an unclaimed bid, the need to incur such expenses (in view, among other things, of the considerations mentioned above) could scare off potential PPP-project initiators. The final negative provision of the PPP Law concerning private initiative, as we see it, is the consolidation of the following grounds for the issuance by the public partner of a decision declaring the impossibility of project implementation: a) the public partner’s lack of proper title to the object stipulated in the proposal regarding project implementation; and b) the object’s encumbrance by third-party rights. In our view, property-right issues associated with the facility envisioned by the agreement could be tackled at later stages of project preparation, leading to the conclusion that project implementation should not be refused</td>
</tr>
</tbody>
</table>

\(^{18}\) Clauses 2-9, Art. 13, PPP Law

\(^{19}\) Clauses 13-19, Art. 13, PPP Law
16. Unlike the concession model of PPP-project implementation, the PPP Law does not envision mandatory private-partner payments during the operational and/or technical-servicing period of the facility governed by the PPP agreement.\(^{20}\)

|   | + | In our opinion, this is a positive norm, insofar as it allows for greater “flexibility” in the financial structuring of PPP projects. |

17. The issue concerning the allotment to the private partner of land plots, forest plots, bodies of water and subsoil blocks has been settled.\(^{21}\)

|   | + | This is definitely a positive norm, excluding the necessity of holding follow-up tenders (for the purposes of concluding PPP agreements and providing the private partner with the respective facilities) under the conclusion of PPP agreements and further project implementation. |

On the basis of the foregoing, it would be reasonable to conclude that the very fact of the PPP Law's adoption represents a very important step towards the further development of PPP in Russia and that the positive aspects associated with its adoption outweigh the negative. However, the negative provisions of the PPP Law that do exist are fraught with significant problems capable of seriously undermining the mechanism’s broad expansion throughout Russia. In this connection, it must be admitted that the PPP Law is in need of refinement with the aim of enhancing the investment attractiveness of PPP projects to potential private partners. We anticipate a flurry of proposals in the near future on further elaboration of the provisions of the PPP Law, in whose drafting various PPP experts have already become involved – including Dentons.

Please note that the present brief provides but an overview of what we believe to be the most salient provisions of the PPP Law; the PPP Law certainly deserves a more thorough analysis, from the standpoint of the specific projects you may be planning to implement within the framework of PPP. In this connection, we would be happy to answer any questions that you may have concerning the PPP Law as a whole and/or its individual provisions.

\(^{20}\) Clauses 9-10, Art. 12, PPP Law

\(^{21}\) Art. 33 and Chapter 7, PPP Law
## Contacts

**Karina Chichkanova**  
Partner, Head of the Russian Infrastructure and PPP and of the St. Petersburg Real Estate Practices  
T: +7 812 325 84 44  
karina.chichkanova@dentons.com

**Ilya Skripnikov**  
Of Counsel of the Russian Infrastructure and PPP Practice  
T: +7 495 644 05 00  
ilya.skripnikov@dentons.com

**Tair Suleymanov**  
Associate of the Russian Infrastructure and PPP Practice  
T: +7 812 325 84 44  
tair.suleymanov@dentons.com