

Republic of Guinea Passes Public-Private Partnership Law to Lure Investors

IN SHORT

The Situation: Although Guinea is rich in natural resources, its economy struggles to attract foreign investors. Some of the main bottlenecks identified by the government are the lack of critical infrastructures and an outdated legal, regulatory, and institutional framework.

The Solution: The Guinean government recently has adopted a new law on public-private partnerships and seeks the private sector's assistance to conduct at least 36 major infrastructures PPP projects in Guinea in the next few years.

Looking Ahead: The new PPP Law definitely will provide opportunities to foreign investors and lenders looking for business opportunities in sub-Saharan Africa in general and Guinea in particular. However, the enthusiasm of foreign investors and lenders may plummet as quickly as it rose, if the government does not adopt the necessary application decree.

Guinea's Urgent Need for Critical Infrastructures

Guinea is a geological goldmine, quite literally, when one considers the high concentration of natural resources in its soil (including diamonds, gold, iron, bauxite, uranium, nickel, phosphate, manganese, oil and gas, and so on).

However, successive Guinean governments have struggled to attract foreign investors to help to extract and exploit those natural resources. The lack of essential infrastructure, such as roads, railroads, power plants, and telecommunications, has greatly impeded the development of natural resources-based industries.

In order to facilitate the access to its natural resources, the government of Guinea has adopted the 2016-2020 National Plan for the Economic and Social Development, in which it solicits the assistance of the private sector to build critical infrastructure using public-private partnership ("PPP") schemes. To this end, the government has dedicated a US\$5.5 billion budget to implement infrastructure PPP projects during the 2016-2020 calendar.

To date, [36 PPP infrastructure projects](#) have been scheduled by the government, and five of them are already in discussions with Chinese partners.

In order to implement those PPP projects, the government has adopted a new law dedicated to PPPs, which is expected to foster the building of critical infrastructures and boost the national economy.

Resources and Minerals Extracted in Guinea Include:

- Bauxite (estimated 26 percent of global reserves)
- Diamonds
- Gold
- Graphite
- Iron Ore
- Limestone
- Manganese
- Nickel
- Salt
- Uranium



What is New with this PPP Law?

Although Guinea had already adopted a law on build-operate-transfer ("BOT") schemes in 1998, that law was never really implemented, because the government failed to adopt the decree necessary to its implementation.

This new PPP law provides a clearer, updated, and more secure legal, regulatory, and institutional framework for PPP projects, through various arrangements (partnership agreements, BOT, concessions, public leasing, delegated public service, etc.). PPP procurement tender processes also have been clarified and updated.

The PPP institutional framework is placed under the authority of the presidency of the Republic of Guinea, and different public authorities have been created to verify projects and follow the PPP procurement procedures.

Obligations to conduct feasibility studies and to precisely define public needs also have been increased in this new law. Thus, the government's demand for consultancy services pertaining to PPP feasibility studies may lead to an increase in the services of consulting firms and other companies.

The new PPP law also is consistent with international lender regulations and guidelines, and it includes protective measures provided by the Guinean Code of Investments, as well as relevant OHADA (*Organisation pour l'Harmonisation en Afrique du Droit des Affaires* or Organization for the Harmonization of Business Law in Africa) provisions (e.g., assignment of receivables).



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What is Missing in this New Law?

This new PPP law is a great step forward in the government's effort to attract foreign investments and foster the building of critical infrastructures, in partnership with the private sector.

As encouraging as this new law may be, however, it still is missing crucial provisions necessary for its full, efficient, and safe implementation.

For instance, provisions pertaining to PPP procurement tender processes and derogative selection processes, as well as the details of mandatory provisions to be included in PPP draft agreements, are yet to be specified. Those missing provisions are expected to be adopted in a separate decree this summer.

After taking a very promising first step toward foreign investors, the Guinean government should be careful not to make the same mistake it did with the BOT law 20 years ago, and instead should ensure that it adopts the PPP decree in due time.

The new PPP law is similar to other such laws in sub-Saharan Africa. In order to achieve the desired results, the government needs to issue the necessary decree, simplify the administrative process, and avoid or remove any bureaucratic or other impediments placed in the execution of PPP projects. If the government fails to do so, potential investors will look elsewhere.

THREE KEY TAKEAWAYS

1. The government of Guinea has dedicated a US\$5.5 billion budget for the development of essential infrastructures in the country, and it seeks the assistance of the private sector via PPP schemes.
2. To implement its new PPP strategy, the government of Guinea has adopted a PPP law and has published a list of top-priority PPP projects to be implemented in the next three years.
3. The new PPP law must be completed with a specific decree, which is expected to be adopted this summer.

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