

West Africa (Guinea) – PPP Law

Full Description

[Law n°0032/2017/AN of 4 July 2017 \(“PPP Law”\)](#) is the main legislation governing public-private partnerships in the Republic of Guinea. The law was introduced to replace Law L/97/012/ AN of 1 June 1998 (“BOT Law”) which at the time governed the financing construction, operation, maintenance and transfer of development infrastructure by the private sector.

The new PPP Law repeals the BOT Law and all provisions relating to the delegation of public services contained in the Code of Public Procurement (Code des Marchés Publics).

Key features

- The PPP Law applies across all industries, except for mining and petroleum which are covered by the Mining Code (Code Minier) or the Petroleum Code (Code Pétrolier). However, infrastructure developed to facilitate the exploiting of mining and petroleum rights (e.g. railways, ports etc.) are intended to be covered. The PPP Law also does not apply to public procurement which remains subject to the Code of Public Procurement (Code des Marchés Publics).
- The maximum term for PPP contracts is 30 years but this can be extended with the approval of the Minister of Finance.
- The law sets out the administrative framework for policing the PPP Law, in conjunction with the Ministry of Finance. It establishes for the creation by decree of the PPP Committee which will be in charge of policy and the PPP Unit whose composition and objectives and operations will also be fixed by decree. The existing ARMP will be responsible for the regulation of PPPs and the ACGMP will be responsible for monitoring procurement procedures. The extent of each of these bodies’ responsibilities is not entirely clear as these are also intended to be fixed by decree.
- The PPP Law sets out the different types of PPP Contracts and establishes two main procurement procedures; the tender procedure (which is to be the norm) and the direct negotiation procedure (which is intended to be used only in exceptional circumstances). The details for these procedures will be implemented by decree. Other features to be dealt with by decree include: relevant contract thresholds and mandatory terms / clauses to be included in all PPP contracts. There is also the possibility for third parties to submit unsolicited proposals to the State (l’offre spontanée).
- While taxes and incentives that are available under Guinean laws and the Investment Code can be taken advantage of, the PPP Law does not establish a stabilization regime for taxes and incentives during the lifecycle of a PPP contract.
- The PPP Law also provides for the unilateral termination by the State of a PPP contract if it is in the public interest, with a right to receive compensation from the State.

- There are sanctions for corrupt and fraudulent practices and there is a right for persons who have suffered damage as a result of those practices to be indemnified by the State or other relevant third parties involved.

The difficulty posed is that to date, the decrees contemplated by the PPP Law have not been passed and therefore the substantive operational mechanics as of the PPP Law are uncertain. As a result, there are no model contracts or agreements and no operational guides.

According to the IMF's [Technical Report \(Public Investment Management Assessment\)](#) dated March 2019, 20 PPP contracts had been concluded at the time of the report, on the direct negotiation basis and in disregard of controls. None of these contracts are publicly available.

The sample “build-operate-transfer” (“**BOT**”) contracts (being a type of PPP contract) for the delivery of **port** and **railway** infrastructure in Guinea provided on this portal exclude the operation of the PPP Law.

Until the PPP Law is operational, it is anticipated that the PPP contracts will continue to be negotiated outside the PPP Law framework.

Guinea is also a member of the Organization for the Harmonization of Business Law in Africa (“**OHADA**”) and is a party to a series Uniform Acts governing insolvency, general commercial law, and dispute resolution. All Uniform Acts can be found [here](#).

Other laws relevant to PPP projects in Guinea include:

- Code des Investissements loi L/2015/008/AN du 25 mai 2015 ([Investment Code Law L/2015/008/AN of 25 May 2015](#)); and
- [Code of Public Procurement](#) (Code des Marchés Publics) is made up of the Public Procurement Law No. L/2012/020/CNT of 11/10/2012, which enables Public Procurement Decree No. D/2012/128/PRG/SGG of 3/12/2012.