



SERBIA
ASSESSMENT OF THE QUALITY OF THE PPP LEGISLATION
AND OF THE EFFECTIVENESS OF ITS IMPLEMENTATION

2011

I- PPP Legislative Framework Assessment (LFA)	Compliance of the PPP legal framework with PFI Guide recommendations¹ and Best Practice		
Core Area		Rating	Assessment
1- PPP Legal Framework	Existence of specific PPP law or a comprehensive set of laws regulating concessions and other forms of PPP and allowing a workable PPP legal framework	16/18	
2-Definitions and Scope of the Law	Existence of a clear definition of the boundaries and scope of application of the concession legal framework (e.g. definition of "PPP", sectors concerned, competent authorities, eligible Private party) limiting the risk of a challenge to the validity of PPP contracts, irrespective of whether the act is specifically targeted at PPP	20/24	
3-Selection of the Private Party	Mandatory application of a fair and transparent tender selection process. Limited exceptions allowing direct negotiations, competitive rules for unsolicited proposals and the possibility to challenge illegal awards.	35/45	
4-Project Agreement	Flexibility with respect to the content of the provisions of the Project agreements which should allow a proper allocation of risks without unnecessary or unrealistic/not bankable/compulsory requirements/interferences from the Contracting Authority (obligations, tariff, termination, compensation).	16/27	
5-Security and Support Issues	Availability of reliable security instruments to contractually secure the assets and cash-flow of the Private Party in favour of lenders, including "step in" rights and the possibility of government financial support, or guarantee of, the Contracting Authority's proper fulfilment of its	7/21	

¹ UNCITRAL *Legislative Guide on Privately Financed Infrastructure Projects*, 2001 (hereinafter the "PFI Guide")

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	obligations.		
6-Settlement of Disputes and Applicable Laws	Possibility to obtain proper remedy for breach under the applicable law through international arbitration and enforcement of arbitral awards.	11/15	
General LFA Rating			
		69,17%	Medium Compliance
II-Legal Indicators Survey (LIS)	Effectiveness Assessment : How the PPP law works in practice		
Core Area		Rating	Legal Indicator Survey
7- Policy Framework	Existence of a policy framework for public private partnerships	9/24	
8 Institutional Framework	Existence of an institutional framework for public private partnerships	9/27	
9- PPP Law Enforcement	Award and implementation of PPP projects in compliance with the Law	15/27	
General LIS Rating		42,3%	Low Effectiveness
OVERALL RATING		55,8%	Medium Compliance/Effectiveness

Local Expert²: Law office Maric, Malisic&Dostanic,

² The Local Experts in charge of each country have been consulted for the elaboration of the responses to the Checklist in their capacity of well recognized established law firm in the country but the Local Experts as well as EBRD are in no way responsible for the responses given to any question in this Checklist as the Consultant was free to use any other sources of information for its final determination.



3.

RATING: Key for assessment of Each Question

✓ ✓ ✓	Yes	3 points
✓ ✓	Yes, with reservations	2 points
✗ ✗	No, with Limited compliance / redeeming features	1 point
✗ ✗ ✗	No	0 point
N/A	Not applicable	0 point/ Not included in total

Key for Assessment of Each Core Area and for Overall Assessment

≥ 90%	Very High Compliance/Effectiveness
≥ 70%-89%	High Compliance/Effectiveness
50%-69%	Medium Compliance/Effectiveness
30%-49%	Low Compliance/Effectiveness
< 30%	Very low Compliance/Effectiveness

TERMINOLOGY

So as to keep answers consistent and avoid ambiguity, we set out below some brief definitions of the terminology used in this questionnaire. Any definition is provided solely to clarify some of the terminology used below. The reader should note that any such definition does not correspond with any given definition under best international practice (which does not provide for any standardized PPP legal definitions recognized worldwide) neither should it be interpreted that we recommend the adoption of such definitions under actual documentation, but they are included in the interests of clarity for the completion of this questionnaire, and we should be grateful if you could adopt such definitions for the purposes of completing the questionnaire.

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- **"Public Private Partnership" -"PPP" or "PPP project"** includes all types of long-term arrangements between public authorities and private institutions , including but not limited to; Concessions , BOT and derived forms, PFI and Institutional PPP. For the purposes of this questionnaire, PPP excludes the sale of public assets or of public company shares which are part of a privatisation process and also excludes public works, services or supply contracts which are subject to public procurement rules.

The following types of Public - Private Partnership Agreements may be adopted by a Contracting Authority for undertaking infrastructure projects. These are solely indicative in nature and the Contracting Authority may seek to adopt a combination of the different contractual arrangements, which incorporate some of their elements or combine elements.

- **"BOT"** - (Build-Operate-and-Transfer) - and derived forms : a contractual arrangement whereby the Private Party undertakes to finance, design, construct under a turnkey risk basis, operate and maintain an Infrastructure project for a specified period after which period the project facilities are transferred to the Granting Authority usually without payment of any compensation.

The Private Party has the right to collect contract or market based tariffs or fees from the users of the infrastructure project, as specified in the PPP agreement, to recover its investment and operating and maintenance expenses for the project. A BOT type of PPP arrangement may provide for all the implementation and operational efficiencies of the private sector, together with new sources of infrastructure capital. Derived forms of BOT contractual arrangements exist such as Build-Own-Operate-and-Transfer (BOOT) similar to the BOT agreement, except that the Private Party owns the Infrastructure project during the specified term before its transfer to the Contracting Authority or its designee, or such as Build-Own-and-Operate (BOO) which is a contractual arrangement similar to the BOT agreement, except that the Private Party owns the Infrastructure project and no transfer of the project to the Contracting Authority or its designee at the end of the fixed period is envisaged. Derived forms incorporating Lease right rather than Ownership or dealing with rehabilitation or extension rather than construction which extend the possible combination which for the purpose of this questionnaire will all be hereafter referred to as BOT for simplification purpose except where legal specificity requires specific treatment.

- **"Concession"**: is an act attributable to the State whereby a Contracting Authority entrusts to a third party the total or partial management of public services for which that authority would normally be responsible and for which the third party assumes all or part of the risk.
- **"PFI"** (Private Finance Initiative) : a form of cooperation and partnership between public authorities and Private Parties which aim to ensure the funding, construction, renovation, management or maintenance of an infrastructure or the provision of service to the infrastructure without the delegation of the public service itself. It is a contractual arrangement whereby the Private Party



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undertakes the financing and the construction of an infrastructure project and after its completion transfer it to the Contracting Authority or its designee. This arrangement may be employed in the construction of a public service facility for which the public service must be operated directly by the contracting authority for whatever reason but the operation and maintenance of the facility remain the responsibility of the Private Party for the entire duration of the PPP agreement. The contracting authority will reimburse the total project investment on the basis of a rent based of an agreed schedule with the payment starting from the date of commencement of operation and pay for the services rendered to the facility on a performance basis.

- **"IPPP"** (Institutional PPP): a structural or corporate form of PPP which provide for the cooperation between public authorities and a Private Party through a joint venture or mix (public- private shareholding) company in which case all reference to the selection process refers to the selection of the Private Party.

Other definitions:

- The **"Law"** or **"PPP Law"**: a law regulating any form of PPP including but not limited to Concession, BOT, PFI, IPPP and including, for the purpose of this questionnaire, the set of rules applicable to any PPP in the absence of a specific PPP law. The Law for the purpose of this questionnaire also includes any implementing regulation and any form of governmental act regulating PPP.
- **"BOT Law"** : a law regulating a BOT type of PPP in their multiple forms.
- **"Concession Law"**: a law regulating a Concession form of PPP.
- **"Contracting Authority"**: a public authority empowered to award a PPP and enter into Project Agreements
- **"PFI Law"**: a law regulating a PFI form of PPP.
- **"PPP unit"** : specialized institution/agency/ministerial department established to promote and take care of PPP.
- **"Private Party"** : Private Party or other entity in the form of a special purpose company to which a Project Agreement in general has been awarded. *[The word Private party will be used for the sake of this study even in case the PPP regulation allows PPP business partner to be a mix company or even a public entity.]*
- **"Project Agreement"**: an agreement(s) between the Contracting Authority and the Private Party regulating their respective rights and obligations with respect to the PPP project.



REFERENCE TO BEST PRACTICE

- UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects, 2001 (hereinafter the "**PFI Guide**") and UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects, 2003 (UNCITRAL Model Legislative Provisions).
- EC - Commission Interpretative Communication on Concessions Under Community Law dated 12 April 2000; together with additional EU major documents/decision /recommendation on concessions including Directives 2004/18/EC and 2004/17 EC of 31 March 2004; Green Paper on Public Private Partnerships and Community Law on Public Contracts and Concessions dated 30 April 2004; Report on the public consultation on the Green Paper (SEC(2005) 629- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Public-Private Partnerships and Community Law on Public Procurement and Concessions (Brussels, 15.11.2005.COM(2005) 569) European Parliament resolution on public-private partnerships and Community law on public procurement and concessions (2006/2043(INI)); European Commission Guidelines for Successful Public-Private Partnerships (2003).Commission Interpretative Communication Brussels, 05.02.2008 C (2007)6661on the application of Community law on Public Procurement, and Concessions to Institutionalized Public-Private Partnerships (IPPP);
- EBRD Core Principles for a Modern Concessions Law – selection and justification of principles Prepared by the EBRD Legal Transition Team.2005;
- UNIDO Guidelines for Infrastructure Development through Build Operate Transfer (BOT) Projects, 1996 (UNIDO BOT Guidelines); and
- OECD Basic Elements of a Law on Concession Agreements, 1999-2000.



SERBIA OVERALL ASSESSMENT OF THE QUALITY OF CONCESSION LEGISLATION AND OF ITS EFFECTIVENESS

Serbia has enacted very recently in November 2011 an act incorporating the legal framework for PPP, including Concessions – the PPP Law (Official Gazette of RS no 88/2011). In Serbia, there was no general PPP Law before the new law governing the realization of PPP projects which was mainly governed by the Law on Concessions, the Law on Communal Activities and indirectly by other Serbian sectoral laws and by-laws. By adoption of this Law, the previous act dealing specifically with concessions, the Concession Law (Official Gazette RS no 55/2003) has been put out of force.

The PPP law appears to address the majority of the PPP related questions raised in the questionnaire.

Although the PPP law as well as other applicable laws provide for the respect of principles such as equal legal treatment, fair competition and the "autonomy of the will", and despite of the fact that the publicity and the competitive character of the project award procedure, as well as remedies are fairly granted by the law, only sporadic projects have been implemented so far at municipality level (even though the sectors where PPPs may be implemented were not restricted by the law). In addition to the overlapping regulation which is difficult to apply, the lack of PPP model agreements and the institutionalized form of economic and consulting support of PPP projects may have also contributed to the absence of more important projects in the past and the new PPP regulation as well as the new institution of PPP Central Unit which has just been created may assist in this respect.

As for requirements towards the future legislation in order to improve the new PPP law, it is necessary to adequately regulate the scope of application of the legal framework (including the definition of cooperation between public authorities involved in the procedure). We also consider it desirable to provide improved regulation with respect to the creation of reliable security interests over the assets and the cash-flow of the project, thereby enhancing the bankability of a PPP project.



ASSESSMENT & LEGAL INDICATOR SURVEY

1. LEGAL FRAMEWORK

1.1 Existence of different forms of PPP legal framework

QUESTION	ANSWER	ARTICLE	COMMENTARY
1. Does the country have a single act dealing specifically with Concessions or a generalised act incorporating the legal framework for PPP, including Concessions?	✓ ✓ ✓		<p>Serbia has a generalised act incorporating the legal framework for PPP, including Concessions – the PPP Law (Official Gazette of RS no 88/2011). PPP Law is a fresh piece of legislation, enacted in November 2011.</p> <p>By adoption of this Law, the previous act dealing specifically with concessions, the Concession Law (Official Gazette RS no 55/2003) has been put out of force.</p>
2. Does the country have an act that allows BOT or derived forms such as BOOT, BOO or other forms either as part of a specific act or as part of a general PPP Law?	✓ ✓ ✓	PPP Law, 7, Foreign investment 5, paragraph 2	<p>PPP Law and Serbian Law on Foreign Investments (“Official Gazette SRY” no. 3/2002 and 5/2003 and “Official Gazette SCG” no. 1/2003 – Constitution chart) allow BOT and derived forms of this type.</p> <p>PPP Law does not specifically mention BOT or other derived forms defined in this questionnaire. However,</p>

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			<p>these forms are allowed under the Law, and can be implemented as a PPP project, with or without concession elements.</p> <p>Under the Law on Foreign Investments, a foreign investor may obtain a permit for BOT-Build, operate and transfer project regarding a particular object, facility or installation, as well as for infrastructure objects and communications.</p>
3. Does the country have an act that allows PFI, either as part of a specific act or as part of a general PPP Law?	✓ ✓ ✓	7	Yes. The PPP Law allows PFI. Definition of a PPP is wide enough to encompass PFI, as a combination of possibilities of arrangements between Private Party and Contracting Authority.
4. If the answer is <i>No</i> to any of the three first questions concerning a specific form of PPP does the Constitution or other general act (ex: the Civil Code, sectoral law) recognise the basic principles of the concerned PPP and regulate its granting?	N/A		N/A

For our general information: Is a new PPP Law or an amendment to the existing Law being prepared, or considered, in the country?

If so, at what stage of the legislative process is such new PPP Law or amendment to the existing Law?

The PPP Law was enacted in November 2011 and represents a new legal framework for implementation of PPP projects.

Aside from that, certain amendments to the Public Procurement Law have entered the Parliament's procedure for adoption in February 2011, adoption of which is expected in the following few months.

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1.2 Specificity and integration of PPP legal framework

<p>5. If the country has a Public Procurement Law, to what extent does the Public Procurement Law apply or not to the granting of a PPP?</p>	<p>✓ ✓</p>	<p>4, 20, 21, 24, 38, 40, 41, 51, 58, 61</p>	<p>The Serbian Public Procurement Law (the "PPL") is widely applied to the procedure of granting a PPP.</p> <p>Namely, under the PPP Law, a Private Partner is chosen either based on the public procurement procedure laid down in the PPL (applicable to PPPs) or based on the procedure for awarding a concession laid down in the PPP Law (applicable to Concessions). The Project Agreement is also concluded either as the public procurement contract or a concession contract.</p> <p>Moreover, even the procedure of awarding a concession, prescribed by the PPP Law, is relied upon the rules of the PPL in some parts, such as: (i) if a concession has predominant features of a concession for public works, the public procurement procedure is applied, (ii) if the Contracting Authority wishes to engage consultants, they have to be chosen in line with the PPL, (iii) PPL is applied to procedure of protection of rights of bidders and other participants in the procedure etc.</p>
<p>6. If the country has sectoral laws regulating PPP in specific sectors, is it clear which law is applicable to the granting of PPP for each particular sector?</p>	<p>✓ ✓</p>	<p>11, 45</p>	<p>In addition to the PPP Law and the PPL, the following sectorial laws are also applicable to granting of PPPs: Law on Communal Activities, Law on Public Companies and Performing Activities of Public</p>

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			<p>Interest, Energy Law, Law on Mining, Law on Local Self-Government, Law on Gaming Activities, Law on Public Property, Law on Navigation and Ports on Inland Waters and others.</p> <p>As the PPP Law is just adopted, it is yet to be seen how it will be applied and coordinated with other sectorial laws. When it comes to granting of Concessions, the PPP Law sets out that all other questions related to granting a concession in a specific sector may be regulated by a separate law, save for the rules on granting procedure. Also, if the Project Agreement encompasses several concession subjects, it will be governed by the rules regulating the subject for realization of which the Project agreement is “primarily intended”.</p> <p>Given that implementation of the PPP project will surely require cumulative application of PPP Law, PPL, and probably other sectorial law, we note that certain issues could arise in the process of synchronization of the afore said, especially bearing in mind that almost all sectorial laws have been adopted before the PPP Law.</p>
<p>7. Does the country have a Law allowing the Institutional form of PPP (IPPP) which regulates IPPP participation to PPP?</p>	<p>✓ ✓ ✓</p>	<p>4, 9</p>	<p>Yes. The PPP Law recognizes IPPP, as one of PPP forms. IPPP is based on the relation of the Public and Private Party as shareholders of a joint commercial company which is the titleholder of the realization of the PPP in question.</p>



2. DEFINITIONS AND SCOPE OF THE PPP LAW(S)

2.1 PPP definition³

QUESTION	ANSWER	ARTICLE	COMMENTARY
<p>1. Does the Law define one or several term(s) (<i>i.e.</i> "PPP", "Concession", "BOT", "Partnership" <i>etc. and/or respective agreements</i>) for the arrangements to be regulated by the Law which specify the limits of application of the Law?</p> <p>For our general information: <i>please provide the given definition(s), if any.</i></p>	✓ ✓ ✓	3, 7, 10, 11, 25	<p>Yes, the PPP Law defines the terms PPP and Concession in terms of their scope.</p> <p>PPP is defined as a long-lasting cooperation between a public and a private partner for the purpose of securing financing, construction, reconstruction, operation or maintenance of <i>infrastructure or other objects of public importance</i> and provision of <i>services of public importance</i>⁴.</p>

³ PFI Guide, Consolidated Legislative Recommendations, Recommendation 3 and Commission Interpretative Communication on Concessions Under Community Law dated 12 April 2000; together with additional EU major documents/decision /recommendation on concessions including Directives 2004/18/EC and 2004/17 EC of 31 March 2004; Green Paper on Public Private Partnerships and Community Law on Public Contracts and Concessions dated 30 April 2004; Report on the public consultation on the Green Paper (SEC(2005) 629- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Public-Private Partnerships and Community Law on Public Procurement and Concessions (Brussels, 15.11.2005. COM(2005) 569) European Parliament resolution on public-private partnerships and Community law on public procurement and concessions (2006/2043(INI))

⁴ The notion of "public importance" is not defined within the PPP Law and later on in the text of the law the legislator uses the term "public interest" which is not specifically defined either.



			<p>Concession is a form of contractual PPP, and its scope is limited to commercial use of <i>natural wealth</i>⁵ or <i>goods in general use</i>⁶ which are in public ownership or provision of <i>activities of general interest</i>⁷.</p> <p>The PPP Law is not applicable in the following cases: (i) when establishing PPPs require disclosure of information which would undermine the security of the Republic of Serbia, (ii) the PPP is based on international treaties that the Republic of Serbia concluded with one or more States for the joint implementation or use of the project, and (iii) the subject of the PPP is the exploitation of public telecommunications network or provision of telecommunication services.</p> <p>In addition, PPP Law is not applied when the estimated value (VAT excluded) of the project is below the limit under which the public authorities do not have to apply the PPL for public procurements. This limit is determined on an annual basis by the Law on annual budget of the Republic of Serbia.</p>
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⁵ Defined by the Law on Public Ownership (Official Gazette of RoS, no. 72/2011) as “waters, waterways and their sources, mineral resources, sub-terrestrial waters, geothermal and other geological resources and mineral reserves, as well as other goods which are declared as natural wealth by a specific law”.

⁶ Defined by the Law on Public Ownership as “goods which are by their nature dedicated to be used by everyone” such as public roads, public railways, bridges, tunnels on public roads, railways or streets, streets, squares, public parks, border crossings etc.

⁷ Defined by the Law on Public Companies and Activities of General Interest (Official Gazette RoS no.25/2000, 25/2002, 107/2005, 108/2005 and 123/2007) as “activities which are defined as such in the field of: production, transfer and distribution of electric power, production and production, transmission and distribution of electric power; production and processing of coal; research, production, processing, transportation and distribution of oil and natural and liquid gas; oil and petroleum products trade; railway, postal and air transportation; telecommunications; publishing the official gazette of the Republic of Serbia; media; textbooks publishing; usage, management, protection and developing of general interest goods (water, roads, mineral resources, forests, waterways, lakes, shores, spas, wildlife), as well as utility services



<p>2. Does the Law apply to all contracts entered into that fall under the definition(s) given above, irrespective of the name given to such contract (<i>concession, license, usufruct right, lease, etc.</i>)?</p>	<p>✓ ✓ ✓</p>		<p>Yes, the law applies to all contracts under the definitions above, regardless of the name given to it.</p>
<p>3. Does the Law make a clear distinction between a PPP agreement (<i>such as a Concession</i>) and a license (<i>i.e. an authorisation to operate by a public authority</i>)?</p>	<p>✓ ✓ ✓</p>	<p>46, paragraph 2, point 5</p>	<p>Yes, there is a clear distinction between the Project Agreement (defined under the Law as a Public Contract) and different types of authorizations to operate.</p>



2.2 Contracting Authority

QUESTION	ANSWER	ARTICLE	COMMENTARY
<p>4. Does the Law identify (<i>or allow clear identification by reference to other laws or regulations</i>) the public authorities ("Contracting Authorities") that are empowered to select projects, prepare for, and award PPPs and enter into Project Agreements ?</p>	<p>✓ ✓</p>	<p>12, 13, 26, 29</p>	<p>The PPP Law clearly identifies the Contracting Authorities and other public bodies involved in the realization of PPP projects. However, when determining the exact Contracting Authority authorized to grant a particular project, a reference is made to other laws (when public bodies and the subject of the concession <i>are within competencies of ...</i>). Consequently, in some "border-line" or "not explicitly regulated" cases, it could be difficult to determine the exact body competent for certain concession subject.</p> <p>The Public Party may be any public body – state organ, organization or other direct/indirect beneficiary of budgetary means, social insurance organization and public company, company performing activities of general interest⁸ or legal person incorporated by any of the above and performing activities of general interest⁹.</p>

⁸ Under certain conditions of control of its operations.

⁹ Under certain conditions of control of its operations.



			<p>All the above public bodies have the right to autonomously initiate the procedure of PPP project realization within their competencies, as well as to conclude Project Agreements with Private Parties.</p>
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For our general information: *If yes, which of the following authorities are identified:*

- *National authorities (e.g.: the government, ministries, and independent agencies);*
Government of the Republic of Serbia - grants concessions, i.e. approves PPP project proposal when public bodies and the subject of the concession are within competencies of the Republic of Serbia. In addition, the approval of the Government is also needed when: (i) the project induces the responsibility of the Republic of Serbia or has direct impact on its budget, and (ii) if the Republic of Serbia is the owner of real estate intended for concession activities, and the Granting authority is the autonomous province or local government, upon proposal of the Ministry of Finance.
 The PPP Project proposal / Concession Act proposal is also submitted to the Commission for PPPs and Concessions (the “PPP Commission”) for giving opinion on the possibility to realize the project in PPP/Concession form.
- *Regional/state-level authorities;*
Government of the Autonomous Province - grants concessions, i.e. approves PPP project proposal when public bodies and the subject of the concession are within competencies of the Autonomous Province.
- *Local or municipal authorities; or State owned companies?*
General Assembly of the local authority - grants concessions, i.e. approves PPP project proposal when public bodies and the subject of the concession are within competencies of the local authority.
Public company, i.e. a legal entity authorized by a special law to grant a concession.



2.3 Private Party and Project Company

QUESTION	ANSWER	ARTICLE	COMMENTARY
<p>5. Is it possible for a PPP being awarded to a foreign company, a Private Party or to a domestic company with foreign participation in the share capital and/or management (<i>without discrimination</i>)?</p>	<p>✓ ✓ ✓</p>	<p>PPP Law 4, 14, 15, 16, 21 Law on Communal Activities, 5</p>	<p>Based on the PPP Law, the Private Party can be a natural or legal, domestic or foreign entity, without any restrictions thereof.</p> <p>A Private Party is defined as the natural or legal person, domestic or foreign, with domestic or foreign participation or without it, or a consortium of one or more of such natural or legal persons, who are selected in a public procurement procedure or the procedure for granting concessions, and conclude a public contract with the public partner, or for that purpose establish an SPV, or establish a joint company with the public partner.</p>

For our general information: *can a PPP be awarded to public entities or to entities jointly owned by private and public entities (IPPP)? Are there restrictions imposed on such contracts?*

PPP Law does not specifically mention awarding a PPP project to a public entity. However given a broad definition of a Private Party, we see no restrictions in awarding a PPP Project to a public entity.



On the other hand, PPP Law explicitly recognizes the IPPP form, with mixed public-private participation in the capital of the SPV. There are no restrictions in the PPP Law, in terms of entities participating in the IPPP. However, there might be a restriction imposed by a separate law. E.g. the Law on Communal Activities sets out that the communal activity of public line passenger transport by trolleybuses has to be performed only by public companies or companies in which the majority of at least 51% of participation in the capital is held by the Republic of Serbia or a local authority.

2.4 Concerned sectors¹⁰

QUESTION	ANSWER	ARTICLE	COMMENTARY
6. Does the Law identify (<i>or allow identification by reference to other laws or regulations</i>) the sectors and/or types of infrastructure and/or services in respect of which a PPP may or may not be granted?	✓ ✓	7, 10, 11	The PPP Law allows identification of sectors in respect of which a PPP may be granted, by reference to general areas, defined in other laws. Certain sectors for awarding concessions are specifically mentioned, but only as an example.
7. Do the sectors eligible for PPP correspond to a large extent to those listed below, or if not, is the list of eligible sectors an open-ended one (<i>as opposed to being exhaustive</i>) allowing (<i>or at least not preventing</i>) PPP to be granted in numerous sectors”?	✓ ✓	7, 10, 11	The eligible sectors are not exhaustively defined. Therefore, the list can be considered as open-ended, allowing PPPs to be granted in numerous sectors falling under the definition of “infrastructure and other objects of public importance”, “services of public importance”, “exploitation of natural wealth or good in general use”, “performing activities of general interest”, all defined by separate laws (please see Section 1, point 2.1.

¹⁰ For further information on the concerned sectors please refer to: PFI Guide, Consolidated Legislative Recommendations, Recommendation 3 and 4.



			above).
8. Do the sectors eligible for PPP includes the merchant sectors of the economy (<i>energy, transport, water, oil and gas</i>) eligible for PPP in addition to non commercial activities such as the provision of government services (such as <i>schools, hospitals, prisons, defence and housing</i>).	✓ ✓	11	As noted above, the eligible sectors are not directly listed in the PPP Law. However, Article 11 does mention <i>exempli causa</i> the areas eligible for granting a Concession. This article specifically lists the merchant sectors of the economy (<i>energy, transport, water, oil and gas</i>). As per the non-commercial activities, save for health and education, others are not specifically listed.

For our general information: Please indicate the restrictions if any imposed by the Law on the sectors eligible for PPP:

PPP Law is not applicable to exploitation of public telecommunication network and provision of telecommunication services.

3. SELECTION OF THE PRIVATE PARTY¹¹

3.1 General Considerations

QUESTION	ANSWER	ARTICLE	COMMENTARY
1. Does the Law require, in principle, the Contracting Authority to select Private Parties through a competitive tender process?	✓ ✓ ✓	20	Yes. As already noted, the Private Parties are chosen either based on the public procurement or concession procedure.

¹¹ For further information on the selection of the Private Party, please refer to: PFI Guide, Consolidated Legislative Recommendations, Recommendations 14 to 39 included.



2. Is there reference in the Law to the principles of transparency, equal treatment and proportionality?	✓ ✓ ✓	5, 6	Yes.
3. Is there a provision in the Law concerning the publication of information related to the competitive procedures in the country media and in the international media (<i>for large projects</i>)?	✓ ✓ ✓	22	<p>The PPP Law requires the publication of information related to competitive procedures in the Official Gazette of the Republic of Serbia, in a daily paper distributed on the whole territory of the Republic of Serbia, on the internet page of the public body and the public procurement portal.</p> <p>For projects value of which exceeds EUR 5 million (and for others, if needed), the information on competitive procedures are also published in one international paper and electronically, on the internet page of the Tenders Electronic Daily and internet edition of the additional publication of the Official Journal of the European Union.</p>
4. Are there provisions within the Law or any special manual or recommendations governing in detail the selection of the Private Party (<i>i.e.: the pre-selection of bidders, the procedure for requesting proposals or other procedure such as competitive dialogue/two stage procedure</i>)?	✓ ✓ ✓	PPP Law 21-44, PPL 20-92	When it comes to PPPs without concession elements, awarding is governed by few articles of the PPP Law and the PPL, The PPL sets out details of the public procurement procedure for selecting a Private Party. There are 6 different procedures envisaged: open procedure, restricted procedure (i.e. two-stage procedure), negotiation procedure with and without



			<p>publishing of public call, design contest and low value procurement procedure. Also, certain specificities are laid down for procurements in waterpower, energy, mining, telecom and traffic sectors. In addition, a Guideline for bidders in public procurement procedures can be found on the internet page of the Public procurement Office (only in Serbian language).¹²</p> <p>For Concessions, the PPP Law sets out the details of the procedure for selection of the Private Party.</p>
<p>5. Does the Law provide that if the Contracting Authority rejects an applicant at the time of pre-selection or disqualifies a bidder, it must make public the reasons for the decision (<i>or inform the rejected bidder thereof explaining the reasons for rejection</i>)?</p>	<p>XX</p>	<p>PPL 22, 61, 75-77, 80, 107</p>	<p>PPP Law, i.e. the rules on the procedure for awarding Concessions, does not explicitly provide for publication or information of the bidder on the reasons for rejecting the bidder at pre-qualification stage or disqualifies the bidder.</p> <p>Under the PPL (applicable to PPPs) the Orderer (i.e. the Contracting Authority) may reject the untimely bid. In such case, the Contracting Authority has to return the bid unopened to the bidder, with the remark that the bid is untimely.</p> <p>In the first stage of the restrictive (two stage procedure), the Contracting Authority passes reasoned decision on accepting qualification of bidders, containing also the reason for not accepting other bids as qualified. This decision is delivered to all applicants within 3 days as of its adoption. Within 8 days as of</p>

¹² <http://www.ujn.gov.rs/>



22.

			<p>receipt of the said decision, a bidder has the right to submit a Request for protection of his rights to the Contracting Authority.</p> <p>Generally, opening of bids is public, unless the Procuring entity determines otherwise, for reasons of protecting a trade, official, military or state secret.</p>
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3.2 Award of PPP

QUESTION	ANSWER	ARTICLE	COMMENTARY
<p>6. Does the Law provide that all proposals are ranked solely on the basis of a predefined evaluation criteria set forth in the pre-selection documents/ request for proposals?</p>	<p>✓ ✓ ✓</p>	<p>PPP Law 21, 35, 39, PPL 51, 52</p>	<p>Yes. The PPP Law sets forth that the evaluation criteria have to be pre-determined and publicized along with the public call.</p> <p>Under the PPL, the selection criteria have to be pre-defined, as well as the methodology for their evaluation. This information has to be contained in both the public call and the tender documentation.</p>
<p>7. Does the Law provide for the publication of a notice of the award of the project, identifying the Private Party and including a summary of the essential terms of the project agreement?</p>	<p>✓ ✓</p>	<p>PPP Law 40, 74 PPL 24, 74</p>	<p>Under the PPP Law, the Contracting Authority is obliged to deliver the decision on awarding a Concession, with the minutes on opening and evaluation of bids, to all bidders without delay, by registered mail with return receipt or in other provable way. The decision particularly contains the name of the Private Party and main elements of the awarded concession. In addition, each Project Agreement is recorded in the special Register held by the Ministry of Finance. The Ministry shall prescribe the content and manner of keeping the Register by a special by-law, containing also the data which will be available to the public.</p>



			<p>Under the PPL, the Contracting Authority is obliged to publicize the Notice on the concluded Project Agreement in the Official Gazette of the Republic of Serbia within 3 days as of signing, as well as to publicize the Notice on the Public Procurement Portal within the same deadline.</p> <p>If the awarding procedure was the procedure of negotiation without publishing of public call, the PPL obliges the Contracting Authority to publicize the decision on the most advantageous offer, within 3 days as of adoption, in the Official Gazette of the Republic of Serbia and on the Public Procurement Portal, containing the data on procurement subject, the offer chosen and the grounds for carrying out the negotiation procedure.</p>
<p>8. Does the Law provide that the Contracting Authority or any other public authority maintain records of key information pertaining to the selection and award proceedings?</p>	<p>✓ ✓ ✓</p>	<p>PPP Law 40, PPL 14, 76, 80</p>	<p>Under the PPP Law, the contracting Authority is obliged to keep minutes of opening and evaluation of bids.</p> <p>The PPL provides that the Contracting Authority has the obligation to keep and maintain all documentation related to public procurements for a minimum of eight (8) years following the awarding of the contract.</p> <p>Particularly, the Contracting Authority is obliged to keep minutes of opening the bids, with the data determined in the Law. In addition, the Contracting Authority has an obligation to compose a written</p>



			Report on expert evaluation of bids.
9. If the answer to the previous question is <i>Yes</i> , does the Law provide that such record is accessible to the public, or at least to interested parties?	✓ ✓	PPP Law 6, 40 PPL 10, 76	<p>Records kept in the procedure governed by the PPP Law are accessible to bidders, i.e. have to be delivered to them right after adoption of the decision on the most advantageous bid. In addition, under the principle of transparency, each bidder has the right to perform an insight into documentation on the executed awarding procedure.</p> <p>The PPL allows accessibility to records for participants in the public procurement procedure during opening of bids. Also these entities are allowed to access the data on awarding procedure after it is finished, upon written request submitted to the Contracting Authority. Also, the minutes on opening of bids are delivered to all bidders within 3 days, and the data from the Expert report are accessible to the bidders within the content of the decision on selection of the Private Party, which is delivered to each bidder within 3 days as of adoption.</p>

3.3 Final negotiations

QUESTION	ANSWER	ARTICLE	COMMENTARY
10. Does the Law contain provisions regulating final negotiations (i.e. post contract award) so	✓ ✓		The law does not specifically provide for the applicability of such provisions during final



<p>that transparency, equal treatment and competition are preserved?</p>			<p>negotiations. However, the general principles of transparency, equal treatment and competition included in the PPP Law (and endorsed by other Serbian law governing competitive procedures) are also applicable to post contract award negotiations.</p>
<p>11. Does the Law provide that the Contracting Authority has the authority to terminate negotiations with the invited bidder if it becomes apparent that the bid will not result in an agreement and start negotiations with the second ranked candidate?</p>	<p>✓ ✓</p>	<p>PPP Law 48, PPL 82</p>	<p>PPP Law does not provide any provision regarding the possibility to terminate negotiations with the invited bidder if it becomes apparent that the bid will not result in an agreement. Only obligation provided by PPP Law is that the Contracting Authority offers to the selected bidder conclusion of an agreement.</p> <p>However, the PPL allows that Orderer can conclude the public procurement contract with the second ranked candidate, in case the first ranked bidder refuses to conclude such contract.</p> <p>In addition, we note that the Contracting Authority or any other party participating in the negotiation process can be held liable for damage, compensation in case of termination of negotiation if it becomes apparent that there was not actual will on the part of the bidder to conclude the contract. This is based on the Law on Obligations.</p>



3.4 PPP Award without competitive procedure

QUESTION	ANSWER	ARTICLE	COMMENTARY
12. Does the Law provide that the Contracting Authority has the authority to award a PPP without a competitive process? Is this only in limited/ exceptional circumstances?	✓ ✓	PPP Law 2 and 3, PPL 86, 87	<p>The PPP Law provides that its provisions are applied to all investments in the public property and are to be effectuated through a competitive process. However, in cases when disclosure of information for constitution of PPP would endanger national security, when PPP is constituted on the grounds of international agreements concluded between Serbia and one or more foreign states and if the subject of the partnership would be exploitation of telecommunication network the PPP Law is not applied.</p> <p>The PPL is not applicable to procurements in the energy sector, water management, mining, telecommunications and public transport. Consequently, there is often no competition at all in these sectors.</p>
13. Does the Law provide for a procedure, set of rules or principles to be respected when awarding a PPP without a competitive process?	XXX		

For our general information, please specify the conditions which would allow such direct negotiations?

Under the Concession Law it is possible that a tender process can be avoided in case of matters of national defence or security, as decided by the Government.

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3.5 Special case of unsolicited proposals

QUESTION	ANSWER	ARTICLE	COMMENTARY
14. Does the Law provide for an adequate framework for the Contracting Authority to manage unsolicited proposals/private initiatives (i.e. a proposal relating to the implementation of a PPP that is not submitted in response to a request or solicitation by the Contracting Authority) that ensures transparency and equal treatment and does not distort competition?	✓ ✓ ✓	PPP Law 19	The law provides that if the initiative for PPP comes from a Private Party the Contracting Authority must decide on necessity of such project within 90 days, whereas a Private Party can participate on the tender and conclude the Public Agreement if it does not breach the equal treatment of all participants.

3.6 Review procedures

QUESTION	ANSWER	ARTICLE	COMMENTARY
15. Does the Law allow the bidders who claim to have suffered, or that may suffer loss or injury, to seek review of the Contracting Authority's actions or failure to act?	✓ ✓ ✓	PPP Law 58, PPL 100	<p>The PPP Law prescribes that a participant has the right to object and challenge the process in accordance with provisions of the PPL.</p> <p>The PPL stipulates that bidders can submit a complaint to the Republican Commission for the Protection of Rights in Public Procurement Proceedings. Such decision may be appealed in the frame of an</p>



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			administrative court proceeding (in Serbian: <i>Upravni spor</i>).
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4. **PROJECT AGREEMENT**¹³

4.1 **Model or list of provisions**

QUESTION	ANSWER	ARTICLE	COMMENTARY
1. Does the Law give flexibility to the negotiation of most terms of the Project agreement and if it contain (or refer to): (i) a model PPP agreement it is an optional template agreement for guidance only or (ii) a list of mandatory material provisions which must be included in the agreement, the content of such provisions is left for negotiation)?	✓ ✓	PPP Law 46	<p>There is no model PPP agreement.</p> <p>In case of Project Agreement awarded under the PPL, the Concession Law and other sectoral laws, a list of mandatory material provisions must be included in the agreement in case the provisions of the competent law require so.</p> <p>The PPP Law regulates the compulsory provisions of a Public Contract i.e. the project agreement.</p>

¹³ For further information on the project agreement definition, please refer to: PFI Guide, Consolidated Legislative Recommendations, Recommendations 12 and 40 to 68 included.



4.2 Duration and extension of the Project Agreement

QUESTION	ANSWER	ARTICLE	COMMENTARY
2. Does the Law provide that the duration of the Project Agreement should depend on the length of time taken for the amortisation of the Private Party's investment and an appropriate return on the capital?	✓ ✓ ✓	PPP Law 18	The PPP Law regulates that the duration of the Project Agreement should depend on the length of time taken for the amortisation of the Private Party's investment and an appropriate return on the capital.
3. Does the Law provide that the renewal or extension of the Project Agreement should be limited and depend on exceptional circumstances (<i>such as Contracting Authority default or an event of force majeure</i>)?	✓ ✓	PPP Law 18	The PPP Law sets out the possibility of an extension in case that the Private Partner is precluded in realization of its contractual obligations without its culpability.

For our general information, please provide the given minimum and maximum duration (if any)

In Concession Law, the prolongation and the original term of the contract may not exceed 30 years in total.



4.3 Termination of the Project Agreement

QUESTION	ANSWER	ARTICLE	COMMENTARY
4. Does the Law leave open to the Project Agreement negotiations the list of possible ground for termination and the content of to the termination provision?	✓ ✓	PPP Law 46	Based on the PPP Law, the Public contract has to contain the conditions of amendments or termination of the contract (and requiring the explanation of the possible consequences with respect to termination, termination due to changed circumstances or force majeure).
5. If the answer to the previous question is <i>No</i> does the Law provide for a list of grounds of termination which does not affect the balance between the parties rights and obligations (<i>one sided provisions</i>) or the stability of the contractual relation under the Project Agreement (e.g.: <i>too large or non exhaustive list</i>)?	N/A		N/A



6. Does the Law provide for (<i>or at least does not prevent</i>) compensation of the Private Party for losses incurred as a result for termination on the grounds of public interest for losses incurred as a result of public authority acts?	XX		The law neither explicitly allows nor prohibits
7. Does the Law provide for (<i>or at least does not prevent</i>) compensation of the Private Party for all cases of early termination (<i>including in case of serious breach or failure by the Private Party</i>), for fair value after depreciation of the assets financed by the Private Party?	XX		The law neither explicitly allows nor prohibits



4.4 Tariff setting, service standards

QUESTION	ANSWER	ARTICLE	COMMENTARY
8. Does the Law provide clear guidance on all aspects of interaction between the bodies that have the power to award PPP and the bodies that regulate tariffs and service standards?	✓ ✓	PPP Law 12, 13, 47	The PPP Law gives only general guidance on interaction between the bodies involved in procedure for awarding PPP.

4.5 Financial responsibilities of the Private Party and Contracting Authority

QUESTION	ANSWER	ARTICLE	COMMENTARY
9. Does the Law provide that the Private Party can collect tariffs or fees for the use of the facility or its services?	✓ ✓	PPP Law 10	The PPP Law allows the Private Party to collect tariffs and fees under the condition that such matter should be regulated in the Project Agreement.
10. Does the Law provide for the possibility of fixed and/or consumption-based payments to the Private Party by the Granting Authority or other public authorities (<i>in the case of Power Purchase Agreement, shadow toll or PFI for instance</i>) ?	XX		The law neither explicitly allows nor prohibits the possibility to receive payments from the Granting Authority. Consequently, the parties to the Project Agreement may agree in such payments.



5. SECURITY AND SUPPORT ISSUES¹⁴

5.1 Security Interests

QUESTION	ANSWER	ARTICLE	COMMENTARY
1. Does the Law provide for (<i>or does not specifically prevent</i>) a Private Party to create security interests over the project assets, rights and proceeds or other valuable guarantees related to the project?	✓ ✓	PPP Law 49	The PPP Law provides that a Private Party can create security interests over the project assets, rights and proceeds upon prior approval given by the Public Partner.
2. If the answer to the previous question is <i>Yes</i> , does the Law clearly state which types of security can be provided and include some of the most common type of guarantees in project financing (such as those listed in the request for general information below)?	XXX		

For our general information, please can you confirm whether a Private Party may pledge or assign by way of security:

- *the proceeds and receivables arising out of the PPP;*

¹⁴ For further information on support and financial securities, please refer to: PFI Guide, Consolidated Legislative Recommendations, 13, 49, 57 and 60.



37.

- *the assets for which it has rights of use under a project agreement;*
- *its property;*
- *shares of the Project Company;*
- *the project agreement; or*

obtain other valuable guarantees (please specify)?

5.2 Government support

QUESTION	ANSWER	ARTICLE	COMMENTARY
3. Does the Law provide for (<i>or does not specifically prevent</i>) the public authority to provide support to the Contracting Authority and a guarantee for the proper implementation of the PPP by the Contracting Authority?	XX		<p>This is not regulated, but in practice the government can provide support to the municipalities through the partial financing of the projects realized in cooperation with the private sector.</p> <p>This issue can also be relevant and related to tax and customs benefits, as regulated in different other laws.</p>
4. Does the Law provide for (<i>or does not specifically prevent</i>) the Public Authority to provide financial or economic support for the implementation of PPP?	XX		<p>Practically, although - to our understanding- it is not regulated, there is an option that the Government provides financial or organizational support, including the providing of state funds in the so called PPP projects.</p>



<p>5. If the answer to the previous question is <i>Yes</i>, does the Law clearly state which public authorities may provide such support and which types of support can be provided? (i.e. <i>tax and customs benefits; foreign exchange protection (convertibility and transfer guarantees; subsidies; equity or loan participation)</i>)?</p>	<p>✓ ✓</p>		<p>It is not always clear which of the laws should be primarily applied for certain activities or whether the laws should be applied cumulatively. In general, types of support may be <i>tax and customs benefits; foreign exchange protection (convertibility and transfer guarantees); subsidies; equity or loan participation</i>, depending on the particular situation.</p>
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5.3 Lenders' rights

QUESTION	ANSWER	ARTICLE	COMMENTARY
6. Does the Law provide for the Parties to arrange the financing with reasonable flexibility under the Project Agreement without strict time constraints or other constraints (<i>except with respect to security package and government support</i>)?	XX		The law neither explicitly allows nor prohibits
7. Does the Law provide, in the event of the default of the Private Party for the lenders to “ <i>step-in</i> ” or substitute the Private Party with a qualified new Private Party without initiating a new tender process?	XXX		



6. SETTLEMENT OF DISPUTES AND APPLICABLE LAWS¹⁵

6.1 Settlement of disputes

QUESTION	ANSWER	ARTICLE	COMMENTARY
1. Does the Law permit the Contracting Authority to enter into a Project Agreement that is subject to international arbitration?	XX		For all relevant disputes related to the concession of real estates, the competent courts are the courts of the Republic of Serbia. In case of disputes based on other issues, the domestic arbitration may be arranged but if the Concessionaire is a foreign entity, an international arbitration may be agreed.
2. Has the government of the country ratified the Washington Convention on the Settlement of Investment Disputes (ICSID) (1965)?	✓ ✓ ✓		Yes, the convention has been ratified.
3. Has the government of the country ratified the New York Convention on recognition and enforcement of foreign arbitral awards (1958)?	✓ ✓ ✓		Yes, the convention has been ratified.

¹⁵ For further information on the settlement of disputes, please refer to: PFI Guide, Consolidated legislative Recommendations, Recommendations 57, 69 and 71.



6.2 Applicable laws

QUESTION	ANSWER	ARTICLE	COMMENTARY
4. Does the Law permit (<i>or does not prevent</i>) the Contracting Authority to enter into side agreements to the Project Agreement (such as <i>a direct agreement with the lenders to the project or a support and guarantee agreement in respect of the Project Agreement</i>) that is governed by foreign law.	× ×		It is neither allowed nor prohibited by the law.
5. Has the country ratified any international convention for the protection of foreign investments?	✓ ✓ ✓		Bilateral agreements on protection and support of foreign investments are signed with countries such as: China, Russian Federation, Bulgaria, Slovak Republic, Poland, Belarus, Macedonia, Zimbabwe, Guinea, Germany, Holland, Sweden, Great Britain, Austria, Italy, Czech Republic, Ukraine, Greece, Ghana, Turkey, Croatia, Kuwait, Hungary, Cuba, Libya, Iran, Israel, Kuwait, Korea, Kazakhstan, India, USA, Bosnia and Herzegovina, Slovenia, Spain, Albania and Nigeria.



II- EFFECTIVENESS ASSESSMENT: HOW THE LAW WORKS IN PRACTICE:

(Please comment based on the previous 2006 effectiveness general assessment)

7. POLICY FRAMEWORK

7.1 Existence of PPP Policy Framework

QUESTION	ANSWER	ARTICLE	COMMENTARY
1. Is there a general/national policy framework (explicit or implicit) for PPPs for infrastructure or public services?	× × ×		Such framework does not exist.
2. Is there any administrative guidance or printed information edited by the government or the PPP Unit concerning the legal framework for PPP projects in the country?	✓ ✓		The Serbian Commercial Chamber and other organizations have made a lot of efforts in organizing workshops, lecturers etc. There are presentations organised by the Public Procurement Office of the Republic of Serbia. The Foreign Investment Council has included this issue in its White Book.
3. Is there a municipal/regional policy framework (explicit or implicit) for PPPs in infrastructure or public services?	× ×		There is, i.e. Law on Communal Services and other laws which, in combination with the PPL, addresses certain PPPs in infrastructure and public services.

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7.2 PPP Awareness and Sustainability

4. Is there a national and/or municipal /regional long term programme for PPP promotion and awareness?	✓ ✓		Based on our information the Ministry of Economy and Regional Development has started a project called “Development of the Modern Concession and Public Private Partnership Legislation in Serbia”.
5. Are there PPP training programmes on a national and/or municipal/regional level for public servants and other PPP concerned people?	× × ×		Please see point 2 of 7.1.
6. Are there PPP courses as part of university curriculum or specialist departments and faculties in universities teaching PPP?	× × ×		We are not aware of any.



7.3 Obstacle to implementation of PPP Policy

<p>7. Are you of the opinion that there are no social/political obstacles to implementing PPP in the country (e.g. grass roots opposition, policy measures against private sector participation in public infrastructure/services, etc.)?</p>	<p>✓ ✓</p>		<p>Public Procurement Directorate will be abolished without replacement under the new public procurement law. This raises concerns on transparency and political support.</p>
<p>8. Are you of the opinion that there are no legal obstacles to implementing PPP in the country (e.g. non-publication of a decree provided under the Law and necessary for such law to become effective, etc.)?</p>	<p>✓ ✓</p>		<p>Please see the above commentary with respect to security issues and involvement of government support and guarantee for which improvement is required in order to facilitate financing .</p>



For our general information, please describe the existing impediment and obstacles if any with respect to the two previous questions

8. INSTITUTIONAL FRAMEWORK

8.1 Existence and role of PPP Central Units/Agency

QUESTION	ANSWER	ARTICLE	COMMENTARY
1. Is there a specialised institution/agency/ministerial department established to promote PPP and to serve as Central PPP Unit?	✓ ✓ ✓	PPP Law 65-69	The PPP Law establishes the Commission for PPP as a specialized institution for assistance in realization of PPPs, as well as for promotion, information and consultancy in the field of PPPs.
2. Is such Central PPP Unit composed mainly of specialists recruited from the business community and not exclusively composed of civil servants coming from different public ministries?	✓ ✓	PPP Law	Central PPP Unit will be composed of persons having respectful professional knowledge in the sphere of PPP, public procurement and concessions, as well as EU Law.
3. Is the role of such Central PPP Unit comparable to a "task force" assisting in the development of projects in general and not limited to promotion of PPP?	✓ ✓		The principal task of this Central PPP Unit is directly assisting in the development of projects in general.



4. Is the consent or recommendation of such Central PPP Unit necessary for the development and granting of most PPP projects (<i>except small or local PPP</i>)?	×××		
5. Is one of the roles of the Central PPP Unit to assist in building capacity namely of the public sector with respect to PPP?	×××		

For our general information, please name such establishment and specify its place in public hierarchy, format and key functions (regulatory, operational, know how collecting, etc. or a combination thereof).

8.2 Other institutions concerned by PPP

6. Is there any PPP unit/agency or department of the Central PPP unit either at the municipal or regional level?	×××		
7. Is there any specific PPP unit department in any ministry (other than the central PPP unit) or at sectoral level?	××		At present, Public Procurement office of the Republic of Serbia is following PPP's matters, as well as the new founded Commission for PPP.
8. Is there either a specific "one stop shop" for PPP authorisations and formalities or a "one stop	×××		



<i>shop</i> " which services are available to the sponsors of PPP project as well as other investors?			
9. Is the division of power between different public authorities involved in the PPP granting process simple and coordinated?	× ×		Not in full. Some of the Serbian business associations such as FIC have recommended improvement of the communication between the central and local authorities regarding potential PPP concepts and the implementation of projects intended to be carried out as PPPs.

9. PPP LAW ENFORCEMENT

9.1 Effectiveness of PPP enforcement and compliance with the Law

QUESTION	ANSWER	ARTICLE	COMMENTARY
1. Have any PPP projects in any form ever been awarded in the country on the basis of the Law discussed above? (<i>with or without specific reference to the Law</i>)	✓ ✓		Based on the presentation of Public Procurement Office of the Republic of Serbia, only sporadic projects in the communal sectors were implemented, such as mainly waste management; activities of public interest to privately owned entities in the gas transport and distribution sector.
2. Have such PPP projects, if any, been awarded	✓ ✓		We are not aware of this. We believe projects are

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generally following a transparent competitive selection procedure (<i>and only through direct negotiation under exceptional legal circumstances as may be provided by the Law</i>)?			generally awarded through competitive selection procedures.
3. Have any PPP projects or similar long term agreements (<i>falling under the definition of PPP under this questionnaire</i>) never been awarded on any legal basis different from the Law since the Law has been in force?	XX		Many of “so called” PPP projects have been awarded based on cumulatively applied laws (including former Law on Concessions) and by-laws, including the tender provisions of the Public Procurement Law.

For our general information, please give example of legal instruments, or reasons used, to bypass the Law and establish a PPP.



9.2 Statistics on PPP implementation under the Law

4. Have most of the awarded PPP projects been successfully implemented and put into operation in compliance with the Law?	✓ ✓		See comment above
5. Has a PPP project ever been awarded and implemented in the country at the local /regional /municipal level in compliance with the Law?	✓ ✓		Many of “so called” PPP projects have been awarded based on cumulatively applied laws and by-laws, including the tender provisions of the Public Procurement Law.
6. Have PPP project ever been awarded in the country in the non merchant sector (<i>such as Hospital, School, prisons</i>) and not exclusively in the merchant sector (<i>energy, water, transport</i>)?	XXX		

For our general information:

- Approximately how many PPP projects are presently in operation (figure or order of magnitude) in the country and in what sectors have PPP projects been awarded (energy, water, education, health for example)?

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Based on the presentation of the Public Procurement Office in Republic of Serbia, no single concession project has been recently implemented in Serbia (mining concessions excluded), no BOT arrangements following the Concession Law, sporadic projects in the communal sector (waste management), conferral of the activity of general interest to the privately owned entities only in gas transport and distribution sector. The same applies for the newly adopted PPP Law.

- Please give some examples of the most significant project awarded:
 - under which legal form have such PPP projects been awarded (Concession, BOT, PFI, other):
 - have such PPP project been granted by (i) central, (ii) sub-sovereign/regional (if applicable) or (iii) municipal government as Contracting Authority;
- when did PPP begin to be awarded in the country: (i) in the last 10 years or before; (ii) in the last 5 years; or (iii) within the past few years only; and
- *please give examples of any PPP projects awarded but not implemented (or not implemented under a PPP form)*
- are there any PPP/Project Agreements in discussion?

N/A.

9.3 Challenge of PPP

7. Are you of the opinion that there is a reasonable chance for an unsuccessful bidder to successfully challenge in the country a PPP awarded under conditions contrary to the Law?	✓ ✓		Structures are in place but in the absence of case law we are not in the position to predict an outcome.
8. If the answer to the previous question is <i>Yes</i> , are you of the opinion that there is a reasonable chance for the plaintiff to get some	✓ ✓		Structures are in place but in the absence of case law we are not in the position to predict an outcome.

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compensation or for such action to result in the cancellation of the award?			
9. Have PPP project been implemented by the parties most generally without serious claims/arbitration by either Party concerning the performance of the Project Agreements under the Law?	✓ ✓		We are not completely aware of the statistic, but no significant claims/arbitrations are known to us.
10. If any Project Agreement has been terminated prior to the end of the contractual period by the Contracting Authority, has fair compensation been paid to the Private Party in compliance with the Law?	N/A		We have no information on such cases.

For our general information, can you provide any examples of a successful legal challenge in the courts or otherwise of a PPP award in the country based on the PPP Law? Please describe the matter and, if known, the outcome of such matter.

N/A.