

FEDERAL LAW

NO. 224-FZ OF JULY 13, 2015

ON PUBLIC-PRIVATE PARTNERSHIP AND MUNICIPAL-PRIVATE PARTNERSHIP IN THE RUSSIAN FEDERATION AND AMENDING CERTAIN LEGISLATIVE ACTS OF THE RUSSIAN FEDERATION

Adopted by the State Duma
on July 1, 2015

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List of change documents

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Chapter 1. GENERAL PROVISIONS

Article 1. Purpose and Subject of Regulation of this Federal Law

1. The purpose of this Federal Law shall be establishing of legal background for attraction of investments in the economy of the Russian Federation and increasing the quality of goods, work and services, organization of provision of which to consumers shall be the responsibility of state and local authorities.
2. This Federal Law shall establish fundamentals of legal regulation of relations created in connection with preparation of a project of public-private partnership or a project of municipal-private partnership, conclusion, execution and termination of an agreement on public-private partnership or municipal-private partnership, including the related authority of state and local authorities, establish guarantees of rights and legal interests of parties to the agreement on public-private partnership or municipal-private partnership.

Article 2. Legislation of the Russian Federation on Public-Private Partnership, Municipal-Private Partnership and Municipal Legal Acts on Municipal-Private Partnership

1. The legislation of the Russian Federation on public-private partnership and municipal-private partnership shall be based on provisions of the Constitution of the Russian Federation, the Civil Code of the Russian Federation, the Budget Code of the Russian Federation, the Land Code of the Russian Federation, the Urban Development Code of the Russian Federation, the Forestry Code of the Russian Federation, the Water Code of the Russian Federation and the Air Code of the Russian Federation and shall consist of this Federal Law, other federal laws and other regulatory legal acts of the Russian Federation and regulatory legal acts of the Russian Federation constituent entities. The standards of law contained in other federal laws adopted in accordance with this Federal Law, other regulatory legal acts of the Russian Federation and regulatory legal acts of the Russian Federation constituent entities and municipal legal acts shall comply with this Federal Law.
2. Relations created in connection with preparation, conclusion and termination of concession agreements with establishment of guarantees of rights and legal interests of parties to the concession agreements shall be regulated by Federal Law No. 115-FZ of July 21, 2005 On Concession Agreements.

Article 3. Basic Notions Used in this Federal Law

For the purposes of this Federal Law the following basic notions shall be used:

1) public-private partnership, municipal-private partnership - a cooperation of a public partner, on the one hand, and a private partner, on the other hand, legally executed for a certain term and based on combination of resources and distribution of risks, based on an agreement on public-private partnership or municipal-private partnership concluded in compliance with this Federal Law in order to attract private investments in the economy, ensuring of availability of goods, work or services and increase of their quality by state and local authorities;

2) project of public-private partnership, project of municipal-private partnership (hereinafter also - the project) - a project planned for implementation by public and private partners jointly using the principles of public-private and municipal-private partnership;

3) agreement on public-private partnership, agreement on municipal-private partnership (hereinafter also - the agreement) - a civil agreement between a public partner and a private partner concluded for not less than 3 years through the procedure and on terms established by this Federal Law;

4) public partner - the Russian Federation, in the name of which acts the Government of the Russian Federation or the executive authority authorized by it, or a Russian Federation constituent entity, in the name of which acts a supreme state executive authority of a Russian Federation constituent entity or the executive authority of the Russian Federation constituent entity authorized by it, or a municipal entity, in the name of which acts the head of the municipal entity or other authorized local authority in accordance with the charter of the municipal entity;

5) private partner - a Russian legal entity, with which the agreement is concluded in accordance with this Federal Law;

6) sponsor - a legal entity or an association of two and more legal entities operating without forming of a legal entity under a joint operation agreement, granting borrowings to a private partner for execution of the agreement on terms of refund ability, serviceability and maturity;

7) direct contract - a civil agreement between a public partner, a private partner and a sponsor for regulation of the terms and the procedure of their interaction during the term of execution of the agreement, as well as in case of amendment or termination of the agreement;

8) comparative advantage - an advantage in utilization of funds of the Russian Federation budgetary system necessary for implementation of the project, over utilization of funds of the Russian Federation budgetary system necessary for execution of a state or a municipal contract on condition that the price of goods, work or a service, the quantity of goods and the scope of work or service, quality of the goods supplied, work performed or a service rendered and other characteristics of the goods, work or the service in the course of the project implementation are equal to the price of goods, work or a service, the quantity of goods and the scope of work or service, the quality of the goods supplied, work performed or a service rendered and other characteristics of the goods, work or the service in the course of execution of a state or municipal contract;

9) operation of object of the agreement - use of the object of the agreement for the purpose of carrying out by the private partner of activities envisaged by such agreement, related to manufacture of goods, performance of work or rendering of services through the procedure and on terms determined by the agreement;

10) maintenance of the object of the agreement (hereinafter also - the maintenance) - measures aimed at supporting of fault-free, safe and operable condition of the object of the agreement, its repair and overhaul;

11) authorized authorities - a federal executive authority authorized by the Government of the Russian Federation to exercise powers envisaged by Part 2 of Article 16 of this Federal Law, an executive authority of a Russian Federation constituent entity authorized by the supreme state executive authority of the Russian Federation constituent entity to exercise powers envisaged by Part 2 of Article 17 of this Federal Law, a local authority authorized to exercise powers envisaged by Part 2 of Article 18 of this Federal Law in accordance with the charter of the municipal entity;

12) joint tender - a tender held using the procedure established by this Federal Law by two and more public partners for implementation of the project and following the results of which each public partner shall conclude an agreement with the winner of the joint tender or other person authorized to conclude such agreements in compliance with this Federal Law.

Article 4. Principles of Public-Private Partnership and Municipal-Private Partnership

Public-private partnership and municipal-private partnership in the Russian Federation shall be based on the following principles:

- 1) disclosure and accessibility of information on public-private and municipal-private partnership, except for information that is a state secret or other secret protected by the law;
- 2) ensuring competition;
- 3) absence of discrimination, equality of parties to the agreement and their equality before the law;
- 4) fair fulfillment of obligations under the agreement by its parties;
- 5) fair distribution of risks and obligations between the parties to the agreement;
- 6) freedom to conclude the agreement.

Article 5. Parties to the Agreement on Public-Private Partnership and the Agreement on Municipal-Private Partnership

1. Parties to the agreement on public-private partnership and the agreement on municipal-private partnership shall be a public partner and a private partner.

2. The following legal entities shall not be private partners or participate from the part of a private partner:

- 1) state and municipal unitary enterprises;
- 2) state and municipal institutions;
- 3) public companies and other legal entities established by the Russian Federation on the basis of federal laws;
- 4) business partnerships and associations, economic partnerships controlled by the Russian Federation, a Russian Federation constituent entity or a municipal entity;
- 5) subsidiary business associations controlled by organizations cited in Items 1-4 of this Part;
- 6) non-commercial organizations established by the Russian Federation, Russian Federation constituent entities or municipal entities in the form of funds;
- 7) non-commercial organizations established by organizations cited in Items 1-6 of this Article in the form of funds.

3. Business partnerships and associations and economic partnerships shall be controlled by the Russian Federation, a Russian Federation constituent entity or a municipal entity, as well as organizations cited in Items 1-4 of Part 2 of this Article, if there is one of the following circumstances:

1) the Russian Federation, a Russian Federation constituent entity or a municipal entity and one of the organisations cited in Items 1-4 of Part 2 of this Article has the right to dispose, directly or indirectly, of more than 50 percent of the total number of votes of the voting shares (interest) that compose the authorised capital of the controlled person;

2) the Russian Federation, a Russian Federation constituent entity or a municipal entity and one of the organizations cited in Items 1-4 of Part 2 of this Article has acquired a right or an authority to determine decisions taken by the controlled person, including the terms for its entrepreneurship activities, under an agreement or on other grounds;

3) the Russian Federation, a Russian Federation constituent entity or a municipal entity and one of the organizations cited in Items 1-4 of Part 2 of this Article has the right to appoint a sole executive body and/or more than 50 percent of members of the collective executive body of the controlled person or has an unconditional possibility to elect more than 50 percent of members of the board of directors (supervisory board) or other collective managing body of the controlled person.

4. Certain rights and obligations of a public partner, the list of which shall be established by the Government of the Russian Federation can be exercised by bodies and/or legal entities cited in Part 2 of this Article, authorised by the public partner in accordance with federal laws, other regulatory legal acts of the Russian Federation, regulatory legal acts of Russian Federation constituent entities or municipal legal acts (hereinafter also - the bodies and the legal entities acting from the part of the public partner).

5. The procedure for exercise of certain rights and obligations of a public partner by the bodies and the legal entities acting from the part of the public partner, the scope and the composition of such rights and obligations shall be defined by the agreement on the basis of the decision to implement the project of public-private partnership or the project of municipal-private partnership.

6. A private partner shall be obliged to fulfill the obligations under the agreement by its own. A private partner shall only have the right to fulfill its obligations under the agreement involving third parties, if the terms of the agreement allow it. In such case, the private partner shall bear responsibility for actions of third parties as if they were its own.

7. Involvement of third parties in fulfillment of its obligations under the agreement by the private party shall only be allowed with a written content of the public partner that shall be executed as a separate document that shall be an integral part of the agreement and that can determine the list of third parties specifying their identification information. If the consent of the public partner contains the persons that can be involved by the private partner, the private partner shall have no right to involve other persons in fulfillment of its obligations under the agreement, and the third parties specified in the list shall have no right to involve other persons for fulfillment of their obligations.

8. A private partner shall meet the following requirements:

1) non-performance of liquidation of the legal entity and absence of a decision of the arbitration court on initiation of proceedings in the case of bankruptcy of the legal entity;

2) non-application of an administrative sanction in the form of administrative suspension of activities of the legal entity through the procedure established by the Code of the Russian Federation on administrative offences as of the day of filing of the application for participation in the tender;

3) absence of uncollected taxes, duties and debt on other compulsory payments, the interest for utilization of budgetary funds, late payment fees or penalties, absence of other financial sanctions not earlier than one month before filing of the application for participation in the tender;

4) existence of licenses for carrying out of certain types of activities, certificates of admission of self-regulating organizations for performance of work envisaged by the agreement and other permits needed for execution of the agreement, necessary in compliance with the legislation of the Russian Federation.

9. Establishing of any requirements for private partners not envisaged by this Federal Law shall not be

allowed.

Article 6. Elements of the Agreement on Public-Private Partnership and the Agreement on Municipal-Private Partnership

1. At taking of a decision to implement a project of public-private partnership or a project of municipal-private partnership the state authority or the local authority authorized to take such decisions by this Federal Law shall determine the form of the public-private partnership or the form of the municipal-private partnership through inclusion of the obligatory elements envisaged by this Article into the agreement and establishing the order of their implementation.

2. Obligatory elements of the agreement shall be the following:

- 1) construction and/or reconstruction (hereinafter also - the formation) of object of the agreement;
- 2) full or partial sponsoring of the object of the agreement by the private partner;
- 3) operation and/or maintenance of object of the agreement by the private partner;
- 4) creation of title of the private partner to the object of the agreement on condition of encumbrance of the object of the agreement in accordance with this Federal Law.

3. For the purpose of establishing the form of the public-private partnership or the municipal-private partnership the agreement can also include the following elements:

- 1) designing of the object of the agreement by the private partner;
- 2) full or partial sponsorship of operation and/or maintenance of object of the agreement by the private partner;
- 3) ensuring partial sponsorship from the part of the public partner of formation of the object of the agreement by the private partner, sponsorship of its operation and/or maintenance;
- 4) existence of the obligation of the private partner related to transfer of the object of the agreement on public-private partnership or object of the agreement on municipal-private partnership into ownership of the public partner upon expiration of the term defined by the agreement, but not later than on the day of termination of the agreement.

4. If the amount of sponsorship of formation of object of the agreement by the public partner and the market value of real estate and/or chattels transferred by the public partner to the private partner under the agreement, or the market value of the transferred title to such property (if the agreement does not envisage creation of title of the private partner to such property) in total exceed the amount of sponsorship of formation of such subjects by the private partner, the obligatory element of the respective agreement shall be the obligation of the private partner envisaged by Item 4 of Part 3 of this Article.

5. Formation of object of the agreement, its operation and/or maintenance shall be sponsored with funds of the Russian Federation budgetary system only at the account of subsidies from the Russian Federation budgetary system in compliance with the budget legislation of the Russian Federation.

Article 7. Objects of the Agreement on Public-Private Partnership and the Agreement of Municipal-Private Partnership

1. Objects of the agreement shall be the following:

- 1) private motor roads or sections of private motor roads, bridges, protective road structures, artificial road structures, manufacturing facilities (facilities used for overhaul, repair and maintenance of motor roads), elements of improvement of motor roads, facilities used for toll charging (including toll collection points), road service facilities;
- 2) public transport, except for the metro;
- 3) railway transport objects;

- 4) pipeline transport objects;
- 5) sea and river ports, specialized ports and their infrastructure objects, including artificial land plots, port hydraulic structures, except for infrastructure objects of a sea port that can be in federal ownership and are not subjected to alienation for private possession;
- 6) marine and river vessels, mixed river-sea going ships, and those of icebreaker assistance, hydrographic and scientific research activities, ferry crossings, floating and graving dry docks, except for the objects that are, according to the legislation of the Russian Federation, in federal ownership and are not subjected to alienation for private possession;
- 7) aircraft, air fields, airports, technical and other facilities for support of aircraft operation, except for the objects that are the property of state aviation or belong to the single system of air traffic organization;
- 8) facilities for generation, transmission and distribution of electric power;
- 9) hydraulic structures, stationary and/or floating platforms and artificial islands;
- 10) underwater and underground technical constructions, passages, communication lines and utility systems, other linear communication and utility facilities;
- 11) healthcare facilities, including those of health resort treatment and other healthcare activities;
- 12) educational, cultural and sports facilities, facilities for organization of leisure and tourism, other public social service facilities;
- 13) facilities used for processing, utilization, decontamination and disposal of solid utilities waste;
- 14) land improvement objects, including those used for lighting;
- 15) melioration systems and parts of their engineering infrastructure, except for public melioration systems.

2. An object of the agreement out of those listed in Part 1 of this Article can only be the property for which the legislation of the Russian Federation does not establish belonging to state or municipal ownership only or a prohibition of alienation for a private possession or being in private possession.

3. The agreement can be concluded in respect for several objects cited in Part 1 of this Article. Conclusion of the agreement in respect of several objects shall be allowed in case, when such actions (omission) will not lead to prevention, restriction or elimination of competition.

4. An object of the agreement subjected to reconstruction shall be owned by the public partner as of the moment of conclusion of the agreement. The object shall be free from the rights of third parties as of the moment of its transfer to the private partner.

5. It shall not be allowed to transfer an object of the agreement (property included into it) to a private partner, that is owned by a state or a municipal unitary enterprise by the right of economic jurisdiction or by a state or municipal budgetary institution by the right of operational management as of the moment of conclusion of the agreement.

6. The private partner shall have no right to pledge the object of the agreement and/or its rights under the agreement, except for their use as a method for securing fulfillment of obligations to the sponsor in case of a direct agreement. Foreclosure of the pledged assets shall only be possible, if the private partner was not substituted during not less than 180 days from the day of forming of grounds for the foreclosure or if the agreement was not terminated early by the court decision due to the material violation of the agreement terms by the private partner.

7. In case of foreclosure of the pledged assets the public partner shall have the right of preferential purchase of the pledged assets at the price equal to the debt of the private partner to the sponsor, but not higher than the value of the pledged assets.