

Public - Private Partnership in the Russian Federation: legal developments, major issues and opportunities

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Vyacheslav Khorovskiy, Managing Partner
GRATA International, Moscow

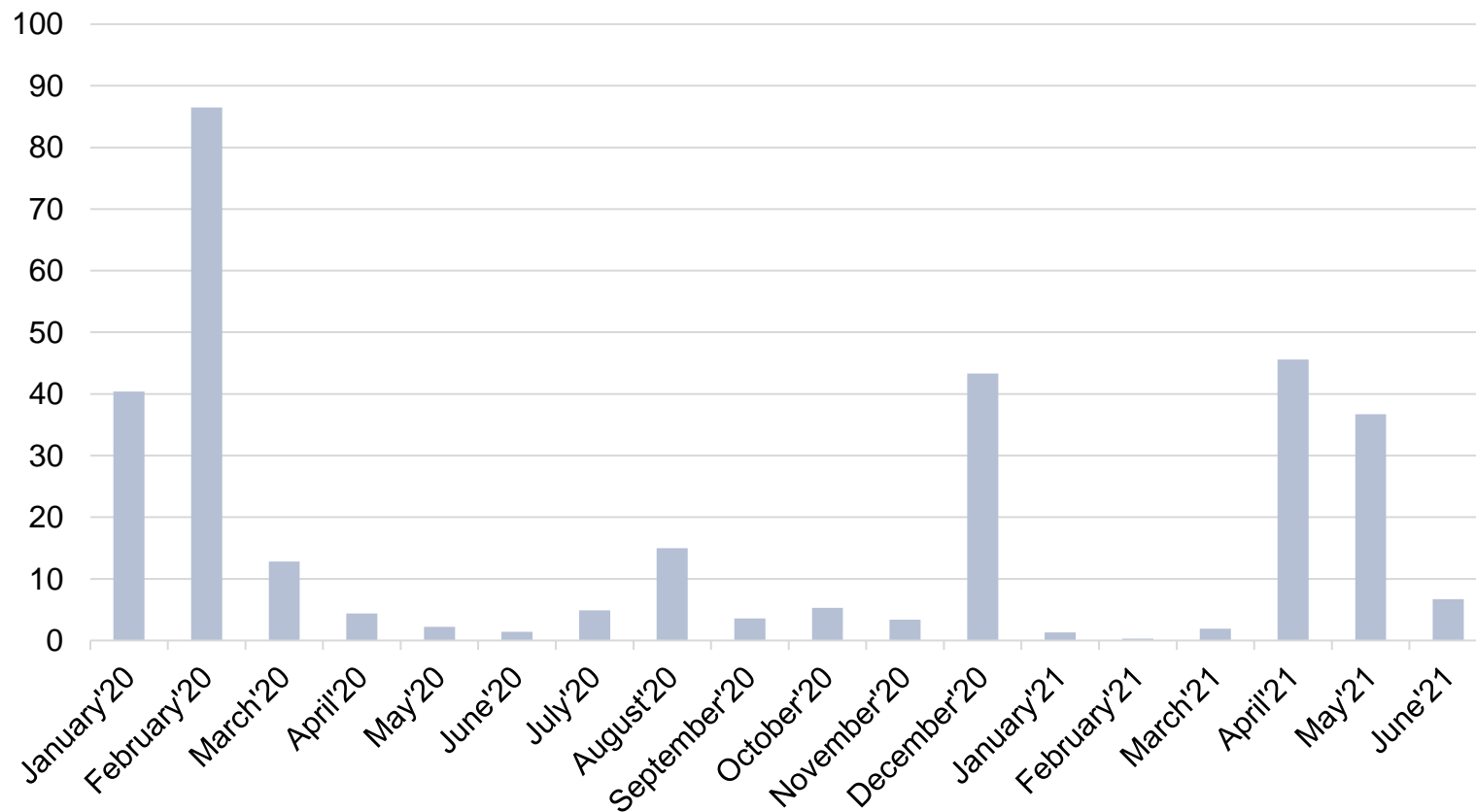


PPP Market in 2020 – 2021

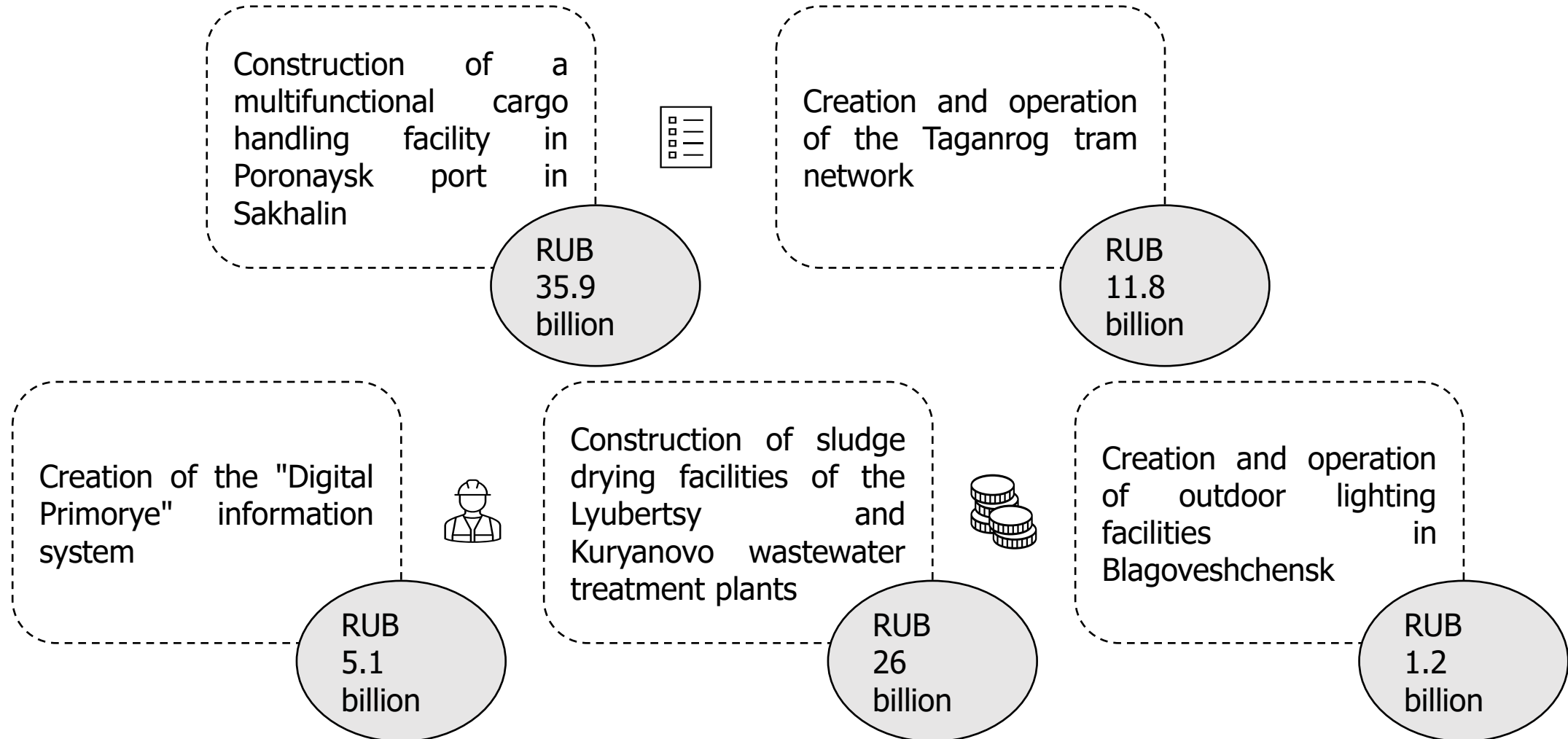
In **2021**, **30** concession agreements and **3** PPP agreements were signed, and **11** projects were launched for a total investment amount of over **1 billion** Roubles each.



Amount of private investments
in 2020 - 2021 (billion Roubles)



The Largest PPP Projects in 2021



Ranking of Russian regions in PPP development

Russian regions are annually evaluated in terms of:

- dynamics of PPP development;
- project implementation experience;
- level of the region's legal and institutional environment.

Place (2020)	Russian region	Place (2019)
1	Moscow Region	3
2	Republic of Sakha (Yakutia)	29
3	Moscow	2
4	St Petersburg	13
5	Yamal-Nenets Autonomous District	18

PPP Legal Regulation

Federal Law No. 224-FZ dated 13 July 2015 "On Public-Private Partnership, Municipal-Private Partnership in the Russian Federation and on Amendments to Certain Laws of the Russian Federation" (the "PPP Law")

The PPP agreement is a civil law agreement between a public partner and a private partner entered into for a period exceeding three years under which the private partner undertakes to create wholly or partially at its own account or using raised funds immovable property or immovable property and movable property, technologically connected with each other, to operate and (or) maintain such property, and the public partner undertakes to ensure the transfer of ownership of the facility to the private partner.

Federal Law No. 115-FZ dated 21 July 2005 "On Concession Agreements" (the "Concession Law")

Under a concession agreement the concessionaire undertakes at its own account to construct and/or reconstruct certain property as specified in the agreement the right of ownership to which either belongs or will belong to the concessor and to conduct its activity by using (operating) the object of the concession agreement while the concessor undertakes to grant to the concessionaire for a period fixed in the agreement the rights of possession and use of the object of the concession agreement

Forms of PPP

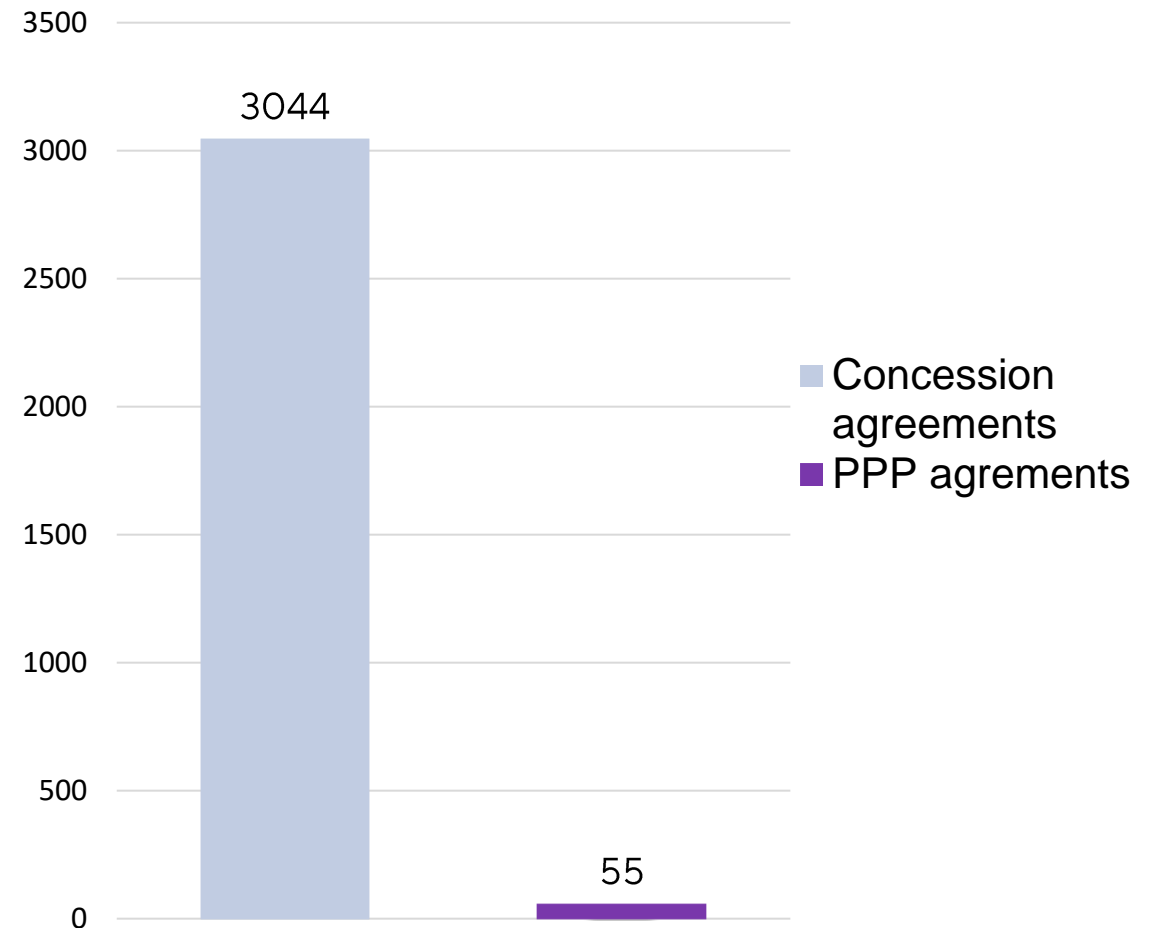
"Conventional"

- Concession agreement;
- Public - private partnership agreement;
- Municipal - private partnership agreement.

Quasi-PPP

- Leasing agreement with investment conditions;
- Investment contract;
- Establishment of a special project company with public and private capital, etc.

Distribution of projects by form in 2004-2020



Key legal rules

PPP Law

Concession Law

Private partner

Russian legal entity

- an individual entrepreneur
- a foreign or Russian legal entity
- two or more legal entities acting as a simple partnership (under an agreement on mutual activities)

Object

Objects for which private ownership is possible/appropriate

Objects for which private ownership is not possible/appropriate

Ownership

Private

Public

The term of the agreement

More than three years

No restrictions

Pledge of the object

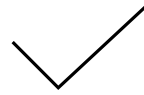
It is possible to pledge the object of the agreement if it is used to secure obligations towards the financier provided there is a direct agreement.

Pledge is not available

Advantages of PPP for investor



Guaranteed return on investment



Increase of revenue from the project as a result of additional services



Sharing risks with public party



Co-financing of the project using the state financial resources

Difference between PPP and public procurement

In court practice there is no uniform approach towards the criteria for distinguishing PPPs and public procurement, and therefore there is a risk of re-qualification of PPP/concession agreements as public contracts.

In Case No.A40-23141/17-149-224 ("Bashkir case") the court of the first instance stated that compensation from the budget of all the costs for construction of the facility does not comply with the Concession Law. This financing option "blurs the line" between a concession agreement and a state contract. The appeal court reversed the decision of the court of the first instance noting that the concessionaire's investment may be fully compensated by the concessor's payment.

The courts in Case No.40-23141/17 ("Tuvina case") reached opposite conclusions stating that application of law on the procurement system is mandatory when the tender involves compensation of the costs of constructing objects from the budget of the Russian Federation.

The courts of three instances upheld the position of the antimonopoly agency and refused to invalidate the FAS warning to terminate the concession agreements.

Implementation of the minimum guaranteed income mechanism

In case law there is no uniform approach to the validity of conditions on the minimum guaranteed income included in the terms of the agreements.

In Case **Nº A64-6415/2017** the court upheld a counterclaim filed by a public party and invalidated the terms on compensation of gross revenue to the concessionaire.

The court noted that the obligation to compensate the concessionaire in the amount of the lost gross revenue was contrary to the principles of efficient use of the budget resources.

The concessionaire should have been aware of the invalidity of such agreement as a professional participant in the electricity area at the stage of participation in the tender.

PPP Legislative Perspectives

The Ministry of Economic Development of the Russian Federation is preparing a draft federal law "On Amendments to Certain Laws of the Russian Federation in Order to Improve the Public-Private Partnership Mechanisms"

Key developments: providing a maximum amount of project financing at the account of the capital subsidy

specifying a minimum payment time period for the concessor's payment

allowing a list of a "special events" in agreements

(where there is a breach of the agreement by one of the parties, or other acts or events that have resulted in adverse effect for the other party's position)

implementation of a tender procedure for concession agreements in electronic form

identification of a single public authority with the power to manage PPP relations

PPP Opportunities

Decree No. 213 dated 12 April 2021 of the President of the Russian Federation "On Approving the Principles of State Policy of the Russian Federation on International Information Security"



Notes the need to improve the effectiveness of PPP in the area of information security

Order No. 2869-r dated 5 November 2020 of the Russian Government "On Approval of the Development Strategy for the Machine Tool Industry until 2035"



PPP mechanisms are mentioned as measures to reduce the risks of underinvestment

Order No. 3615-p dated 28 December 2020 of the Russian Government "On approval of the Strategy for the Development of Physical Culture and Sports in the Russian Federation until 2030"



PPP is a priority for the development of physical culture, sports and sports medicine infrastructure

PPP Opportunities (continuation)

Resolution No. 1268 dated 28 July 2021 of the Russian Government "On the Implementation of the Project to Create an Innovative Educational Environment (Campuses) through the Mechanisms of Public-Private Partnerships and Concession Agreements in the Scope of the Federal Project "Development of Infrastructure for Research and Training" of the National Project "Science and Universities"

The plan includes creation of a network of university campuses until 2030

The budget provides more than 36 billion Roubles for implementation of the project

The project will provide investors with a steady income and return on investment through participation in the management of the created infrastructure



**THANK
YOU!**

Vyacheslav
Khorovskiy

+7 495 660 1184

vkhorovskiy@gratanet.com

www.gratanet.com





QUESTIONS?
