

THE LEGAL FRAMEWORK OF THE INSTITUTE OF PUBLIC-PRIVATE PARTNERSHIP IN CENTRAL ASIA

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Abstract. *Central Asia (CA) is a region facing a substantial infrastructure deficit. In recent years, CA countries have turned to public-private partnerships (PPPs) as a potential avenue for infrastructure improvement. This article aims to comprehensively understand the regulatory framework in the PPP field and assess the impact of legislation on developing partnerships between the state and the private sector. The study is based on PPP legislation in CA countries, comparative analysis, statistical data from government agencies, international literature, and research materials. The analysis reveals that while CA governments have established legal and institutional frameworks for PPPs, the level of partnership development could be more balanced and satisfactory. Therefore, this article examines the regulatory framework and identifies challenges and opportunities, highlighting the potential of PPPs to drive sustainable growth and development.*

Keywords: *Central Asia; public-private partnership; PPP legislation; infrastructure projects; sustainable growth.*

Reikšminiai žodžiai: *Centrinė Azija; viešojo ir privataus sektorių partnerystė; VPSP teisės aktai; infrastruktūros projektai; tvarus augimas.*

Introduction

The countries of Central Asia (CA) significantly prioritize public-private partnerships (PPPs) as critical drivers of sustainable infrastructure development. This approach is widely adopted in many developed countries as it offers the balanced distribution of risks, utilizes the expertise of the private sector, and produces innovative strategies that incentivize the enhancement of public infrastructure. The CA countries, recognizing the necessity of infrastructure projects (Amedanou 2023, 295–309), are keenly aware that robust infrastructure is the cornerstone of economic progress. A well-connected infrastructure network not only elevates quality of life for citizens, but also fosters trade, improves the business climate, and attracts investment (Edobor Arimoro 2022, 109–111).

PPP is a globally recognized practice for implementing infrastructure projects in various fields, including transportation, construction, energy-related projects, utility projects, and the renovation of sports facilities, schools, hospitals, and housing (Cui et al. 2018, 773–774). Hard and soft infrastructure is pivotal to economic growth and sustainable development. Therefore, establishing an institutional and regulatory legal environment that fosters favorable conditions for the CA countries is paramount. The role of infrastructure in economic growth and sustainable development is crucial, underscoring the necessity of advocating for PPP in the CA countries.

Presently, the CA countries are grappling with severe infrastructure issues across various sectors of the economy. The primary culprits are insufficient investment and many infrastructure facilities needing construction, repair, and maintenance. For instance, the primary energy source in CA countries is coal, which releases significant amounts of harmful gases into the atmosphere, hindering the achievement of the Sustainable Development Goals (OECD 2019, 101–108). The wellbeing of citizens worldwide hinges on investments in infrastructure projects (Li, Li, and Zhang 2023, 103–104). This underscores the criticality of the situation and the potential impact of PPP legislation on infrastructure development.

This article aims to assess the impact of PPP legislation on infrastructure development in the CA countries. The authors firmly believe that creating properly organized PPP laws will not only positively impact the development of infrastructure processes in the CA region, but also pave the way for a brighter, more sustainable future. It has been proven that many countries where PPP is successfully implemented utilize a solid regulatory and institutional framework for implementing projects, especially developing countries. Institutional and regulatory frameworks must be adequate in order to manage PPP arrangements, given their long-term nature and the need to adapt to changes throughout the life of a PPP project. The World Bank also recommends the creation of sustainable, reliable, and inclusive legal norms in the PPP field. Therefore, it is necessary to create good laws to develop infrastructure goals, implement the government's programs, and achieve social progress (JSC Kazakhstan Center for Public-Private Partnership 2022, 4–16). To understand the state of development of the PPP mechanism in CA, the following questions were raised:

- RQ1: How effectively does PPP law work in CA countries?
- RQ2: What aspects need to be improved or changed for the effective operation of PPP?
- To answer the above questions, the following hypotheses were postulated:
- H1: Adopting an effective and favorable legal framework will strengthen the development of infrastructure projects in CA countries.
- H2: Laws regarding PPP need to be improved in all CA countries to attract investment and ensure openness and equal rights.

Literature review

PPP, a concept with diverse interpretations globally, holds significant relevance around the world. In the UK, it is referred to as a private finance initiative (PFI); in Canada, Australia, and the USA, it is known as P3; in France, it is a public-private partnership contract, or *Societe d'economie mixte (SEM)*; in the countries of the former Soviet Union, it is termed a PPP (Pashina et al. 2018, 2734–2738).

Veblen (Valiati and Fonseca 2014) considers institutions as habits of thinking, observing that culture influences economic relations; therefore, an evolutionary approach is required to study the theory of public choice, and the principles of new public administration (NPM) have set a trend in the search for solutions to emerging problems in the field of public finance. Studying various PPP experiences from around the world, Veblen determined that the success of a PPP depends on legal, cultural, and social factors (Kociemska 2020, 581–587). In order to improve PPP, the European Center for PPP Expertise has determined the cost-performance ratio (VfM) method for using PPP and noted the time and cost indicators, i.e., the signifiers of the implementation of projects on time and within budget (Verweij and Satheesh 2023, 680–682; Kosycarz, Nowakowska, and Mikołajczyk 2019, 2–7). It is noted that infrastructure projects require significant financial investments and that the primary purpose of using PPP is finance (Shvydenko et al. 2020, 1–2). This indicates that a transparent and understandable legal and organizational PPP framework with competitive reporting can increase the volume of PPP projects and the interest of business entities in using this mechanism to improve infrastructure.

Steelberg (2021, 727–728) points out the increasing use of PPP in low- and middle-income countries to address infrastructure demands. This trend has led to laws facilitating the participation of business in infrastructure projects, often in collaboration with banks and international organizations. The author further argues that the underdevelopment of infrastructure networks, leading to issues such as unemployment, transportation, and energy problems, is a key factor hindering the success of PPP.

Other studies have argued that sustainable organizational management, leadership, strict compliance, and contract management are key aspects of a successful partnership

(Abdul Latif et al., 2023, 1–3). In addition, reducing opportunism on the part of both public and private partners is essential in order to minimize the collapse of projects and improve partnerships. Abdul Latif et al. also paid particular attention to the factors contributing to successful PPP implementation. According to their study, such factors as proper coordination, trust, quality of communication, and cooperation are crucial to the successful implementation of PPP projects. The above factors depend on a robustly organized legal and institutional framework through which public and private partners can interact.

These conclusions are consistent with those of other researchers, as Ismail (2013, 6–9) noted that one of the essential criteria for developing PPP in Malaysia is effective governance and a favorable legal framework. This observation is corroborated by the findings of Chan et al. (2010, 484–486), who argue that to ensure the successful development of PPP in China, there is a “favorable legal framework” paired with a “strong and excellent private consortium.” The latter study also classified 18 critical success factors, three of which are “joint responsibility,” “political and social stability,” and “reasonable state control.”

In general, the state’s role is to create a legal framework that would stimulate the use of the PPP mechanism, provide reliable protection to investors, and create equal conditions by establishing priority standards for PPPs.

Materials and Methods

In this study, we analyzed the legal framework presented in Table 1. Regulatory laws were obtained from the legal information database. A comparative analysis of the legal norms in the field of PPP was conducted in CA countries by analyzing their legislative frameworks. The purpose was to identify similarities and differences among nations and to evaluate the effectiveness of the regulatory framework in each country. The authors reviewed the literature related to PPP from over the past decade. This involved conducting a comprehensive search of electronic databases, including Scopus, Web of Science, and Google Scholar, as well as the official websites of governments and government agencies in CA countries. The last search was performed on April 28, 2024, using the online library of the University of Aix-Marseille and the International Kazakh-Turkish University’s databases. The study was conducted based on a systematic review and meta-analysis, using data from national PPP centers and information from newspapers, conference presentations, and ministry websites.

Statistical analysis is one of the methods used to evaluate the development of PPP in CA countries. CA countries’ statistical committees and PPP centers collect and publish information in the public domain. To assess the effectiveness of PPP law in each country, we analyzed the total number of PPP projects by country in Figure 1. The official websites of the PPP centers were used as sources of information. In Figure 2, we identified projects by economic sectors, and the number of projects was distributed among the five main sectors of the economy by country, as shown in Table 2.

Results

General characteristics of the PPP legislative framework in CA countries

PPP legislation in CA countries was established after 2010. Table 1 provides an overview of the legislative framework, highlighting its commonalities and divergences.

Table 1. Comparative table of PPP legislation in CA countries

Norms	Kazakhstan 2015	Kyrgyzstan 2021	Uzbekistan 2019	Turkmenistan 2021	Tajikistan 2012
Parties	Public and private partners				
State Partner	Governments and state companies				Only government
Private partner	Legal entities and individual entrepreneurs				
Deadlines	5–30 years	0–49 years	3–49 years	3–45 years	Via contracts
Object of the agreement	All sectors of the economy	Public infrastructure and social services			
Contest	via tender				
Direct negotiations	Defined by law				
PFI	Defined by law				Absent
PPP center	Defined by law			Absent	Defined by law
Dispute resolution	Via negotiations, courts, or arbitrations		Via national law		Via council

Source: composed by the authors

Share of PPP projects in CA countries

Figure 1 depicts the number of PPP projects in CA countries. Despite the implementation of PPP law, there has been an uneven distribution of projects amongst the countries in the region. Kazakhstan has seen the most growth in PPP projects, accounting for over 70% of all regional initiatives. However, Turkmenistan and Tajikistan have yet to see much progress despite having a legislative framework. On the other hand, Uzbekistan and Kyrgyzstan have recently started developing PPP partnerships, and they currently account for

around 20% of the total number of projects in the region.

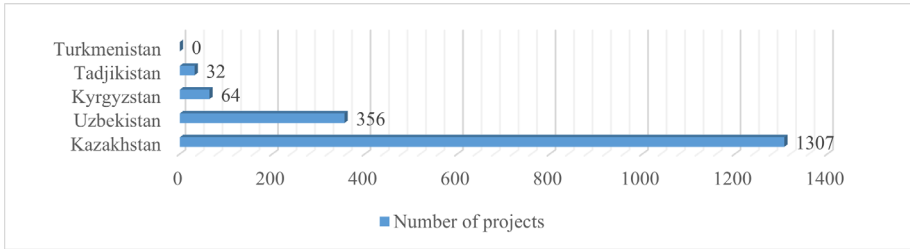


Figure 1. *Number of PPP projects in CA countries*
 Source: composed by the authors

PPP projects by sector in CA countries

Figure 2 shows the five main sectors in the economy of the CA countries where most PPP agreements have been formed. Education accounts for almost half of projects, while the healthcare and energy sectors account for approximately 16%. The infrastructure, transport, industry, agriculture, and communication sectors constitute less than 15% of projects, while those related to culture and sports occupy less than 10%.

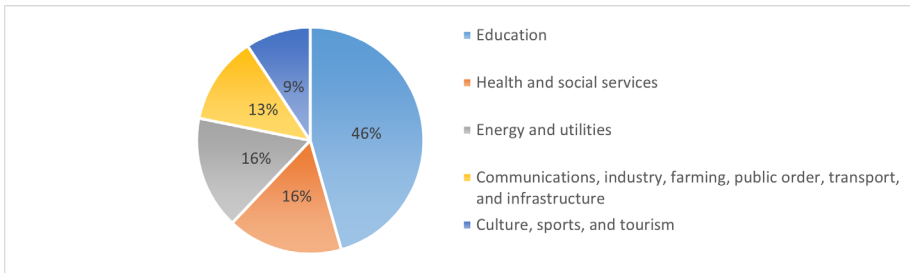


Figure 2. *PPP projects by sector in CA countries*
 Source: composed by the authors

Table 2 highlights five sectors of the economy in which PPP projects vary in each country. As shown in Figure 2, most PPP agreements in Kazakhstan are in education, and the fewest are in industry, agriculture, and communications. On the other hand, Uzbekistan, Kyrgyzstan, and Tajikistan are focusing more on developing transport, infrastructure, and agriculture projects. However, there are fewer projects in the field of education. In these countries, there are more projects in the field of infrastructure and transport than in culture and sports.

Table 2. PPP projects by sector in CA countries

Countries	Education	Health and social services	Energy and utilities	Culture, sports, and tourism	Communications, industry, farming, public order, transport, and infrastructure
Kazakhstan	748	234	165	92	68
Uzbekistan	43	45	115	40	107
Kyrgyzstan	6	9	2	18	29
Tajikistan	2	1	0	13	16
Turkmenistan	0	0	0	0	0

Source: composed by the authors

Discussion

This study underscores the transformative power of legislation for developing infrastructure projects in the CA region. The research, employing comparative legal analysis, validates the hypotheses, revealing that countries in CA with advanced PPP laws, such as Kazakhstan, have experienced a remarkable upswing in infrastructure projects across various sectors of the economy. Kazakhstan's success story is a beacon of hope, demonstrating the potential benefits of explicit regulatory legal acts in establishing PPP agreements and fostering more infrastructure projects.

Firstly, PPP legislation initiates the development of infrastructure projects in CA countries. All CA countries have a legal and institutional framework for PPP, but there are some similarities and differences between them in the legislation. Public and private partners are recognized as parties in all CA countries, but in Kazakhstan, financial institutions and operators are also recognized as parties. Public partners include the government, local authorities, and companies authorized by the state. Private partners in Kazakhstan can be individuals, legal entities, consortia, and non-profit organizations. The implementation period of PPP projects ranges from 1 to 49 years, depending on the country. The object of PPP is infrastructure, but in Kazakhstan, PPP can be applied to all sectors of the economy. The selection of a private partner is generally determined through tender and direct negotiations. Private financial initiatives were identified in all countries except Tajikistan. In all countries except Turkmenistan, PPP centers are responsible for implementing projects. The legislation of each country resolves disputes, and in Tajikistan, they are resolved through councils (Law of the Republic of Kazakhstan on Public-Private Partnership 2015; Law of the Kyrgyz Republic on Public-Private Partnership 2021; Law of the Republic of Tajikistan on Public-Private Partnership 2012; (The Law of Turkmenistan on Public-Private

Partnership 2021); (Law of the Republic of Uzbekistan on Public-Private Partnership 2019).

We analyzed the effectiveness of the PPP legislative framework in the CA countries. Kazakhstan has the highest number of PPP projects implemented among all CA countries, ranking first in political impact. As of 2019, it ranked 11th in Asia for favorable PPP conditions, 8th for quality of institutions, and 13th in regulation (Asian Development Bank 2022b). Kazakhstan has a solid legal framework for PPP that aligns with the UNECE principles, addressing social, economic, and environmental issues. Private partners receive incentives and state support, as the government is committed to attracting investments, technology, and services. Thus, Kazakhstan has over 1,300 operational PPP projects.

Uzbekistan's PPP law, adopted in 2019 and amended in 2021, has boosted project growth, with over 20% of Central Asia's PPP projects now taking place in the country. While PPP in Kyrgyzstan is in its early stages, legal norms have been developed to create favorable conditions for PPP implementation despite the challenges of bureaucracy and low public service provision (Chayubekova et al. 2022, 442–444). Tajikistan has made only 60 PPP projects available – less than 5% of all projects in the region. Despite adopting a PPP law earlier than the other CA countries, the total percentage of regional projects taking place in Tajikistan is less than 2%. This is due to the need for more favorable investment support and PPP development conditions. Turkmenistan has established a legal and institutional framework for PPPs, but has yet to announce official projects (Kurbonova 2017, 46–48).

Figure 2 shows that the education sector is the most common industry in which PPP projects are implemented in CA countries due to rapid population growth. As the region's population is anticipated to increase, more PPP agreements are expected in the education sector (Migranyan 2016, 99–103). Healthcare and social services represent almost 20% of PPP projects due to the impact of COVID-19 in the CA region, leading to the need for healthcare development and population protection (Asian Development Bank 2022a, 28–31).

Energy, housing, and communal services are as crucial as healthcare in Central Asia, and 16% of PPP agreements are for infrastructure and transportation projects. Developing transport infrastructure is essential for economic growth and job creation. Infrastructure and transport projects comprise a significant portion of PPP agreements, particularly in Kyrgyzstan. While culture and sports account for less than 10% of PPP agreements, they are still critical sectors in the CA countries (Sheraliev 2023, 28–30). Table 2 shows that PPP agreements are primarily concluded in CA countries' education, healthcare, and infrastructure sectors. Despite the fact that Kazakhstan needs to replace or reconstruct around 75% of its infrastructure, the Kazakhstan 2050 strategy aims to see it enter the ranks of the top 30 most developed countries. Moreover, the government has adopted the Quality Education – Educated Nation and Healthy Nation projects to address education and health-related issues. Programs such as Nurlı Zhol and Nurlı Zher are also being implemented in housing, communal services, culture, and sports (Asian Development Bank

2022b, 127–129).

In Uzbekistan, more than half of projects are in transport and utilities, electric power, agriculture, and tourism (Dzhuraevna and Alisher Qizi 2021, 38–39). Energy is the most popular area where a PPP agreement is concluded. The government intends to produce 25% of its energy from renewable energy sources such as hydro, solar, and wind by 2026 (Evrin et al. 2023, 255–262). The use of PPP in education is essential because of limited access to higher education, to which only 9% of those eligible can apply today. Therefore, the higher education system needs to be improved by training highly qualified personnel in science and innovation and providing the material and technical basis, among other measures (Ravshanovich 2021, 134). It is therefore no surprise that more than 15% of current Uzbekistani PPP projects are in the education sector.

PPP is defined as a priority for developing the Kyrgyz economy according to the National Strategy for 2018–2040, and it is considered a way to reduce poverty. In addition, a national PPP development program for 2022–2026 has been developed, the main goal of which is infrastructure development. Most projects are linked to infrastructure, transport, culture, and sports. Thus far, 19 projects have been implemented, and more than 50 are being prepared (Kozhombardiya et al. 2023, 54–56). In Tajikistan, PPP has been developing for over 10 years, and the PPP Implementation Center is responsible for overseeing these projects. Today, most PPP projects are implemented in hydropower, agriculture, the social sector, tourism, mining, and infrastructure (Babagaliya 2018, 8–9). The potential of PPP in Tajikistan has yet to be fully realized, despite the fact that its legal and institutional framework was formed before that of any other CA country. The legal and institutional framework in Turkmenistan in the field of PPP thus requires further development. In addition, the law on PPP of Turkmenistan is partially similar to the law on PPP of Uzbekistan, especially regarding the issue of holding a tender and determining a private partner (Law of Turkmenistan on Public-Private Partnership 2021; (Law of the Republic of Uzbekistan on Public-Private Partnership 2019).

Conclusions

1. Firstly, the findings of this study suggest that although all CA countries have a legal and institutional PPP framework, the development of PPP is uneven due to various factors, such as the level of institutional and legal development, the availability of specialists in the field, and political will. Kazakhstan has a robust legal and institutional framework that supports the growth of infrastructure projects across all sectors of the economy. However, in Turkmenistan and Tajikistan, the underdeveloped legal and institutional infrastructure poses challenges in implementing infrastructure projects in the field of PPP.

2. Secondly, the consequences of the PPP mechanism can vary depending on the country. In the countries of the CA region, where tenders require more transparency and direct negotiation is too frequently used to avoid competition, PPP can lead to negative results. To address this issue, a unique approach to PPP is needed, which includes developing a custom strategy, improving the legal and institutional framework, complying with principles and laws, the monitoring of project implementation by the state and international organizations, and providing training in the field of PPP.
3. Lastly, this study has some limitations. Firstly, we should have analyzed how PPP affects the socio-economic situation of the CA countries in terms of attracting additional investment. Secondly, searching for information on PPP development in the CA countries (except Kazakhstan) was difficult. Thirdly, secondary data on PPP from authors in the CA countries must meet further inclusion requirements, and thus was omitted from this study. Nonetheless, we obtained general information about ongoing projects through the official PPP websites of the CA countries. The PPP project data in this study covers the period up to April 28, 2024. Finally, we emphasize the need to study the development of PPP in the CA countries annually in order to track the dynamics of the growth of the PPP mechanism and its impact on people's quality of life and the development of sustainable infrastructure.

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VIEŠOJO IR PRIVATAUS SEKTORIŲ PARTNERYSTĖS INSTITUTO TEISINĖ SISTEMA CENTRINĖS AZIJOS ŠALYSE

Anotacija. Centrinė Azija (CA) yra regionas, kuriame labai trūksta įvairių sričių infrastruktūros. Todėl pastaraisiais metais CA šalys norėjo pagerinti infrastruktūrą per viešojo ir privataus sektorių partnerystę (VPSP). Šiuo straipsniu siekiama suprasti VPSP srities reguliavimo sistemą ir įvertinti teisės aktų poveikį plėtojant valstybės ir privataus sektoriaus partnerystę. Tyrimas grindžiamas PPP teisės aktais CA šalyse, lyginamąja analize, CA šalių vyriausybinių agentūrų statistiniais duomenimis, tarptautinės literatūros apžvalga ir CA šalių tyrimų medžiaga. Tyrimo analizė parodė, kad CA šalių vyriausybės sukūrė teisinės ir institucinės VPSP kūrimo sistemas. Tačiau partnerystės išsivystymo lygis yra nevienodas ir nepatenkinamas. Todėl šiame straipsnyje nagrinėjama reguliavimo sistema, nustatomi iššūkiai ir galimybės bei pabrėžiama viešojo ir privataus sektoriaus partnerystės svarba siekiant skatinti tvarų augimą ir plėtrą.

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