

# Development of PPPs in the Kyrgyz Republic

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# Agenda

- PPP-friendly environment
- PPP law
- PPPs in practice
- Long-term maintenance PPPs for roads

# PPP-Friendly Environment

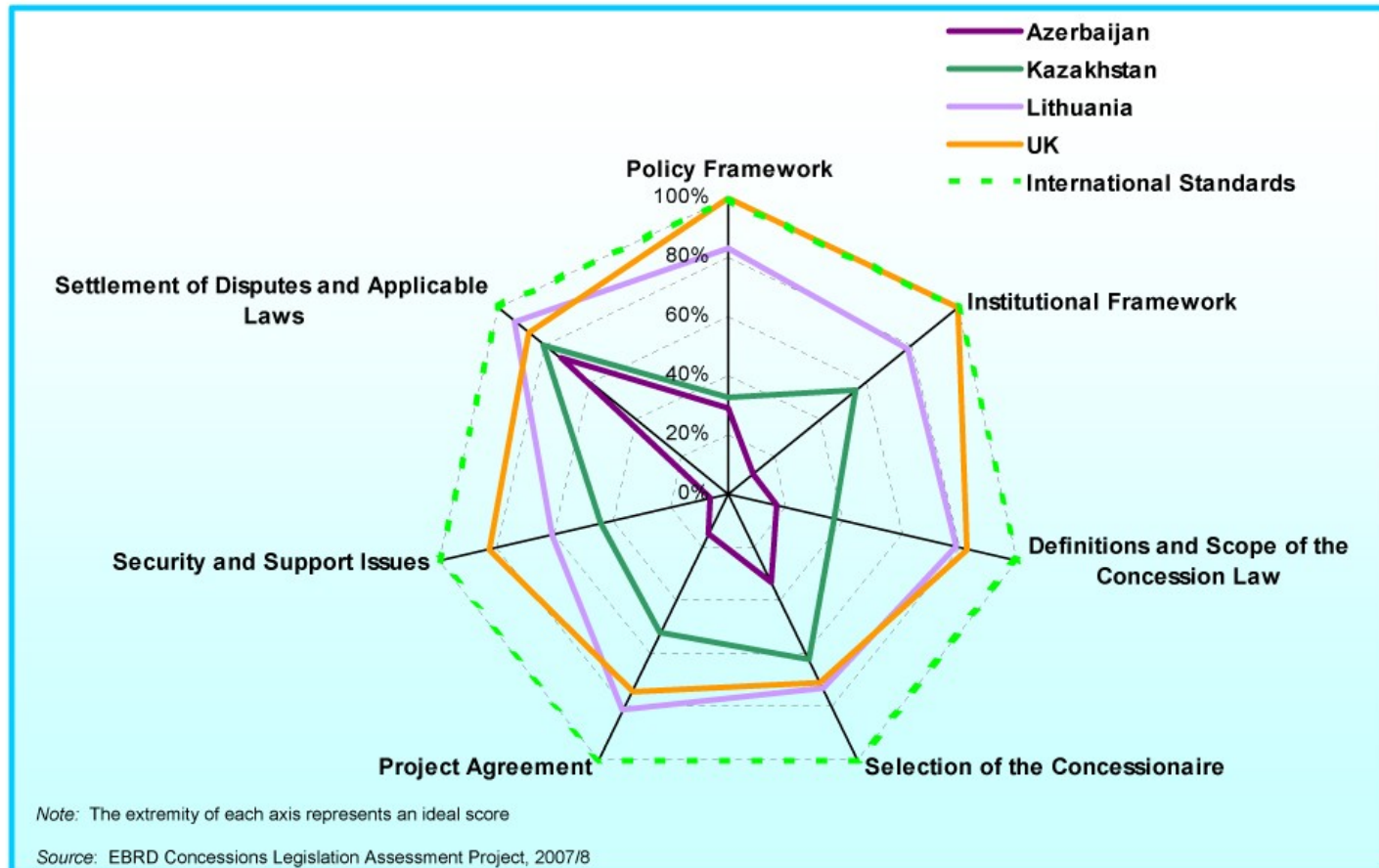
- Key importance to establish an enabling environment
- Simple and general PPP law with guidelines in decrees
- Some main aspects:
  - Definition of concepts and terms
  - Transparent and competitive bidding
  - Allowing for bid evaluation on a net present value (NPV) basis
  - Provision for international arbitration
  - Concept of contract renegotiation and amendments
  - Allowing public disclosure of concession agreements
  - No differentiation in treatment for national and foreign investors

# PPP-Friendly Environment

- SWOT analysis carried out under the TRACECA project on the Coordination of National Transport Policies for the Central Asian Republics in 2007.
- Concession Law exists since 1992 and was amended in 2004.
- EBRD evaluates a “low compliance” level (problems identified in the scope of application, list of objects subject to concessions, selection procedures, negotiation flexibility, security).

# PPP-Friendly Environment

Level of compliance in core areas of concession legislation



# PPP-Friendly Environment

## **Opportunities:**

- Important transport investment opportunities especially in roads construction and maintenance, but also airports.
- Expectations of efficiency gains from improved transport administration.
- Diminution of intra-regional and inter-regional development disparities.
- Increasing interregional and international traffic.

# PPP-Friendly Environment

## **Threats:**

- Traffic development restrictions because of closed borders or border restrictions due to political or security reasons
- Development of transport corridors ignoring / bypassing Kyrgyz Rep due to prohibitive non-physical barriers of trade and transport.
- Problems of good governance.

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# PPP law

- Law on PPPs passed on 11 May 2009 № 154
- Decree № 323 on 27 May 2009 “On approving the procedures ...”
- Asian Development Bank has considered the adoption of these regulatory legal acts as contradictory to generally accepted international PPPs practice.
- On 9-11 October 2008 Expert Working group on PPPs met in Samarkand under project for Coordination of National Transport Policies of the Central Asian Republics and agreed a model PPP law.

# PPP Law

- Kyrgyz law covers only 5 of the generally accepted 27 points needed in a PPP law.
- Kyrgyz law covers: objectives, principles, transparency, private partner's guarantees, dispute settlement..
- But does NOT cover 22 other issues...

# PPP Law does not cover...

- Definitions
- Equal treatment and non-discrimination,
- Rateability principle,
- Balance of risks,
- Free competition,
- Freedom of contracts,  
Cooperation, Government powers,  
Competence on economic  
planning, on budget execution, of  
specialist organization on PPP  
issues, of local governments,
- National Council on PPPs,
- Subject matter of the PPP,
- Basic contractual forms of PPP
- PPP contract realization methods,
- Ownership of intellectual property,
- Control over realization of PPP, ,
- Private and state partners' responsibilities,
- Access to information,
- PPP initiation process,
- Information message on PPP,
- Private partner selection commission,
- Requirements of the offers,
- Evaluation of the offers,
- Making the PPP contract,
- Termination of the PPP,
- State register of PPP contracts,
- State partner's guarantees,
- Risk and risk allocation,

# PPP Law

- These issues need to be addressed.
- We propose consideration of the model law already agreed by Kyrgyz and other experts from Central Asian Republics.
- UNECE Team of Specialists is ready to help.

ПРОЕКТ

## МОДЕЛЬНЫЙ ЗАКОН О ГОСУДАРСТВЕННО-ЧАСТНОМ ПАРТНЕРСТВЕ

### Глава I ОБЩИЕ ПОЛОЖЕНИЯ

#### Статья 1. Цели и сфера применения настоящего закона

Цель настоящего Модельного закона (далее - Закон) - обеспечить правовые условия для привлечения частных инвестиций для реализации общественно значимых проектов и программ в широком спектре отраслей экономики, социальной и инновационной сферах, обеспечения эффективности использования имущества, находящегося в государственной собственности, повышения качества работ, услуг, а также других видов деятельности общественного значения.

Настоящий закон устанавливает основные принципы государственно-частного партнерства, формы и методы его реализации, порядок создания и функционирования, права и обязанности государственного и частного партнеров.

#### Статья 2. Основные понятия, используемые в настоящем Модельном законе

В настоящем Модельном Законе основные понятия и термины используются в следующих значениях:

- 1) государственный партнер - юридическое лицо или объединение таких лиц, представляющие интересы общества и устанавливающие партнерские отношения в рамках государственно-частного партнерства;
- 2) частный партнер - юридическое или физическое лицо и/или объединение таких лиц, независимо от организационно-правовой формы, места нахождения капитала, ставшее в соответствии с настоящим законом участником государственно-частного партнерства;
- 3) государственно-частное партнерство - взаимовыгодное сотрудничество между государством и бизнесом, реализуемое в различных формах и ставящее своей целью решение политических и общественно значимых задач на национальном, региональном и местном уровнях, которое осуществляется путем заключения и исполнения договора, в том числе концессионного;
- 4) договор о государственно-частном партнерстве - письменное соглашение между государственным и частным партнерами, определяющее права, обязанности и ответственность сторон, условия реализации проекта государственно-частного партнерства;
- 5) объект государственно-частного партнерства - имущество, создаваемое (реконструируемое), эксплуатируемое в соответствии с договором о государственно-частном партнерстве;
- 6) оферент - юридическое или физическое лицо и/или объединение таких лиц, вступающее с предложением установить государственно-частное партнерство;
- 7) оферта - письменное предложение, поданное оферентом государственному партнеру, об иницировании или установлении государственно-частного партнерства;
- 8) публичный интерес - любая выгода, форма и ценность которой определяются решением государственного партнера, полученная в пользу государственного партнера, а также лиц, проживающих и/или работающих на территории Республики;
- 9) проект государственно-частного партнерства - совокупность мероприятий по осуществлению договора государственно-частного партнерства, реализуемого в течение ограниченного периода времени и имеющего завершаемый характер;
- 10) специализированная организация по вопросам государственно-частного партнерства - организация, созданная Правительством для оказания услуг по вопросам государственно-частного партнерства;
- 11) реконструкция - мероприятия по переустройству на основе внедрения новых технологий, механизации и автоматизации производства, модернизации и замены морально устаревшего и физически изношенного оборудования новым более

# Other laws

- A concession law needs to be compatible with other legal texts:
  - Procurement law(s) - allow for competitive bidding
  - Dispute resolution law – international arbitration?
  - Expropriation law – provisions for compensation?
  - Foreign ownership legislation - foreign ownership restrictions on land or land rights, foreign equity limitations to domestic companies?
  - Labour law
  - Foreign exchange law
  - Tax system
- Additionally consistent and objective judicial enforcement

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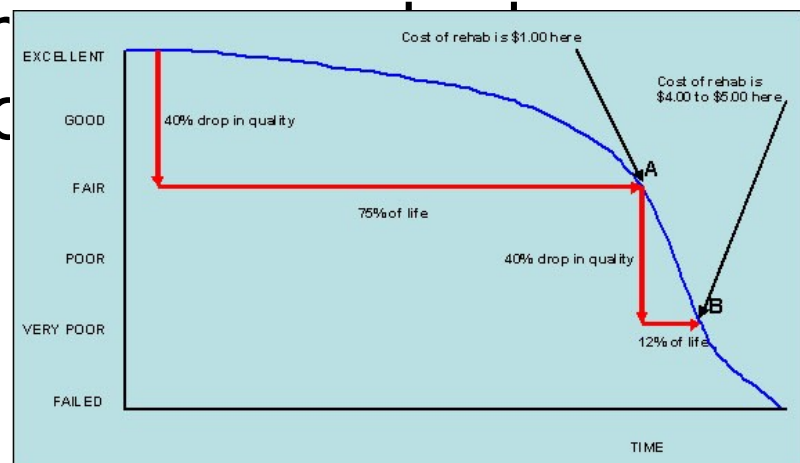
# PPPs in practice in Kyrgyz Republic

## **Potential projects include:**

- the construction of small and medium-sized hydroelectric power stations,
- rehabilitation of existing thermoelectric plant,
- construction and maintenance of toll roads,
- Long term maintenance of major roads.

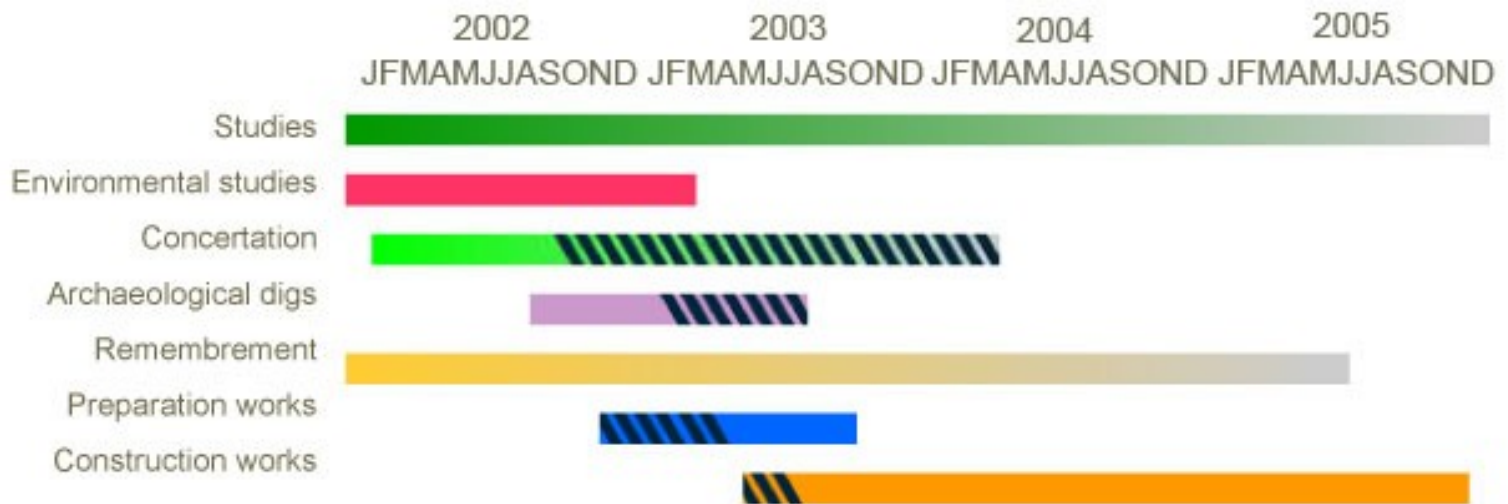
# Why do PPPs?

- PPPs are an option for public authorities that want to change focus from provision of infrastructure to provision of service
- PPPs are not just about finance - private sector commitment to maintenance and quality.
- Road sector performance can be improved by adopting a life cycle approach



# Concurrent engineering = significant time savings

Example: A28 Rouen-Alençon motorway – 128 km in 4 years



# Improved quality of service



# How to do PPPs

- PPPs demand a relationship of trust & risk sharing.
- A strong need for major preparations and reforms of the public sector to create an “enabling environment”
- Stable political environment and good governance principles
- Healthy economic and financial environment
- General policy framework for private sector participation and commitment to policy stability

# PPPs - the basics

- A clear policy statement needed to denote high political commitment (binding statement) for the need to attract private funds in the transport sector.
- General legal framework
  - The legal framework needs to be clear, consistent and not conflicting, stable and fair
  - Usually it consists of:
    - the concession law
    - complementary decrees and
    - other associated laws

# Know-how needed

- PPP implementation requires highly specialised, multi-disciplinary knowhow (legal, technical, financial, economic) in the public sector, mainly focusing on:
  - PPP policy development and PPP concept promotion
  - facilitating government coordination
  - environmental assessment
  - contract negotiations, management and supervision (specialised legal knowhow)

# PPP Unit

- Must set up and operate a PPP unit
- Focused, dedicated and experienced team helping to organise pre-tender stage:
  - From concept to PPP management
  - Expertise and oversight
  - Professional and politically independent
  - Trained specifically in PPP procurement procedures
  - Use consultants to fill in missing skills and capabilities
  - Good governance ensures open and fair

# Private sector capacity building

- Local private transport actors should be assessed since some of them might be potential investors and they facilitate the PPP process
- In particular, the following should be assessed:
  - Consulting firms for technical design, demand analysis, supervision
  - Contractors for construction and maintenance
  - Financial markets (banking system, capital markets)
  - Potential operators (eg for toll roads as well as "free" roads)
  - Insurance companies

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# Long-term maintenance PPPs

## Example: Rajasthan Mega-Highways project

Before

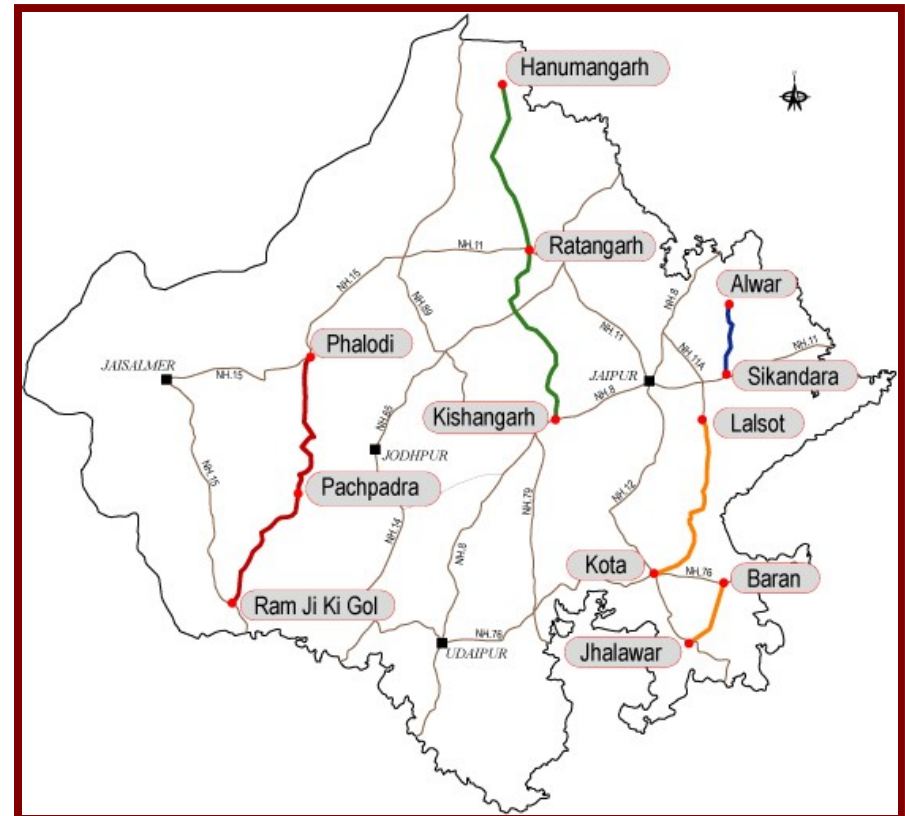


After



# Rajasthan Mega Highways Project

- Upgrading of 1,053 km of key state roads to two lane carriageway with paved shoulder
- Identified roads to complement National Highway stretches and provide better connectivity in north-south direction



# Project Philosophy

- Single largest road project under PPP framework in India
- Clubbing of different road corridors in a single project enables cross-subsidisation of marginally/un-viable corridors
- Project structure provides focused attention to project development and implementation

# Advantages of Megahighways model

- Unbundling of risks (construction, maintenance, traffic/revenue and financing risks at different stages and appropriate times)
  - With BOT all risks are clubbed -> increase in bid prices
- Returnable up-front capital support
  - In BOT models, up-front capital grant not returnable by operator, even if project does very well
- Project surpluses to be reinvested in Project Roads/State Roads since returns on equity are capped
  - In BOT models, surpluses are retained by BOT operator

# Conclusions

1. What is needed is a systematic approach with the highest political support essential
2. PPPs are not just about money, but about quality and value
3. PPPs do not have to mean tolling – eg long-term maintenance PPPs
4. UNECE Team of Specialist ready to help the Kyrgyz Republic.

**Thank you for your attention**

**Благодарю вас за ваше**

**ВНИМАНИЕ**

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