



Slovakia

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	12 /21	
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 /42	
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 /18	

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.	14/15	
General LFA Rating		69 %	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	16 /24	
8 Institutional Framework	Existence of an institutional framework for public private partnerships	2 /15	
9- PPP Law Enforcement	Award and implementation of PPP projects in compliance with the Law	22/27	
General LIS Rating		53,7 %	Medium Effectiveness
OVERALL RATING		61,3 %	Medium Compliance + Effectiveness

Local Expert²: B & S Legal, (Boris Šváby, partner)

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 standardised PPP legal definitions recognised 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 Institutionalised 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.



SLOVAKIA OVERALL ASSESSMENT OF THE QUALITY OF PPP LEGISLATION AND OF ITS EFFECTIVENESS

Under Slovak law, PPP projects are governed by a complex legal framework where concessions and PPP projects are regulated by a number of different laws and government resolutions. Although such fragmentation is not an obstacle to the implementation of PPP projects, the logic of the legal framework is not always cohesive, which may cause practical difficulties in their application.

Although the different types of PPPs are not explicitly named by the applicable laws, they would fall under the scope of the public procurement law and relevant sectoral regulation. However, the law applicable to PPP projects is rather short and does not provide for the concrete basic rights and obligations of the parties participating in the PPP. This may be an obstacle to the realization of smaller PPP projects (especially at municipal level).

In addition to the above, the Public Procurement Act (which is the main source of law for the award of PPP projects) ensures the enforcement of the principles of non-discrimination, transparency, economy and efficiency during the selection process in a sufficient manner. It is also to be noted that the award of projects (especially the restriction of awards without a competitive tender), the publicity of the award proceedings and the available legal remedies are adequately regulated as well.

De lege ferenda, it is to be considered to provide the possibility to create reliable security interests over the assets of the project, thereby enhancing the bankability of a PPP project. One could consider the legislation to be refined, allowing for more flexibility for the conclusion of project agreements that would allow for the proper allocation of risks between the contracting authorities and the private sector participants.

Obviously the main if not sole objective of this Public Procurement Act enacted in 2006 has been to comply with the EU harmonization requirement by copying parts of concerned Directives and not to promote PPP or concession in any way.

The fact that the former Concession Law (adopted in 1996) has been cancelled and that reference to concession are now part of the general Public Procurement Law means that the law is not sufficiently specific to concessions and PPP. Thus, in addition to the Public Procurement Law (regulating public contracts and possibly certain works or service concessions), the development of PPP in the Slovak Republic requires the adoption of a specific PPP law or substantial expansion of the existing part of the Public Procurement Law in particular with respect to PFI type of PPP.

Checklist Slovakia



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There is currently no plan to make legislative changes to improve the PPP legal environment. The current Slovak government seems less inclined to promote PPP projects than the previous one. Unfortunately, some of the pilot PPP highway projects have been terminated after the award has been granted to the preferred bidder for the reasons on the side of the private partner (financial closing has not occurred). In such situation it is not surprising that there is currently no public authority in charge for providing economic and consulting support to potential contracting authorities of PPP projects.

The successful financial close of first major PPP project in Slovakia related to construction and operation of R1 expressway in 2010 has given a positive sign for the possible success of project financing in Slovakia despite the fact that several project for which concession was awarded could not reach financial closing. Instructive documents issued by the Ministry of Finances to facilitate the participation of International Institutions such as EIB and EBRD have improved the situation. However, the Ministry of Finance is no more in charge of administrative and economic guidance of the Contracting Authorities, which means that the applicability of these documents is questionable.

The current government seems to be less inclined to PPP projects than the previous government was. This is mainly due to the fact that the current government i) had cancelled two of the three pilot highway PPP projects, ii) claims that the three pilot PPP projects related to the construction of highways were extremely expensive and iii) seems to support other forms of construction of highways (classical form of contract for work or EU funds).



ASSESSMENT & LEGAL INDICATOR SURVEY

1. LEGAL FRAMEWORK

1.1 Existence of different forms of PPP legal framework

QUESTION	ANSWER	ARTICLE	COMMENTARY
<p>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>	<p>✓ ✓</p>		<p>In the Slovak Republic, there is no single unified act that only and specifically regulates PPPs. Concessions and PPP projects are regulated by a number of different laws within the legal framework.</p> <p>The main source of law of such system which also applies to PPP projects and concessions is the Public Procurement Act (No. 25/2006 Coll., hereinafter referred to as “PPA”).</p> <p>Other sources of law that may be applicable to PPP projects are:</p> <ul style="list-style-type: none"> - the Civil Code (No. 40/1964 Coll.), - the Commercial Code (No. 513/1991 Coll.), - the Act on Public Administration Budgeting Rules (No. 523/2004 Coll.),



		Art 269 (2)	<ul style="list-style-type: none"> - the Act on Budgetary Rules of Self-Government (No. 583/2004 Coll.), - the Road Traffic Act (No. 135/1961 Coll.), - the Act on Electronic Toll Collection (No. 25/2007 Coll.), - the Municipal Property Act (No. 138/1991 Coll.) - the Act on State Property Administration (No. 278/1993 Coll.) <p>Furthermore, the following government resolutions specify the position and obligations of the Contracting Authority participating in a PPP project (however, these are only binding on the Contracting Authority):</p> <ul style="list-style-type: none"> - Policy for the realization of PPP projects (No. 914/2005) - Proposal concerning the implementation of technical aid scheme for PPP projects (No. 786/2007) - Proposal for basic methodology and implementation documents related to the administration of Scheme of technical aid to PPP projects (No. 80/2008) - Preparation and implementation procedure of PPP projects and control procedure (No. 499/2006) - Content and requirements for the realization study and Public sector comparator (No. 500/2009) - Analysis of legislation concerning implementation of PPP projects in the Slovak Republic and proposal of legislative measures in the area of PPP (No. 609/2009). <p>The contract itself in both cases will qualify as an</p>
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		Commercial Code	innominate contract governed by the Commercial Code, i.e. a contract which is not specifically regulated as a contract type by any statute. The Commercial Code explicitly enables the Parties to enter in such contracts providing that they define sufficiently their contractual obligations. In case of innominate contracts, the contractual relationship is governed by legal provisions that regulate the closest contract type.
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?	✓ ✓	Art 15 PPA	The PPA contains specific provisions relating to concessions that basically correspond to the DBFO form (design-build-finance-operate). ³ Other types of PPP projects such as BOT, although not explicitly regulated, would fall under the scope of general public procurement law, which enables the use of a competitive dialogue procedure.
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?	✗ ✗		There is no specific reference to PFI in the Law. However, PFI might be covered by general rules of public procurement and assessed according to the PPA, including the use of the competitive dialogue procedure.

³ However, these rules do not provide a general legal framework regulating concessions but rather enumerate the exclusions from the general public procurement law.



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		
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For our general information: *Is a new PPP Law or an amendment to the existing Law being prepared, or considered, in the country?* No, we are not aware of any new legislative proposal relating to PPP in this moment.

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

1.2 Specificity and integration of PPP the legal framework

5. If the country has a Public Procurement Law, is it clear to what extent does the Public Procurement Law apply or not to the granting of a PPP?	× ×	Art 1 PPA Art 66 – 71 PPA Art 1 (2) n), Art 8 PPA	The PPA regulates the awarding of contracts for delivery of goods, construction works, procurement of services; design contests and the role of administrative authorities in the public procurement. It is the main source of law in relation to PPP projects. It sets forth specific rules applicable to concessions, while other types of PPP projects are governed by general rules governing public procurement. With respect to concessions in the sectors of energy, transport, water, postal services, oil and gas exploration and provision of airports and ports, which are awarded by the Contracting Authorities exercising these activities, the PPA shall not apply. It is, however, not clear which act shall be used for the selection of the
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		Art 281 – 283 of the Commercial Code	Private Partner. As there are no sector specific provisions, the Public Commercial Contest proceeding set forth by the Commercial Code may be applicable. The basic principles of EU law shall also apply in this case.
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>There are no sectoral laws regulating specifically PPPs. However, each sector of public activity has its own sector specific regulation that shall apply to PPPs implemented in this sector.</p> <p>As the most significant PPP projects implemented in the Slovak Republic concerned the construction of motorways, the government enacted or amended the following laws relating to the road traffic sector:</p> <ul style="list-style-type: none"> - the Act on Single Extraordinary Measures in the Preparation of the Construction of Certain Motorways and Roads for Motor Vehicles (No. 669/2007 Coll.) the Act on Certain Measures to Accelerate the Preparation of the Construction of Motorways and Roads for Motor Vehicles (No. 129/1996 Coll.) - the Act on Electronic Toll Collection (No. 25/2007 Coll.), - the Act on the National Motorway Authority (No. 639/2004) - the Road Traffic Act (No. 135/1961 Coll.)
7. Does the country have a Law allowing the	✓ ✓	Art 21 and 27	In principle, the Act on Public Administration



<p>Institutional form of PPP (IPPP) which regulates IPPP participation to PPP?</p>		<p>(1) of the Act on Public Adm. Budgeting Rules Art 9e of Municipal Property Act</p> <p>Art 9e of Regional Property Act</p> <p>Art 6f of Inland Navigation Act</p> <p>Art 11c of Act on Disposal of Public Inst. Assets</p> <p>Art 13f of State Property Administration Act</p>	<p>Budgeting Rules (No. 523/2004 Coll.) precludes the creation of new legal entities by state authorities; however, there are many exceptions depending on the nature of the Contracting Authority and the relevant field of activity.</p> <p>Pursuant to the same act, the following Contracting Authorities are expressly allowed to create IPPPs:</p> <ul style="list-style-type: none"> - Ministries, - public entities established by central administration authorities, municipalities, and regional authorities - other public authorities empowered by the law (see below). <p>The following acts expressly allow public authorities to create joint ventures with a concessionaire for the purpose of concession:</p> <ul style="list-style-type: none"> - the Municipal Property Act (No. 138/1991 Coll.) - the Regional Property Act (No. 446/2001 Coll.) - the Inland Navigation Act (No. 338/2000 Coll.) - the Act relating to the Disposal of Public Institutions Assets (No. 176/2004 Coll.) - the Act on State Property Administration (No. 278/1993 Coll.).
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2. DEFINITIONS AND SCOPE OF THE PPP LAW(S)

2.1 PPP definition⁴

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>	✓ ✓	Art. 15 PPA	<p>There is no definition of PPP set out in the Law, however, documents issued by the government refer to the definition provided by the Green Paper on PPPs issued by the European Commission (COM (2004) 327). According to this document, PPPs are defined as forms of cooperation between public authorities and the world of business which aim to ensure the funding, construction, renovation, management or maintenance of an infrastructure or the provision of a service.</p> <p>In addition to this definition, the following legal definition may serve as a basis for the different forms of PPP:</p>

⁴ 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))



			<p>"Public works concession" is a contract of the same type as a public works contract except for the fact that the consideration for the works to be carried out consists:</p> <ul style="list-style-type: none"> a) either solely in the right to use and manage the "product" of such works upon its completion for a definite period of time b) or in addition to this right the Private Party may receive a payment. <p>"Service concession" shall be a contract of the same type as a service contract whilst the pecuniary performance for the services to be provided is compensated for by the right to enjoy the benefits of the services provided. This right may be linked with pecuniary performance.</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>)?	✓ ✓ ✓		Yes, the name given to such contract does not influence its legal qualification.
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>)?	✓ ✓ ✓	Art 2 and 3 of the Trade Licensing Act	<p>Licenses are covered by the Trade Licensing Act (No. 455/1991 Coll.) and other sector regulations. Concessions as particular forms of PPP are defined by the PPA.</p> <p>Before June 2010, the Trade Licensing Act distinguished three types of trade licences, one of them</p>



			being called "concession". This term was used in a different sense than the word "concession" in the context of public procurement. This type of trade licence has been abolished in June 2010 and the Trade Licensing Act does not use the term "concession" anymore. This modification has made the distinction between the two terms clearer, as a license clearly refers to an authorisation to operate awarded by a public authority.
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2.2 Contracting Authority

QUESTION	ANSWER	ARTICLE	COMMENTARY
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 ?	✓ ✓ ✓	Art. 6, 7 PPA	According to the PPA, the Contracting Authorities are: a) the Slovak Republic, represented by State authorities, b) Municipal authorities, c) Regional authorities, d) Legal entities established for the specific purpose of meeting needs of general interest, without any industrial or commercial character, that are financed or managed by the State, regional or local authorities, or that have an administrative, managerial or supervisory board, where more than the half of the members are appointed by the State, regional or local authorities,



			<p>e) Associations formed by one or more of such authorities, f) Legal entities over which the above mentioned authorities can exercise direct or indirect dominant influence.</p> <p>PPA also applies to all contracts subsidised for more than 50% by the Contracting Authorities.</p> <p>In the sector of energy, water, transport and postal services, the relevant public undertaking is defined as a legal entity that pursues activity in one of these sectors and:</p> <ul style="list-style-type: none"> - over which the Contracting Authority may exercise directly or indirectly a dominant influence, - which operates on the basis of special or exclusive rights granted by the Contracting Authority.
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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);*
- *Regional/state-level authorities;*
- *Local or municipal authorities; or State owned companies?*

2.3 Private Party and Project Company

QUESTION	ANSWER	ARTICLE	COMMENTARY
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5. Is it possible for a PPP be 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>)?	✓ ✓ ✓	Art 9 (4), 9 (5), 26, 33	The PPA recognizes the principle of non-discrimination on the basis of nationality.
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For our general information: *Can a PPP be awarded to public entities or to entities jointly owned by private and public entities (IPPP)?*
Yes, under the conditions specified in Point 1.2, question 7.

Are there restrictions imposed on such contracts? There are limitations to the right to dispose of a part of the property of a joint-venture company which was originally owned by the Contracting Authority. As a general rule, this property should be used only for the purpose for which the joint-venture was created.

2.4 Concerned sectors⁵

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?	✓ ✓		As a general rule, the Law does not exclude any sector of public activity which may be carried out as a PPP project.

⁵ For further information on the concerned sectors please refer to: PFI Guide, Consolidated Legislative Recommendations, Recommendation 3 and 4.



<p>7. Do the sectors eligible for PPP correspond 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”?</p>	<p>✓ ✓</p>		<p>The PPA covers both public works concession and services concession. The list of eligible sectors for concession is open-ended, knowing that certain sectors are not governed by the PPA and the conditions of implementation of the PPP project are governed by acts relating to the concrete sector.</p> <p>The list of sectors eligible for other types of PPP projects (other than concessions) is open-ended as well.</p>
<p>8. Do the sectors eligible for PPP includes non commercial activities such as the provision of government services (such as <i>schools, hospitals, prisons, defence and housing</i>) in addition to the merchant sectors of the economy (<i>energy, transport, water, oil and gas</i>).</p>	<p>✓ ✓</p>	<p>Art 6 (2)</p>	<p>As stated above, there is no sector of activity where the possibility to implement a PPP project would be specifically excluded.</p> <p>The fact that among the possible Contracting Authority Legal entities established for the specific purpose of meeting needs of general interest, without any industrial or commercial character, that are financed or managed by the State, regional or local authorities, or that have an administrative, managerial or supervisory board, where more than the half of the members are appointed by the State, regional or local authorities implicitly show that non merchant sector is eligible to PPP.</p> <p>However, it is necessary to observe the legislation applicable to the relevant field of activity that may directly influence the position of the Private Party, particularly in the merchant sectors of economy, e.g.:</p>



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			<ul style="list-style-type: none"> ▪ in case of railway transport, the Railroad Act (No. 514/2009 Coll.) and the Railroad Transport Act (514/2009 Coll.) ▪ in case of water transport and ports, the Act on Inland Navigation (No. 338/2000 Coll.), ▪ in case of air transport, the Aviation Act (No. 143/1998 Coll.) and the Airport Companies Act (No. 136/2004 Coll.) ▪ in case of road transport, the acts stated in Section 1.2, question 6 above, ▪ in case of energy sector, the Act on Regulation in Network Industries (No. 276/2001 Coll.), the Energy Act (No. 656/2004 Coll.) and the Heat Energy Act (No. 657/2004 Coll.).
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For our general information: Please indicate the restrictions if any imposed by the Law on the sectors eligible for PPP: Restrictions apply principally to the right to dispose with state property established by the above mentioned acts.



3. SELECTION OF THE PRIVATE PARTY⁶

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?	✓ ✓	Art 4, 9, 69 PPA Art 70	In principle, yes, depending on the value of the contract and the identity of the Contracting Authority. Competitive process under PPA is not required for concessions the value of which does not exceed the threshold amounts fixed in the law (i.e. amount of EUR 4,845,000). The law is not clear what would be the process of procurement for the Contracting Authority in the situation where the amount would be lower than the amount of EUR 4,845,000. Nevertheless, the Contracting Authority will have to respect the general obligation of transparency and therefore would have to organize an objective tender for procurement of the concession (probably governed by provisions of the Commercial Code relating to public tenders).

⁶ For further information on the selection of the Private Party, please refer to: PFI Guide, Consolidated Legislative Recommendations, Recommendations 14 to 39 included.



<p>2. Is there reference in the Law to the principles of transparency, equal treatment and proportionality?</p>	<p>✓ ✓ ✓</p>	<p>Art. 9 PPA</p>	<p>Pursuant to the PPA, the principles of equal treatment, non-discrimination, transparency, economy and efficiency must be guaranteed. The Law does not mention the principle of proportionality, which is, however, provided for by the EU law.</p>
<p>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>)?</p>	<p>✓ ✓ ✓</p>	<p>Art 22, 23 PPA</p> <p>Art 5a, 5b Freedom of Information Act, Art 47a Civil code</p>	<p>The PPA imposes an obligation on the Contracting Authority to publish the information related to the competitive procedures via the national Publication Office and the EU Publication Office. The Contracting Authority may publish all the information regarding the selection procedure on its website.</p> <p>In addition, starting from January 2011, every contract implying use of public funds or EU funds or concerning property owned by public authorities must be published on the Internet. This measure was introduced by an amendment to the Freedom of Information Act (No. 211/2000) and to the Civil Code in order to increase the transparency of public contracts.</p> <p>The law imposes the publication of the contract in the Central Registry of Contracts administered by the Government Office provided that one of the contracting parties is:</p> <ul style="list-style-type: none"> a) a Ministry, b) other central administration authority, c) a public institution, or



			<p>d) any other legal entity owned or managed by one of the authorities mentioned in a) – c).</p> <p>Other contracting authorities such as regional and municipal authorities must publish the relevant contract on their website, and if they don't have one, in the Official Commercial Bulletin.</p> <p>Information containing trade secrets, other secret information protected by law and personal data are not published. The contract can enter into force only on the day following the publication day.</p>
<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>)?</p>	<p>✓ ✓ ✓</p>	<p>Art 24 – 35 PPA</p>	<p>The PPA sets forth the basic selection procedure of the Private Party.</p> <p>In addition to the general framework provided by the PPA, the government document "Preparation and implementation procedure of PPP projects and control procedure" (No. 499/2006) contains detailed rules for the 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>✓ ✓ ✓</p>	<p>Art 33 (9), 42 (6), 44 PPA</p>	<p>The rejected bidder shall be informed by the Contracting Authority about the reasons of its rejection and about its right to lodge an appeal.</p>



3.2 Award of PPP

QUESTION	ANSWER	ARTICLE	COMMENTARY
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?	✓ ✓ ✓	Art 33, 42 (7), 45 (1), 47 (8) PPA	Yes, the proposals shall be ranked and the contract shall be awarded solely on the basis of the criteria laid down by the contract notice or by the contract documents.
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?	✓ ✓ ✓	Art 22, 23 PPA Annex VII to the Decree No. 530/2009	The Decree on notices used in public procurement (No. 530/2009 Coll.) specifies the information that should be included in different types of notices used in public procurement proceedings. In case of projects that satisfy the thresholds for publication in the EU Publication Office, the EU standard form of Contract Award Notice provided for by the Regulation 1564/2005 is applicable.
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?	✓ ✓ ✓	Art 21 PPA	The Contracting Authority shall keep records of documents related to the procurement proceeding for a period of five years starting from the expiry date of the bid's validity. The documentation should also contain the reasons for using a particular selection procedure.



<p>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?</p>	<p>✓ ✓</p>	<p>Art 21 (5) PPA</p>	<p>Upon request, the Contractual Authority shall submit complete documentation to:</p> <ul style="list-style-type: none"> a) Office for public procurement b) Antimonopoly office c) Courts d) Police and prosecuting bodies e) Other bodies empowered by the law. <p>Other natural and legal persons may obtain this information by application of the Freedom of Information Act, however, due to trade secret and personal data protection, restrictions shall apply in this case.</p>
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3.3 Final negotiations

QUESTION	ANSWER	ARTICLE	COMMENTARY
<p>10. Does the Law contain provisions regulating final negotiations (i.e. post contract award) so that transparency, equal treatment and competition are preserved?</p>	<p>✓ ✓</p>	<p>Art 63 (3)</p>	<p>The law does not contain a specific provision related to final negotiations, however, it provides that following the award of the contract, the Contractual Authority may ask the selected bidder to clarify or confirm his offer. Such clarification or confirmation shall not involve changes to the basic features of the tender or the call for tender, the variations of which are likely to distort competition or have a discriminatory effect.</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?	× × ×		No, there is no such provision in the Law.

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?	✓ ✓	Art 58 (1) PPA	The less competitive procedure established by the PPA is the negotiated procedure without publication because it enables the Contracting Authority to choose one or more Private Parties without issuing a notice. This procedure may not be used in case of a concession which has an aggregate contract value in excess of EUR 4,845,000. Nevertheless, this procedure can be used in case of other PPP projects when: a) no bids or no suitable bids (or no applications) ⁷ have been submitted in response to an open

⁷ The Law makes a distinction between a "bid" and an "application" in accordance with EU directives. Art 17 PPA defines an application as: a) a request for documents in case of an open procedure and b) a request for enlistment in the public procurement procedure in case of restricted procedure, negotiated procedure with publication and competitive dialogue. A "bid" is an offer presented in the open procedure or in the second stage of the restricted procedure (after being accepted on the basis of an application). Therefore, there is a slight difference between the two terms.



			<p>procedure or a restricted procedure, provided that the initial conditions of contract are not substantially altered,</p> <ul style="list-style-type: none"> b) for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may be awarded only to a particular economic operator, c) for reasons of extreme urgency brought about by events unforeseeable by the Contracting Authorities in question, the time period available for an open, restricted or negotiated procedures with publication of a contract notice cannot be complied with, d) the products involved are manufactured purely for the purpose of research, experimentation, study or development, e) in case of contracts concerning additional deliveries by the original supplier which are intended to be either a partial replacement of normal supplies or installations or to be the extension of existing supplies or installations where a change of supplier would oblige the Contracting Authority to acquire material of different technical characteristics, f) for supplies quoted and purchased on a commodity market, g) for the purchase of supplies on particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or the receivers or liquidators of a bankruptcy, h) if the contract concerned follows a design contest and it must be awarded to the successful candidate or to one of the successful candidates according to
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			<p>the applicable rules,</p> <ul style="list-style-type: none"> i) in case of additional works or services not included in the original contract but which have, due to unforeseen circumstances, become necessary for the performance, and the value of which does not exceed 50 % of the amount of the original contract, j) if new works or services consisting in the repetition of similar works or services entrusted to the economic operator to whom the same Contracting Authorities awarded an original contract, provided that such works or services are in conformity with a basic project for which the original contract was awarded according to the open or restricted procedure. <p>This list is exhaustive; it is therefore probable that a large majority of PPP projects will be awarded with a competitive procedure.</p>
<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?</p>	<p>✓ ✓ ✓</p>	<p>Art 59 PPA</p>	<p>Under the negotiated procedure without publication, the Contracting Authority may invite one or more Private Parties fulfilling one of the above-mentioned conditions to submit a tender. The contracting authority shall request the candidates to submit documents demonstrating their meeting of the conditions of participation depending on the object of contract.</p> <p>They negotiate directly on technical, administrative and financial conditions of the contract. A framework agreement cannot be concluded without publication of a</p>



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			<p>notice. In the course of negotiation, the contracting authority shall be obliged to ensure equal treatment to all candidates.</p> <p>It is prohibited to provide information in a manner which may give some candidates an advantage over others. Minutes shall be drawn up of every negotiation.</p>
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For our general information, please specify the conditions which would allow such direct negotiations?



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?	N/A		The Law does not contain any provision related to unsolicited proposals. Prior to any proposal, publication of a contract notice is required.

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?	✓ ✓ ✓	Art 135	The Law sets forth a two-stage review procedure: bidders shall firstly request a remedy directly from the Contracting Authority; in case of refusal they can file an objection to the Office for Public Procurement. The Law prescribes a 10-day period for the filing of a request for remedy or an objection.



4. **PROJECT AGREEMENT**⁸

4.1 **Model or list of provisions**

QUESTION	ANSWER	ARTICLE	COMMENTARY
1. Does the Law contain (or refer to) a model PPP agreement (which is an optional template agreement for guidance only) or a list of mandatory material provisions which must be included in the agreement (<i>the content of such provisions being left for negotiation</i>)?	✓ ✓		The Law does not contain any model PPP agreement, however, the government document entitled Preparation and implementation procedure of PPP projects and control procedure (No. 499/2006) contains short guidelines on the content of a PPP agreement.

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	✓ ✓ ✓	Art. 66 (2) and (3) PPA	In case of concession contracts where the value of the contract is equal to or exceeding EUR 4,845,000, the term of the concession shall depend on the subject-

⁸ For further information on the project agreement definition, please refer to: PFI Guide, Consolidated Legislative Recommendations, Recommendations 12 and 40 to 68 included.



<p>Party's investment and an appropriate return on the capital?</p>			<p>matter of the concession contract, the amount of the payment for public works to be performed or services to be provided and estimated appropriate return of the Private Party (concessionaire) arising out of the right to exploit the subject-matter of the concession contract or the right to enjoy its benefits during the term of the concession. The concession contract may not be entered into for an indefinite term.</p> <p>The duration of the Project Agreements concerning other forms of PPP than concession or a concession where the value of the contract is lower than EUR 4,845,000 is not specified by the Law.</p>
<p>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>)?</p>	<p>XX</p>	<p>Art. 9 (3) PPA</p>	<p>It is not specified explicitly to what extent negotiated procedure under PPA may apply to extension or renewal.</p> <p>However, PPA provides a general guideline in section 9 (3) for this purpose. Art. 9 (3) provides that parties can not conclude amendment to the agreement if the amendment:</p> <ul style="list-style-type: none"> a) would modify considerably the subject-matter of the agreement, b) would modify or amend the conditions that would allow participation of other participants to the original competitive process or that would allow to accept a different offer c) would modify the economic balance of the



			<p>agreement to the benefit of the private contractor in the manner that the agreement had not counted with.</p> <p>Until January 2010, the duration of a concession agreement was limited to 30 years. This provision has been modified so the current legislation does not contain any limitation to the duration of the Project Agreement.</p>
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For our general information, please provide the given minimum and maximum duration (if any)

No minimum and maximum duration of the Project Agreement is set by the Law.

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?	✓ ✓		The Law does not provide for specific grounds for terminating the Project Agreements. The contracting parties of the Project Agreement are free to stipulate any grounds for termination (or for the withdrawal) of



			<p>the Project Agreement.</p> <p>However, there are several statutory grounds for withdrawal resulting from general private contract law which are applicable automatically, unless otherwise agreed in the Project Agreement (e.g. serious breach of the Project Agreement, frustration of the purpose of the Project Agreement based on substantial change of circumstances under which the Project Agreement is entered into etc.).</p>
<p>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>)?</p>	N/A		
<p>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?</p>	✓ ✓		<p>The Law does not provide for the termination of the Project Agreement on the ground of public interest. However, the Project Agreement may stipulate such ground for termination together with compensation of the Private Party for the related incurred losses.</p> <p>The Private Party is in general entitled to claim damages for the losses resulting from the Contracting Authority's breach of its statutory or contractual</p>



			obligations of (i.e. including the obligations of the Contracting Authority stipulated in the Project Agreement) or other grounds according to Commercial Code and Civil Code. However in case of damage caused to the Private Party in relation to exercise of public powers, the Contracting Authority as well as any other Slovak public authority shall be liable to the Private Party according to the Act on Liability for Damage Caused in Exercise of Public Powers (No. 514/2003 Coll.).
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?	✓ ✓	Art. 351 (2) Commercial Code Art. 451 and 457 Civil Code	<p>There are no specific acts or rules relating to PPP and regulating the compensation of the Private Party in case of early termination of the Project Agreement.</p> <p>Possible remedies of the Private Party in case of early termination of the Project Agreement result only from general private law, namely the Commercial Code and the Civil Code.</p> <p>According to the Commercial Code, in case of withdrawal from a contract, each party is obliged to return to the other the provided performance.</p> <p>According to the Civil Code, in case of unjust enrichment resulting from the performance of a contract that is invalid or terminated, the enriched party is obliged to return to the other contractual party such unjust enrichment.</p>



			However, such general private law remedies are only partial and would not fully compensate the Private Party (i.e. the total fair value after depreciation of the assets financed by the Private Party), unless such extent of compensation is agreed in the Project Agreement.
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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?	XXX		The Law does not provide any guidance in this respect.

4.5 Financial responsibilities of the Private Party and Contracting Authority

QUESTION	ANSWER	ARTICLE	COMMENTARY



<p>9. Does the Law provide that the Private Party can collect tariffs or fees for the use of the facility or its services?</p>	<p>✓ ✓</p>	<p>Art. 15 PPA</p> <p>Art 6 (1) of Act No. 25/2007 on Electronic Toll Collection for the Use of Specified Parts of the Roads</p> <p>Art. 8 (4) of Act No. 639/2004 on National Motorway Company</p>	<p>With respect to public work concessions and service concessions, the PPA provides that the consideration for the works to be carried out or the provision of the services may consist either:</p> <ul style="list-style-type: none"> - solely in the right to exploit the work or the service or - the right to exploit together with a payment. <p>Furthermore, the Contracting Authority and the Private Party (concessionaire) shall stipulate in the concession contract to what extent the concerned construction or services may be exploited. A part of such exploitation may also be the right to enjoy the benefits from the concerned construction or services. In general, such provisions enable the Private Party to stipulate the right to collect tariffs and fees in the concession agreement.</p> <p>The Law does not specify who shall realise the payment to the concessionaire, however, it seems that the benefits generated by the use of public works originate mainly from the public, while the payment to the concessionaire shall be provided by the Contracting Authority. The amount of such payment shall be specified in the concession agreement.</p> <p>As for the forms of PPP other than concessions, the Law does not expressly provide for the possibility for the Private Party to collect tariffs and fees.</p> <p>According to the specific legislation on electronic road</p>
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			<p>toll collection, the National Motorway Company is entitled to authorize a third party to collect the toll. However, the toll collected for the use of the roads falling in the scope of the concession (reduced by the National Motorway Company's inevitable costs related to the collection) is a State revenue which is assigned to settle the Slovak Republic's obligations arising from the concession contract concluded between the Slovak Republic and the Private Party (i.e. concessionaire).</p>
<p>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 tool or PFI for instance</i>) ?</p>	<p>✓ ✓</p>	<p>Art. 15 PPA</p>	<p>With respect to public work concessions and service concessions, the PPA provides that the consideration for the works to be carried out or for the provision of the services may consist either:</p> <ul style="list-style-type: none"> - solely in the right to exploit the work or service or - the right to exploit the works or services together with a payment. <p>In general, such provision enables the Private Party (i.e. the concessionaire) to stipulate in the concession contract the right to collect payments from the Contracting Authority.</p> <p>With respect to the forms of PPP other than concessions, the Law does not expressly provide for the possibility for the Private Party to collect payments from the Contracting Authority. However the Law does not prevent stipulating such payments in the Project</p>



			Agreement.
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5. SECURITY AND SUPPORT ISSUES⁹

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?	✓ ✓		<p>The law does not explicitly specify which types of securities may be used for a PPP project.</p> <p>However, in the case of concessions, the law forbids the establishment of a security (such as a pledge) over the project assets.</p> <p>Other types of security are not excluded.</p>
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)?	✓ ✓		<p>As described above, the law does not explicitly provide for specific concrete types of security that can be established in a PPP project.</p> <p>While the establishment of a pledge and a security transfer right over the project assets in relation to PPP projects that qualify as a concession is prohibited by the</p>

⁹ For further information on support and financial securities, please refer to: PFI Guide, Consolidated Legislative Recommendations, 13, 49, 57 and 60.



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			<p>law, none of the types of security provided by private law (i.e. the Civil Code and the Commercial Code) is excluded to be applied as a security to a PPP project.</p> <p>Therefore, unless agreed otherwise in the Project Agreement and apart of the assets for which the Private Party has rights of use under a project agreement, any other type of security (such as the assignment of the proceeds and receivables arising out of the PPP, shares of the Project Company, the project agreement) can be subject to security in a PPP project.</p>
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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;*
- *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?	×××		Since May 2011, the Ministry of Finance does not provide consulting and economic support to Contracting Authorities.
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?	×××		As the Ministry of Finance is no longer responsible for financial and economic support of the implementation of PPPs, the Contractual Authorities must find their own counsellors and support their own expenses.
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>)?	N/A		



5.3 Lenders' rights

QUESTION	ANSWER	ARTICLE	COMMENTARY
<p>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>)?</p>	<p>✓ ✓</p>		<p>There is no such provision in the Law; however, it may be specified by the Project Agreement.</p>
<p>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?</p>	<p>✗ ✗</p>		<p>There is no such provision in the Law. Until now, there has not been a project where such situation would have occurred. However, the law does not exclude such possibility either; therefore, we are of the opinion that if agreed in the project agreement, step-in rights would be allowed. With this respect, it shall be noticed that relevant competition law provisions (mainly relating to mergers and access to essential facilities) shall apply.</p>



6. SETTLEMENT OF DISPUTES AND APPLICABLE LAWS¹⁰

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?	✓ ✓		<p>Concerning arbitration, the Law does not specifically allow international arbitration but does not preclude such an option.</p> <p>Concerning choice of applicable law, the Act on International Private and Procedural Law (No. 97/1963 Coll.) allow to the Parties the free choice of the law they wish to apply to their contractual relationship unless otherwise specified by the Law. On EU level, the Rome Regulation No. 593/2008 shall be applicable.</p>
2. Has the government of the country ratified the Washington Convention on the Settlement of Investment Disputes (ICSID) (1965)?	✓ ✓ ✓		<p>Communication No. 420/1992 Coll. of the Federal Ministry of International Affairs provides for the entry into force of the ICSID as of 8 April 1992.</p>

¹⁰ For further information on the settlement of disputes, please refer to: PFI Guide, Consolidated legislative Recommendations, Recommendations 57, 69 and 71.



3. Has the government of the country ratified the New York Convention on recognition and enforcement of foreign arbitral awards (1958)?	✓ ✓ ✓		The New York Convention entered into force on 10 October 1959 pursuant to the Decree No. 74/1959 Coll.
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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?	✓ ✓ ✓	Art 9 of the Act No. 97/1963	The Act on International Private and Procedural Law (No. 97/1963 Coll.) allow to the Parties the free choice of the law they wish to apply to their contractual relationship unless otherwise specified by the Law. On EU level, the Rome Regulation No. 593/2008 shall be applicable.
5. Has the country ratified any international convention for the protection of foreign investments?	✓ ✓ ✓		Slovakia is bound by more than 40 bilateral agreements for the protection of foreign investments.



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?	✓ ✓		<p>The Policy on the Realization of PPP Projects (adopted by the government resolution No. 914/2005) provides a general policy framework for PPP projects in Slovakia. It specifies the main conditions and principles applicable to PPP projects.</p> <p>However, this brief document has not been updated since 2005, therefore, more relevant information can be found in the legislation in force and the government documents listed below.</p>
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?	✓ ✓		<p>The following government resolutions provide administrative guidance for Contracting Authorities while implementing a PPP project:</p> <ul style="list-style-type: none"> - Proposal on the implementation of a technical aid scheme for PPP projects (No. 786/2007)



			<ul style="list-style-type: none"> - Proposal on basic methodology and implementation documents related to the administration of the technical aid scheme for PPP projects (No. 80/2008) - Preparation, implementation and control proceedings procedure of PPP projects procedure (No. 499/2006) - Content and requirements of the realization study and public sector comparator (No. 500/2009) - Analysis of the legislation governing the implementation of PPP projects in the Slovak Republic and proposal on PPP related legislative measures PPP (No. 609/2009). <p>Furthermore, the Ministry of Finance issued the following instructive documents:</p> <ul style="list-style-type: none"> - Outline of the PPP project proposal and selection criteria (December 2008) - Code of conduct and preparation of implementation of a PPP (October 2010) - Risk management procedure in PPP projects (January 2008) - Guidelines regarding the selection of a consultant for the preparation and implementation of PPP projects. <p>However, the Ministry of Finance is no more in charge of administrative and economic guidance of the Contracting Authorities, which means that the applicability of these documents is questionable.</p>



3. Is there a municipal/regional policy framework (explicit or implicit) for PPPs in infrastructure or public services?	✓ ✓		There are no specific rules applicable to municipal or regional authorities; however, the rules set forth by the government resolutions listed in the previous point are also binding on these entities.
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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?	✓ ✓ ✓		<p>Within the National Strategic Reference Framework for the period of 2007 – 2013, there is an operational program called Technical Support, financed by the European Regional Development Fund (ERBF).</p> <p>Within the framework of this program, the Ministry of Finance is carrying out the project: "Elaboration of methodology documents and analysis of the preparation and implementation of PPP projects". Most of the government documents relating to PPPs have been prepared under this project.</p>
5. Are there PPP training programmes on a national and/or municipal/regional level for public servants and other PPP concerned people?	✓ ✓		There are some PPP training programs organised by Ministries for public servants, usually conducted in relation to a concrete PPP project. The Office for Public Procurement organises courses for its employees on the selection procedure of the Private Party. Moreover, the PPP association carries out trainings which are open for the public.



6. Are there PPP courses as part of university curriculum or specialist departments and faculties in universities teaching PPP?	××		There are no specific courses or specialist departments; however, students of Economy or Regional development receive some information on the implementation of PPP projects.
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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>There are no explicit social and political obstacles to PPP projects as such (there is no grass roots opposition).</p> <p>However, the current government seems to be less inclined to PPP projects than the previous government was. This is mainly due to the fact that the current government i) had cancelled two of the three pilot highway PPP projects, ii) claims that the three pilot PPP projects related to the construction of highways were extremely expensive and iii) seems to support other forms of construction of highways (classical form of contract for work or EU funds).</p> <p>Furthermore, Slovak authorities have little experience concerning the implementation of big PPP projects.</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>There are no direct legal obstacles to the implementation of a PPP project in Slovakia.</p> <p>However, the law governing PPP projects is complex and dispersed in too many regulations of different legal value (acts, government regulations and recommendations), with often no cohesive logic.</p> <p>In addition, the law applicable to PPP projects is rather</p>



			short and does not provide for the concrete basic rights and obligations of the parties involved in the PPP project (or certain limits that could protect for instance the interests of the public partner). This may be an obstacle for realization of smaller PPP projects (for instance at municipal level) where the Contracting Authority does not have sufficient funds to be represented by experienced external advisors.
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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?	XX		<p>The Ministry of Finance does not provide economic and consulting support to the Contracting Authorities anymore; therefore technically, there is no Central PPP Unit in Slovakia.</p> <p>However, the most important PPP projects the value of which exceed EUR 3,319,000 still need to be submitted to the Ministry of Finance for government approval. The Ministry is also member of the European PPP Expertise Centre (EPEC).</p>



			Furthermore, there is a specialised non-governmental organisation created with the aim of supporting and promoting PPP projects in Slovakia called PPP Association (in Slovak: <i>Asociácia PPP</i>). The PPP Association is composed of professionals from the private sector.
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?	N/A		Currently, there is no Central PPP Unit in Slovakia.
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?	N/A		Currently, there is no Central PPP Unit in Slovakia.
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>)?	N/A		Projects exceeding EUR 3,319,000 must be submitted to the Ministry of Finance and are subject to the Government's approval.
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?	N/A		Currently, there is no Central PPP Unit in Slovakia.

Checklist **Slovakia**



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). N/A

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?	×××		No.
7. Is there any specific PPP unit department in any ministry (other than the central PPP unit) or at sectoral level?	××		At ministerial level, <i>ad hoc</i> departments may be established, composed of experts working on a particular PPP project. Otherwise PPP projects are managed by the Project Department (or similar department) of a given Ministry.
8. Is there either a specific " <i>one stop shop</i> " for PPP authorisations and formalities or a " <i>one stop shop</i> " which services are available to the sponsors of PPP project as well as other investors?	×××		No.
9. Is the division of power between different public authorities involved in the PPP granting process simple and coordinated?	×××		No.



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>)	✓ ✓ ✓		The biggest PPP projects ever realised in Slovakia (i.e. the construction of the R1 highway and the electronic toll collection project) were awarded in compliance with the PPA.
2. Have such PPP projects, if any, been awarded 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>)?	✓ ✓ ✓		PPP projects that have been implemented until now on the national level were awarded in accordance with the PPA, mostly pursuant to the competitive dialogue procedure.
3. Please confirm that no PPP projects or similar long term agreements (<i>falling under the definition of PPP under this questionnaire</i>) have been awarded on any legal basis different from the Law since the Law has been in force?	✓ ✓ ✓		Yes.

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?	× ×		The concession concerning the design, construction, financing, operation and maintenance of the motorway D1 (the "first package" and the "third package") were terminated because of failure of the concessionaire to ensure the financing of the project (financial closure).
5. Has a PPP project ever been awarded and implemented in the country at the local /regional /municipal level in compliance with the Law?	✓ ✓ ✓		There are several PPP projects that have been implemented on municipal and regional level (e.g. waste collection system in Košice, public lightening in Liptovský Mikuláš, etc.).
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>)?	✓ ✓		The only PPP project realised so far in the health care sector is the reconstruction of the hospital in Malacky, where the Contracting Authority was the Bratislava self-governing region. The renovation of the hospital Rázsochy in Bratislava was planned as a PPP project, but has not been realised.

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)?*



Please note that we are not aware of any official statistical information on PPP projects in the Slovak Republic and the database of PPP Projects of the Ministry of Finance that is publicly available on the Internet contains only data in relation to one PPP Project (which obviously does not meet the reality), we are not in the position to provide you with the required information on the approximate number of PPP Projects which are presently in operation.

The PPP Projects in the Slovak Republic have been awarded for example in the sectors of road infrastructure, reconstruction of residential buildings, health, municipal infrastructure investments (such as pedestrian zones, playgrounds, public green areas) and technical services, water, sewage and environment (waste).

- *Please give some examples of the most significant project awarded:*
 - *under which legal form have such PPP project has 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;*
 1. concession related to the design, construction, financing, operation and maintenance of the express road R1 Nitra – Tekovské Nemce and Banská Bystrica – north bypass (so called second package), legal form – concession (DBFO), Contracting Authority – Ministry of Transport, Construction and Regional Development;
 2. contract related to the complex service of electronic toll collection, legal form – DBFTO, Contracting Authority – National Motorway Company (joint-stock company with sole shareholder – the Slovak Republic);
- *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*

in the last 5 years
- *please give examples of any PPP projects awarded but not implemented (or not implemented under a PPP form)*



1. concession related to the design, construction, financing, operation and maintenance of the motorway D1 dated April 15, 2009 (so called "first package") terminated on 31 August 2010 because of the failure of the concessionaire to ensure the financing of the project (financial closure) and to fulfil the conditions precedent;
2. concession related to the design, construction, financing, operation and maintenance of the motorway D1 dated January 22, 2010 (so called third package) terminated on 15 December 2010 because of the failure of the concessionaire to ensure the financing of the project (financial closure) and fulfil the conditions precedent.

- *Are there any PPP/Project Agreements in discussion?*

A concession related to the lease of the M.R. Štefánik Airport in Bratislava and a PPP Project related to the motorway D4 – bypass of Bratislava are currently under discussion.

A project concerning the construction of a large-gauge railway in Slovakia that could be possibly realised in the framework of a PPP Project is currently being considered.

Several PPP Projects in the sectors of culture, science and education, sport, parking are being prepared.

9.3 Challenge of PPP

<p>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?</p>	<p>✓ ✓</p>	<p>Art 136, 138 PPA</p>	<p>An unsuccessful bidder is authorised to request a remedy directly from the Contracting Authority; in case of refusal it can file an objection to the Office for Public Procurement. The decision of the Office can be reviewed by the court.</p> <p>However, the efficiency of such remedy is in practice limited because of the length of the court procedure and the fact that the initiation of such procedure does not imply the suspension of the project itself.</p>
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<p>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 a) to get some compensation or b) for such action to result in the cancellation of the award?</p>	<p>✓ ✓</p>	<p>Art 136, 138 PPA 147a PPA</p>	<p>As a general rule, the Act on Liability for Damage Caused in Exercise of Public Powers (No. 514/2003 Coll.) offers the possibility to claim damages caused by incorrect administrative procedure. However, only few cases were successful in this regard. In the context of public procurement, the chances to obtain reasonable compensation are rather low.</p> <p>But the possibility to introduce an objection to the Office for Public procurement and to initiate court proceedings can be considered as sufficient guarantee of the legality of the procedure.</p> <p>Furthermore, starting from April 2011, the Office for public procurement and the prosecutor shall <i>ex offio</i> file a petition for annulment of the public contract if it was awarded under the conditions contrary to the Law.</p>
<p>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?</p>	<p>✓ ✓ ✓</p>		<p>Yes, we are not aware of any court proceedings or arbitration concerning the performance of the Project Agreement.</p>
<p>10. If any Project Agreement has been terminated prior to the end of the contractual period by the</p>	<p>N/A</p>		<p>There were no such cases so far.</p>



60.

Contracting Authority, has fair compensation been paid to the Private Party in compliance with the Law?			
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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.*