

PPP LEGAL FRAMEWORK SNAPSHOT - BOSNIA & HERZEGOVINA

GENERAL INFORMATION

Capital: Sarajevo

Population: 3.82 million

GDP: USD 18,286 million

LEGAL AND INSTITUTIONAL FRAMEWORK

PPP Law and other applicable texts	<p>Law on Concessions of Bosnia and Herzegovina (Concession Law)</p> <p>Book of Rules on Request Submitting Procedure and Concession Granting Procedure (Procedure Rules)</p>
Other applicable sectoral laws	<p>Law on Public-Private Partnership in the Republic of Srpska</p>
PPP Unit	<p>Commission for Concessions of Bosnia and Herzegovina</p>
Definition (Concession Law, art.3)	<p>"Concession" - the right granted by a Conceding Party to provide the construction of infrastructure and/or services and to exploit natural resources under terms and conditions agreed on by Conceding Party and Concessionaire. (art.3)</p>
General Principles (Concession Law, art.2)	<p>The purpose of this Law is to create a transparent, non-discriminatory and clear legal framework for setting the conditions under which local and foreign legal persons may be granted concessions in Bosnia and Herzegovina and to encourage the investment of foreign capital. (art.2)</p>
Tendering and contracting process / Choice of the private partner (Concession Law ; Procedure Rules)	<ul style="list-style-type: none"> • Public invitation for prospective bidders. The Conceding Party shall submit to the Commission on Concessions (Commission) a RFP for approval. (Concession Law, art.22, art.23; Procedure Rules, art.8, art.9, art.10) • The Commission may decide to open an international tender, depending on the value of project, the need to engage specific and modern know-how and technology, project financing structure and other cases when the Commission considers a project as of particular importance. (Procedure Rules, art.13) • Unsolicited proposals shall be submitted directly to a competent ministry of Bosnia and Herzegovina. In the event that the concession asset extends over the Federation of Bosnia and Herzegovina and/or Republic Srpska, and/or Brčko District, the proposal shall also be submitted through competent entity ministry or District authorities. (Procedure Rules, art.30) • After receiving an unsolicited proposal, the ministry shall evaluate whether there is public interest for such a concession, if affirmative, then it shall submit a request to the Commission for approval to negotiate with the proponent.(Concession Law, art.25)

Project Evaluation

(Concession Law;
Procedure Rules)

- The Conceding Party shall prepare a feasibility study on any project to be granted as a Concession prior to public invitation and submit it to the Commission for approval. (Concession Law, art.21)
- The Commission shall consider the impact of project on the supply of services, fees charged, existing policy and net benefit. (Concession Law, art.21)
- The Commission may require the bidder to prepare a feasibility study with environmental impact assessment. (Concession Law, art.22)

Rights and Obligations of the public partner

(Concession Law;
Procedure Rules)

- Obligation to disclose the work of the Commission or hold a public hearing under certain circumstances. (Concession Law, art.15)
- Right to review, in exceptional cases, the Concessions granted before the date that the Concession Law entered into force, as well as the standard services contracts prepared by the Concessionaire. (Concession Law, art.32)
- Right to inspect and monitor the concession projects. The person designated for the inspection and verification shall have necessary access to properties and data of the Concessionaire. (Concession Law, art.20; Procedure Rules art.44)

Rights and Obligations of the private partner

(Concession Law;
Procedure Rules)

- Obligation to compensate, in accordance with the Law on Stamp Duties, the entirety or a part of costs incurred in examining any matter submitted to the Commission or costs incurred in enforcement of the decisions or orders of the Commission. (Concession Law, art.17.9)
- A new Concessionaire shall assume the right and obligations of the former concessionaire. (Concession Law, art.26.5)
- Right to own and use the assets and property made available by the Conceding Party in accordance with the Concession Contract. (art.29)
- Obligation to hold the share capital of the Concessionaire by persons listed in tender document. Any transfer above 15% of voting rights, directly or indirectly, shall obtain prior approval of the Commission. In the event that the Concessionaire and/or person responsible give false statement as to secure such a transfer, such person and Concessionaire shall be fined. (Concession Law, art.30)
- Obligation to not perform any activity other than listed in the Concession Contract. (Concession Law, art.30)
- Obligation to prepare standard services contracts regulating business relationship between the Concessionaire and users of services, subject to approval of the Commission. (Concession Law, art.30; Procedure Rules, art.43)

Obligations and Rights of Both Public and Private Partners

(Concession Law)

- Right to terminate the Concession Contract if the Concessionaire is insolvent or bankrupt, or the Concessionaire or the Conceding Party fails to fulfill its obligations under the Contract. (art.27)

Applicable Law

Dispute resolution

(Concession Law)

- In the event of dispute arisen from violation of the Concession Law, the competent court shall be the Court of Bosnia and Herzegovina. (art.35)
- If so agreed between the interested parties, the Commission may arbitrate any dispute occurred between contracting parties and it may act as a mediator upon request from interested parties. (art.17.5)
- Upon submission of request by any interested party, the Commission shall make a decision in order to protect the rights of interested parties. (art.17.6)
- No appeal shall be permissible against the decision of the Commission. However, administrative proceedings might be initiated before the Court of Bosnia and Herzegovina. (art.18)

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EXAMPLES OF PROJECTS STRUCTURED AS PPP

**Infrastructure sector -
Telecom**

Telekom Srpske

**Infrastructure sector -
Power**

EFT Stanari Coal Plant

**Infrastructure sector -
Telecom**

HT Mobilne Komunikacije d.o.o. Mostar