



Estonia

**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	13/21	
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.	36/45	
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).	20/27	
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 obligations.	11/21	

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

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2.

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.	15/15	
General LFA Rating			
		75,2/%	High 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	8/24	
8 Institutional Framework	Existence of an institutional framework for public private partnerships	3/15	
9- PPP Law Enforcement	Award and implementation of PPP projects in compliance with the Law	21/27	
General LIS Rating		43,7/%	Low Effectiveness
OVERALL RATING		59,4%	Medium Compliance/Effectiveness

Local Expert²: V A R U L Law firm - Triinu Kinkar

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.

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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 (publid- private shareholding) company in which case all reference to the slection 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 questionair, 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 governemental 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.



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In Estonia there is no one single act dealing specifically with PPP projects or concessions. These matters are mainly regulated by the Public Procurement Act. In addition, the Competition Act in conjunction with the Government of Estonia decree “Procedure for organising a public competition for the grant of special or exclusive rights” prescribes the procedure for the organisation of public competitions for granting special or exclusive rights. Besides the Guidelines on the Public Procurement Proceedings issued by the Ministry of Finance, no PPP administrative guidance, framework or policy has unfortunately been adopted.

However, it should be emphasised that the relevant regulations have gone through some noteworthy amendments and improvements. For instance, on 01.01.2011 the stipulations containing the definition of PPP and the conditions for the transfer of the rights and obligations deriving from a public procurement contract or a concession to a third person in PPP projects were incorporated to the Public Procurement Act. The developments in the PPP sector are also demonstrated by the fact that a number of PPP projects have already been initiated and implemented. Moreover, the adjudicative practice with regard to PPP projects is in the process of evolving, as some court decisions can already be distinguished clarifying the respective legal field in Estonia.

Practice has thus demonstrated that successful execution of PPP projects is possible in the framework of current legislation but more detailed PPP specific legislation and institution (lack of PPP Unit) would be welcome as well as more clear provisions concerning security and government potential support.



ASSESSMENT & LEGAL INDICATOR SURVEY

1. LEGAL FRAMEWORK

1.1 Existence of different forms of PPP legal framework

QUESTION	ANSWER	ARTICLE	COMMENTARY
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			Therefore, Estonia does not have a single act dealing specifically with Concessions or a generalised act incorporating the legal framework for PPP, including Concessions. Instead, Estonia has one main generalised act – PPA – incorporating the legal framework for all public procurement proceedings, including works concessions. Another general act – CA – covers together with PGSER granting of special and exclusive rights. In addition there are special clauses for PPP in sector specific acts.
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?	× ×	PPA, article 2(1) CA, article 14(2)	Estonia does not have specific regulation for BOT (and derived forms such as BOOT, BOO). PPA and CA are also applicable to such institutions.
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?	× ×	PPA, article 2(1) CA, article 14(2)	Estonia does not have specific regulation for PFI. PPA and CA are also applicable to such institutions.
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?	✓ ✓ ✓	PPA, article 2(1)	See above. PPA and CA are applicable in case of any form of PPP.

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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?

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

At present, the Parliament has finished the first reading of an Act to amend the Public Procurement Act. The act shall proceed to plenary agenda on 23.11.2011. This draft legislation does not include PPP specific clauses as the purpose of the amendments is to enact specific procedure for defence sector procurements.

1.2 Specificity and integration of PPP legal framework

<p>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?</p>	<p>✓ ✓</p>	<p>PPA, article 6, 6¹, 15</p> <p>PGSER, article 3</p>	<p>PPA does not make any exceptions for PPP contracts which are public contracts according to directives 2004/18/EC and 2004/17/EC and exceed at least national public procurement thresholds. However, only granting of works and service concessions and definition of public-private partnership are expressly mentioned in PPA.</p> <p>PGSER provides that the procedure set in PGSER does not cover contracts concluded according to the PPA. Thus, only the PPP that is not concluded according to the PPA, can be granted according to PGSER.</p>
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			Therefore, it is clear to what extent does the Public Procurement Law apply to the granting of a PPP.
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?	✓ ✓ ✓		As the sectoral laws generally include only clauses which further specify the general clauses in PPA and CA and the sectoral laws do not overlap, it is clear which act is applicable.
7. Does the country have a Law allowing the Institutional form of PPP (IPPP) which regulates IPPP participation to PPP?	✓ ✓		Estonia does not have such specific law, however there are no restrictions for this form of PPP and PPA is applicable to such cooperation.



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>	<p>✓ ✓ ✓</p>	<p>CA, article 14(1)</p> <p>PPA articles 6 and 6¹</p>	<p>Yes, the Law defines several terms, such as (1.) special or exclusive rights; (2.) public works concession; (3.) service concession; (4.) public-private partnership.</p> <p>Special or exclusive rights are rights granted to an undertaking by the state or a local government which enable the undertaking to have a competitive advantage over other undertakings in a goods market or to be the only undertaking in the market.</p> <p>Public works concession is a contract the object of which is the same as in the public works contract and according to which the fee for the works mentioned in the same subsection lies either in the right of the</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))



			<p>concessionaire to exploit the work or in that right together with the monetary payment of the contracting authority.</p> <p>A service concession is a contract the object of which is the contracting for services and according to which the fee for the provision of services lies either solely in the right of the concessionaire to provide the specific service and receive fee for the provision of the service from the users of this service or in that right together with the monetary payment of the contracting authority.</p> <p>Public-private partnership is execution of construction works or provision of services on the bases of a public contract concluded through the procurement procedure or through granting the construction works concession or services concession, when the following conditions are met simultaneously:</p> <ol style="list-style-type: none"> 1) the aim of the co-operation is the execution of construction works or provision of services in the public interests; 2) co-operation lasts at least 20 years; 3) the contracting authority and the Private party use jointly the recourses necessary for the co-operation, such as things, money, expertise, experience; 4) the contracting authority and the Private party share the responsibility and risks of the cooperation.
<p>2. Does the Law apply to all contracts entered into that fall under the definition(s) given above,</p>	<p>✓ ✓ ✓</p>	<p>PPA, articles 2(2), 4(1), 6 and</p>	<p>Taking into account the fact that application of certain provision is dependent on whether the contracts qualify to a definition set in the PPA or CA, it can be</p>

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irrespective of the name given to such contract (<i>concession, license, usufruct right, lease, etc.</i>)?		6 ¹	<p>interpreted that the Law applies to all contracts entered into that fall under the definition(s) given above, irrespective of the name given to such contract. However, it is not expressly stated.</p> <p>In its recent case law Supreme Court of Estonia has stated that only substance of the contract is important if deciding whether PPA regulations should be applied. In the particular case a lease contract by its name was classified as service concession contract by the court.</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>)?	×××		No, the Law does not make a clear distinction between a PPP agreement and a license.

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 ?	✓ ✓ ✓		The Law does not include an exhaustive list of Contracting Authorities by their names that are authorised to enter into PPP contracts. Therefore all public authorities may enter into PPP contracts as far as there are no restrictions in the Law which prohibit certain types of PPP contracts (e.g. a private body cannot impose punishment for offences). But such restrictions are defined by function, not by types or

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		PPA, article 10	<p>names of public authorities.</p> <p>Different types of Contracting Authorities are defined in PPA, which uses the same definition of contracting authorities as provided in directives 2004/18/EC and 2004/17/EC. Therefore, in case the PPP contract is covered by PPA, the public authorities and other similar bodies (state controlled companies, foundations etc) shall follow PPA if entering into PPP agreements.</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);*
- *Regional/state-level authorities;*
- *Local or municipal authorities; or State owned companies?*

According to PPA article cited above, all of these are identified as contacting authorities by the Law.

2.3 Private Party and Project Company

QUESTION	ANSWER	ARTICLE	COMMENTARY
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<p>5. Is it possible for a PPP to 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>)?</p>	<p>✓ ✓</p>	<p>PPA, article 1, 3(3)</p>	<p>The Law does not prohibit a PPP to be awarded to a foreign company, a Private Party or to a domestic company with foreign participation in the share capital and/or management.</p> <p>Furthermore, PPA states that Contracting Authority shall treat all persons from EC or countries which are member of EEA or GPA equally. This means that there may no additional restrictions to participate in the public procurement compared to domestic companies. In case of companies from other countries, Contracting Authority may restrict their participation.</p>
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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)? Are there restrictions imposed on such contracts? **There are no restrictions for such contracts in PPA, public entities or public-private entities are free to compete for public contracts on equal terms with private companies.***

2.4 Concerned sectors⁴

QUESTION	ANSWER	ARTICLE	COMMENTARY
<p>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</p>	<p>✓ ✓ ✓</p>		<p>Law does not include an exhaustive list of sectors/types of infrastructure/services in respect of which PPP may be granted but rather takes the opposite approach by imposing certain restrictions. Therefore it is possible to</p>

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



services in respect of which a PPP may or may not be granted?			establish whether a PPP may or may not be granted.
7. Do the list of sectors eligible for PPP correspond to 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”?	✓ ✓ ✓		Based on the approach that the Law enacts certain restrictions when PPP cannot be applied, the list an open-ended one.
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>).	✓ ✓ ✓		Such sectors are not at the moment explicitly excluded from PPP but the extent of PPP is restricted in connection with such services. In principle, state or local government cannot enter into PPP contract to perform the core functions of public authority unless the law directly gives such permission. E.g. such permission is missing in case of prisons or defence but exists in connection with schools. At the same time it is possible to enter into PPP contracts to establish and maintain infrastructure for such services.

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

Law does not exclude any specific sectors from possible PPP contracts. There are rather certain core functions that cannot be transferred to private companies (eg. to impose punishment for offences). See answer no. 8 above.



3. SELECTION OF THE PRIVATE PARTY⁵

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?	✓ ✓ ✓	CA, article 14(2) PPA, article 2, 4, 6, 6 ¹ , 13, 15-19	The CA states that if legislation on the basis of which special or exclusive rights are granted does not provide the procedure for the grant of a special or exclusive right, a public competition for the grant of such right shall be organised pursuant to the procedure established by the Government of the Republic. In compliance with the CA the Government of Estonia has adopted “Procedure for organising a public competition for the grant of special or exclusive rights” 25.09.01 no 303. In case the contract is covered by PPA and exceeds public procurement thresholds, an open public procurement procedure shall be carried out. Exceptions for this principle are stated in PPA and are in compliance with the exceptions in directives 2004/18/EC and 2004/17/EC. In case of service concession contracts and contracts below threshold that are not explicitly excluded from PPA, an open procedure that complies with general principles of

⁵ For further information on the selection of the Private Party, please refer to: PFI Guide, Consolidated Legislative Recommendations, Recommendations 14 to 39 included.



			<p>public procurement shall still be carried out, only the detailed rules of PPA may not be followed.</p> <p>Therefore, the Law requires the Contracting Authority to select Private Parties through a competitive tender process. However, the PPA sets limited number of exceptions when the competitive tender process may not be followed.</p>
1. Is there reference in the Law to the principles of transparency, equal treatment and proportionality?	✓ ✓ ✓	PPA, article 1 and 3	<p>These principles are included as general principles of public procurement in PPA and shall be followed even if the contract does not exceed public procurement thresholds.</p> <p>These principles have also been mentioned as part of good governance practice in case law of Supreme Court of Estonia and should be followed by all public authorities even if it is not directly provided in a sectoral law.</p>
2. 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>)?	✓ ✓ ✓	PPA, article 16(6), 29(1)	The Law does not provide that such notice should be published in local or international media. Notices for contracts that are covered by PPA shall be published in domestic public procurement register and if international thresholds are exceeded, also sent to appropriate EC register.
3. 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>)?	✓ ✓	Section 2 of PPA	Section 2 of PPA sets out the framework for possible qualification requirements for tenderers and criteria for contract award, but there are no PPP specific provisions. These regulations are in compliance with corresponding regulations of directives 2004/18/EC and 2004/17/EC.

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			Ministry of Financial Affairs has also published informal guidelines to apply PPA in practice, but it concerns public procurement in general, not PPP in detail.
4. 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>)?	✓ ✓ ✓	PPA Article 39 (6), 54(1), (2) and (3)	In case of contracts that are covered by PPA contract authority shall always provide written reasons for disqualification. Giving written reasons for decisions that may harm someone's interests is also a part of good governance practice as provided in case law of Supreme Court of Estonia and therefore such reasons shall be given even if the contract is not covered by PPA.

3.2 Award of PPP

QUESTION	ANSWER	ARTICLE	COMMENTARY
5. 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?	✓ ✓ ✓	PPA, article 50(1)	Yes, contracting authority cannot adopt new award criteria after deadline to submit tenders. Under very limited circumstances, as provided in case law of European Court of Justice, already existing contract award criteria may be further specified during the evaluation procedure.
		PPA, article	In case of public procurement the contracting authority

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<p>6. 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>16(7), 37(1) and (2)</p>	<p>shall provide following details about the contract in the contract award notice that is published on the public website of Public Procurement register: (1.) name of other party; (2.) short description; (3.) start and finishing date; (4.) value.</p> <p>In case the contract exceeds international threshold, contract notice is also published on the homepage of appropriate EU register.</p> <p>In case of contracting authorities covered by directive 2004/17/EC, i.e. contracting entities from the utilities sector, contracting entity has the right to decide whether to publish name of other party and value of the contract.</p>
<p>7. 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>PPA, article 105(1), (2) and (3)</p>	<p>Contract notices and contract award notices are retained and published in Public Procurement Register.</p>
<p>8. 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>PPA article 105(4)</p>	<p>The data in Public Procurement Register is publicly available, except where disclosure would hinder the work of the law enforcement authorities, would contradict the public interest or would violate the business secret of undertakings or would damage their mutual competition. The application of latter exceptions is very rare.</p>

3.3 Final negotiations

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QUESTION	ANSWER	ARTICLE	COMMENTARY
9. Does the Law contain provisions regulating final negotiations (i.e. post contract award) so that transparency, equal treatment and competition are preserved?	XX		<p>In case of public procurement procedure, no negotiations in the period between award of the contract and signing of the contract are allowed.</p> <p>Contract negotiations are possible if a public procurement procedure with negotiations is carried out, but the negotiations shall take place before contract award decision. In case of open and restricted procedures and competitive dialogue, no negotiations after submitting the tenders are allowed.</p>
10. 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?	XX	PPA, article 53(1)	In case the contracting authority uses negotiated procedure it may carry out the negotiations in several stages and eliminate least suitable tenders in each stage. After the contract award decision has been made, contract authority can only sign the contract or declare the entire procurement procedure void. At this stage it is not possible to just eliminate the successful tender and take the second best.

3.4 PPP Award without competitive procedure

QUESTION	ANSWER	ARTICLE	COMMENTARY
11. Does the Law provide that the Contracting Authority has the authority to award a PPP without a competitive process only in limited/	✓ ✓ ✓	PPA, article 14	Yes, PPA contains the same list of exceptions as directives 2004/18/EC and 2004/17/EC. In addition it is also possible to apply negotiated procedure without

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exceptional circumstances?		PGSER, article 6.	prior publication of contract notice where only one company is invited but in very limited cases. The PGSER states that a special or an exclusive right as a general rule will be granted through an open bid procedure. Only if open bid procedure does not give the expected result, limited procedure with negotiations or bid from one undertaking can be used.
12. Does the Law provide for a procedure, set of rules or principles to be respected when awarding a PPP without a competitive process?	✓ ✓		PPA includes specific regulations only for negotiated procedures without prior publication of contract notice. In case the contract is completely excluded from the PPA, there are no specific rules for such procedure. General principles of good governance practice should still be followed.

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

Contracting authority may carry out a negotiated procedure with only one company in following cases:

1. no tenders or no requests to participate in the procurement procedure have been submitted during the open procedure or a restricted procedure or all submitted tenders were substantially different from the technical description of the object of the public contract stipulated in the contract documents and the initial terms of the public procurement are not substantially altered;
2. when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the public contract may be awarded only to a particular tenderer;
3. immediate award of the public contract is necessary due to the extreme need brought about by events unforeseeable by the contracting authority and not dependent on the contracting authority and which do not enable to withhold from the minimum deadlines stipulated in PPA.



There are also a few other cases in PPA when negotiated procedure with only one company may be carried out, but these are generally not applicable in context of PPP.

In case of following contracts the Contracting Authority is not obliged to carry out a procurement procedure according to PPA and may therefore also negotiate only with one company (list includes all exceptions, not only PPP specific):

1. services or public works are contracted or the works concession will be granted with the main objective to offer or operate the electronic communications networks available for the public or provide electronic communications service to the public for the purposes of the Electronic Communications Act;
2. when the contract to be awarded is related to state secret for the purposes of the State Secrets Act or classified information of a foreign state or security information or the information not subject to disclosure or provided the fulfilment of the contract presumes the meeting of special security requirements resulting from the legal acts or when the application of the exception is directly needed to protect the significant state interests;
3. public works are contracted for or the works concession is granted according to the rules resulting from the international agreement in accordance with the Treaty establishing the European Community awarded between Estonia and some foreign country, excl. Member State of the European Union and the objective of contracting for public works or granting the works concession is the joint performance of the public works by Estonia and foreign country or the joint use of the building or when the services are contracted for according to the rules resulting from such international agreement and the objective of contracting for these services is the application or use of the joint project of Estonia and the foreign country;
4. when the contract will be awarded on the basis of the international agreement related to the location of military units;
5. by concluding the contract on the basis of the special procedure of international organisation;
6. by concluding the contracts for the acquisition, lease or rental of immovables or the related rights, regardless of the type of contract;
7. by concluding the contract for services for the acquisition, development, production or co-production of the programme material or its part by the broadcasting organisations and by concluding the contracts related to the transmission time;

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8. by contracting for the arbitration or conciliation service;
9. contracting for the financial service related to the issue, purchase, sale or assignment of securities or other financial instruments, including the service related to money or capital involvement and the services provided by Bank of Estonia;
10. by concluding the contract of employment;
11. by contracting for the research and development services;
12. by contracting for services from another contracting authority or from the association of contracting authorities to whom the sole right for the provision of this service in the relevant territory has been given on the basis of the legal act being in accordance with the requirements of the Treaty establishing the European Community;
13. in case of in-house contracts.



3.5 Special case of unsolicited proposals

QUESTION	ANSWER	ARTICLE	COMMENTARY
13. 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?	× ×		No, the law does not provide special provisions for such situations. Even if initiative to enter into a PPP contract comes from private sector, regulations of PPA and CA shall be followed and there are no exceptions for such cases.

3.6 Review procedures

QUESTION	ANSWER	ARTICLE	COMMENTARY
14. 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?	✓ ✓ ✓	PPA article 117	Yes, in case the contract is covered by PPA, tenderer shall first file an appeal with a special body for disputes in connection with PPA, the Appeal Committee. If the tenderer disagrees with Appeal Committee decision, it can submit an appeal to Administrative Court. In all other cases, where Appeal Committee proceedings do not apply, tenderer can submit an appeal directly to the Administrative Court.



4. **PROJECT AGREEMENT**⁶

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)?	✓ ✓ ✓		<p>Yes, the Law gives a lot of flexibility to the negotiation of most terms of the Project agreement.</p> <p>There is no model PPP agreement but several sectoral acts provide compulsory topics that should be regulated in the PPP contract.</p>

4.2 **Duration and extension of the Project Agreement**

QUESTION	ANSWER	ARTICLE	COMMENTARY

⁶ For further information on the project agreement definition, please refer to: PFI Guide, Consolidated Legislative Recommendations, Recommendations 12 and 40 to 68 included.



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?	×××		No, the Law does not 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
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>)?	✓✓		There are no specific regulations for extension of PPP contracts, therefore general provisions of PPA and CA apply. It means that after the PPP contract expires, new open procedure shall be carried out.

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

Article 6¹ of PPA provides that in order to consider the contract as a PPP contract, its duration shall be at least 20 years. At the same time PPA does not prohibit to enter into PPP contracts that have shorter duration.

4.3 Termination of the Project Agreement

QUESTION	ANSWER	ARTICLE	COMMENTARY
4. Does the Law leaves open to the Project Agreement negotiations the list of possible ground for termination and the content of to the termination provision ?	✓✓✓	Law of Obligations Act, section 10, subsection 3	The Law does not provide for the content of the termination provision for the procurement contract. The Law of Obligations Act applies to the procurement contract and therefore parties of PPP contract are free to negotiate the terms of termination of the contract within the same limits as other parties who enter into a



			contractual relationship.
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		
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?	✓ ✓ ✓	Law of Obligations Act, State Liability Act	Yes, depending on nature of the PPP contract the compensation for damage is covered by Law of Obligations Act (if the contract is covered by private law) or State Liability Act (if the contract is covered by public law). There are no special provisions for PPP contracts, therefore general regulations of compensation for damage apply.
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?	✓ ✓ ✓	Law of Obligations Act, State Liability Act	Yes, see above.

4.4 Tariff setting, service standards

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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?	✓ ✓		There are no special regulations in this field for PPP contracts, but this has not been a problem in practice as such issues are regulated by sectoral acts.

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?	✓ ✓	PPA, article 6(2)	The Law does not expressly state that the Private Party could collect tariffs or fees for the use of the facility or its services. However, the Law states that a service concession for the purposes of PPA is a contract the object of which is the contracting for services and according to which the fee for the provision of services lies either solely in the right of the concessionaire to provide the specific service and receive fee for the provision of the service from the users of this service or in that right together with the monetary payment of the contracting authority.
1. 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</i>	✓ ✓	PPA, article 6(1)	The Law does not expressly provide for the possibility of fixed and/or consumption-based payments to the Private Party by the Granting Authority or other public authorities. Nevertheless, the PPA states that public works concession is a contract the object of which is



<i>Purchase Agreement , shadow tool or PFI for instance) ?</i>			the same as in the public works contract and according to which the fee for the works mentioned in the same subsection lies either in the right of the concessionaire to exploit the work or in that right together with the monetary payment of the contracting authority.
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5. SECURITY AND SUPPORT ISSUES⁷

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?	✓ ✓		The matter is not expressly regulated by the Law, therefore this topic has to be negotiated before entering into the contract.
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)?	× × ×		No, the Law does not clearly state which types of security can be provided and include some of the most common type of guarantees in project financing

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;*

⁷ For further information on support and financial securities, please refer to: PFI Guide, Consolidated Legislative Recommendations, Recommendations 13, 49, 57 and 60.



- *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?	✓ ✓	CA, article 30(1)	The Law does not include specific regulations for PPP in connection with this question. Contracting Authority has the authority whether to grant such support or guarantees as long as it is in compliance with general state-aid regulations in CA.
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?	✓ ✓		See previous question.
5. If the answer to the previous question is <i>Yes</i> , does the Law clearly state which public	× × ×		No, the Law does not clearly state which public authorities may provide such support and which types of support can be provided. It is rather that the Law

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<p>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>currently does not provide the possibility provide certain support whether in PPP or other contractual relationships (e.g. tax and customs benefits).</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>)?	✓ ✓ ✓		Yes, as the Law does not provide strict time constraints, Parties can negotiate the most suitable financing terms for them.
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?	✓ ✓	PPA, article 69 ¹	Yes, the Contracting Authority may give consent to the transfer of the rights and obligations deriving from construction or services public procurement contract or construction or services concession to a third person, if the following conditions are met simultaneously: (i) the person transferring the rights and obligations has infringed the obligations deriving from the public procurement contract significantly and the contracting authority has, due to this, the authorisation to terminate the contract; (ii) with regard to the person “ <i>stepping-in</i> ” none of the bases of exclusion of the tenderers and candidates from the procurement procedure exists; (iii) the economic and financial standing and technical and professional skills of the transferee comply with the conditions set in the procurement documents, that are sufficient for confirming the ability to properly fulfil the transferees unfulfilled part of award and comply



37.

			with and are proportional to the unfulfilled part of object the award, the essence, amount and purpose of the services or construction works.
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6. SETTLEMENT OF DISPUTES AND APPLICABLE LAWS⁸

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?	✓ ✓ ✓		The Law does not include provisions that prohibit this, therefore it is possible if Contracting Authority is interested.
2. Has the government of the country ratified the Washington Convention on the Settlement of Investment Disputes (ICSID) (1965)?	✓ ✓ ✓		In force since 28.11.93.
3. Has the government of the country ratified the New York Convention on recognition and enforcement of foreign arbitral awards (1958)?	✓ ✓ ✓		In force since 22.07.92.

⁸ 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.	✓ ✓ ✓		The Law does not include provisions that prohibit this, therefore it is possible if Contracting Authority is interested.
5. Has the country ratified any international convention for the protection of foreign investments?	✓ ✓ ✓		Estonia has bilateral investment protection agreements with Denmark, Finland, Sweden, France, Germany, USA, Norway, Netherlands, Switzerland, Poland, China Israel, Great Britain, and Northern Ireland, Lithuania, Ukraine Belgium-Luxemburg, Latvia, Italy, Greece, Turkey, Spain, Azerbaijan, Hashemite Kingdom of Jordan and Moldova.



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?	× × ×		There is no such framework in Estonia.
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 Ministry of Finance has issued Guidelines on the Public Procurement Proceedings in general, that amongst other issues briefly includes some details about PPPs.
3. Is there a municipal/regional policy framework (explicit or implicit) for PPPs in infrastructure or public services?	× × ×		There is no such framework in Estonia.



7.2 PPP Awareness and Sustainability

4. Is there a national and/or municipal /regional long term programme for PPP promotion and awareness?	XXX		There is no such programme in Estonia.
5. Are there PPP training programmes on a national and/or municipal/regional level for public servants and other PPP concerned people?	XX		
6. Are there PPP courses as part of university curriculum or specialist departments and faculties in universities teaching PPP?	XX		In University of Tartu there is a voluntary course for public procurement in general, containing some teaching about PPPs.



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>On state level the position in connection with PPP could be described as neutral. There are not many PPP projects on state level, compared to local government level, and there are no extensive programmes to promote PPP, but at the same time there also are no specific obstacles. The public opinion in connection with PPP could also be described as neutral.</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>Practice has demonstrated that successful execution of PPP projects is possible in the framework of current legislation but more detailed PPP specific legislation would be welcome. Currently the implementation of more sophisticated PPP projects means that several acts should be applied simultaneously which means that often external consultation is necessary for smaller Contracting Authorities. As the financial means are limited, this may limit the use of PPP.</p>



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

The absence of PPP specific legislation makes it harder for smaller Contracting Authorities to implement sophisticated projects because they do not have financial means to buy necessary amount of external consultation. Secondly, there seems to be no initiative from on state level to promote the use of PPP.

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?	XXX		There is no institution/agency/ministerial department especially for this purpose. Ministry of Financial Affairs is responsible for implementation of PPA and therefore the respective department to some extent has to handle general PPP issues. Ministry of Economic Affairs and Communications also provides information about PPP but it does not serve as Central PPP Unit.
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		In case of Ministry of Financial Affairs the above mentioned department consists of civil servants who are not recruited from the business community.
	N/A		



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?			
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		
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		

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?			
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?	× × ×		
9. Is the division of power between different public authorities involved in the PPP granting process simple and coordinated?	✓ ✓ ✓		

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>)	✓ ✓ ✓		<p>Yes, there are several local governments who have successfully developed local infrastructure projects and also provided public services based on PPP contracts.</p> <p>Also, it is compulsory for all local governments to grant the exclusive rights for waste management services in form of</p>

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			PPP.
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>)?	✓ ✓ ✓		Yes, in principle there may be only exceptional cases when the contract is awarded without transparent competitive procedure. There is also recent case law of Supreme Court of Estonia which declared a service contract void because no transparent competitive procedure was carried out beforehand.
3. Have PPP projects (<i>or similar long term agreements 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		Before 2000 the public procurement and competition law regulations were quite basic compared to current regulations. Therefore it is possible that there are long term PPP projects which have not been established according to PPA or CA.

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?	✓ ✓ ✓		Although there are no official statistics, there have not been reports that the PPP projects have not been implemented in compliance with the Law.
5. Has a PPP project ever been awarded and	✓ ✓ ✓		

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implemented in the country at the local /regional /municipal level in compliance with the 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>)?	✓ ✓ ✓		There are for example several projects to renovate and construct school buildings under PPP agreements.

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 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?

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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?	✓ ✓		In order to successfully challenge latter decisions of the Contracting Authority a Private party shall take care that there are no unclear provisions in contract notice and contract documents. Often tenderers ignore these problems, but this is not a problem of legislation but rather failure by tenderers.
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 compensation or for such action to result in the cancellation of the award?	✗ ✗		According to current case law, the compensation is limited to reasonable costs to participate in the selection procedure and this only if tenderer can prove that without the violation it would have been successful with high probability. It is not possible to seek compensation for loss of profit.
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?	✓ ✓		There have not been reports, which would claim that there are more problems in connection with PPP contracts compared to other contracts.
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		



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.*

An interested party challenged the decision by a local government to award exclusive right to operate local waste disposal site for 40 years without any open competition. Furthermore, the local government tried to hide the service concession behind the name of a land lease contract, which is not covered by PPA. The Supreme Court of Estonia noted that only the substance of a contract is important when analysing whether it is covered by PPA and took the position that it is indeed a service concession contract. Due to the fact that there was no competitive procedure beforehand, court found that EU principles for public procurement were not followed and therefore declared the contract void.