



## Slovenia

**ASSESSMENT OF THE QUALITY OF THE PPP LEGISLATION AND OF THE EFFECTIVENESS OF ITS IMPLEMENTATION  
2011**

<b>I- PPP Legislative Framework Assessment (LFA)</b>	<b>Compliance of the PPP legal framework with PFI Guide recommendations<sup>1</sup> and Best Practice</b>		
<b>Core Area</b>		<b>Rating</b>	<b>Assessment</b>
<b>1- PPP Legal Framework</b>	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	17/18	
<b>2-Definitions and Scope of the Law</b>	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	19/21	
<b>3-Selection of the Private Party</b>	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.	42/45	
<b>4-Project Agreement</b>	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).	22/27	
<b>5-Security and Support Issues</b>	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.	13/21	

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

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2.

<b>6-Settlement of Disputes and Applicable Laws</b>	Possibility to obtain proper remedy for breach under the applicable law through international arbitration and enforcement of arbitral awards.	13/15	
<b>General LFA Rating</b>			
	126/147	<b>84,5%</b>	<b>High Compliance</b>
<b>II-Legal Indicators Survey (LIS)</b>	<b>Effectiveness Assessment : How the PPP law works in practice</b>		
<b>Core Area</b>		<b>Rating</b>	<b>Legal Indicator Survey</b>
<b>7- Policy Framework</b>	Existence of a policy framework for public private partnerships	14/24	
<b>8 Institutional Framework</b>	Existence of an institutional framework for public private partnerships	12/27	
<b>9- PPP Law Enforcement</b>	Award and implementation of PPP projects in compliance with the Law	25/27	
<b>General LIS Rating</b>	51/78	<b>65%</b>	<b>Medium Compliance</b>
<b>OVERALL RATING</b>	175/228	<b>74,8/%</b>	<b>High Compliance</b>

### Local Expert: 2011 Updated Assessment<sup>2</sup> : Wolf Theiss Attorneys-at-law, Slovenian branch

<sup>2</sup> 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. The initial assessment for 2008 was made with the assistance of the **Law firm Colja, Rojs & partnerji o.p.,d.n.o., Grega Peljhan;**

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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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4.

- **"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 extent 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 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.



## **SLOVENIA OVERALL ASSESSMENT 2011**

Slovenia in 2007 modernised its Public Private Partnership (PPP) policy, institutional and legal frameworks, which compare favourably with those in other EBRD countries of operations. The Slovenian Public-Private Partnership Act (the “PPP Act”), enacted in 2007, is a fairly comprehensive piece of legislation, regulating both contractual and institutional PPPs. The PPP Act refers to contractual PPPs as relations based on either concessions or public procurement and applies to both services concessions and works concessions, including BOT (“build, operate, transfer”) schemes. However, due to its expressly subsidiary nature the Act needs to be consulted in combination with other sector laws and general laws (e.g. the Public Procurement Act or the Public Utilities Act) to ascertain exactly which rules should apply. This approach may not necessarily prove the most attractive for investors and the act remain complex and confuse on many issues.

The PPP Act is applicable to commercially viable infrastructure assets and to public services based on social infrastructure. The law provides a degree of flexibility and a variety of instruments. The most favourable aspects of the PPP Act are that it provides a PPP framework that did not previously exist, and that it obligates the awarding authority to consider the results of a compulsory feasibility study before entering into any public procurement contract. Such studies list the advantages and disadvantages of a PPP for the deal.

The PPP Act is applicable to all forms of public-private partnerships: contractual partnerships such as concessions, BOT, BOO and similar forms, licence authorizations and public contracting relationships (public works and public services), privatizations.

It appears to the advisors in charge of the evaluation of the law that the fact that it wishes to cover every type of public private partnership both contractual and institutional with a broad definition of partnership including all public private type cooperation from Public Procurement to quasi privatisation is certainly an interesting intellectual exercise which inevitably result in the greatest confusion.

The fact that the law intend to regulate concessions, public procurement and equity participation where public and private interest coexist and in each case to try to incorporate EU Directives with respect to Work concession and Service Concessions with a special treatment for water, energy, transport and postal services. The further idea to give to the Law only a "subsidiarity" effect applicable only for the procedures of establishing and operating public-private partnerships with regard to those issues that are not regulated otherwise by a special act or regulation (sectorial law or local government regulations) except on specific provision for which primacy of applicability apply add to the confusion.

In this context it is hard to recoup the provision of the Law with the PFI Guide as benchmark and no doubt that foreign investor will have some difficulty to figure out the legal framework applicable to concessions in a specific sector and the risk associated with such uncertainties or complexities which may further give the impression of bureaucracy and protectionism which is just the opposite of the objective of the Law.

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One of the most favourable elements of the PPP Act is to have designed for Slovenia a public private partnership framework which until 2007 did not exist with the innovative idea to force the awarding authority to consider before entering into any public procurement contract through a compulsory feasibility study the possibility and advantage or inconvenient of a public private partnership for such deal.

The core issues which remain to be improved are those with respect to the (i) content of the concession agreement and termination provisions, (ii) security package available to the lenders and (iii) the modalities of the government support which remains very unclear.

According to the PPP Act, the Ministry of Finance plays a major role in PPP implementation. Specifically, it is required to formulate PPP regulations, form a special organisational unit within its structure to develop and monitor the implementation of PPPs, draw up manuals for operating PPPs and undertake other measures in order to improve PPP practices.

The Minister of Finance is also required to lead the PPP Council, which formulates PPP policy.





## 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>The Public Private Partnership Act was published in the Official Gazette of the Republic of Slovenia no. 127/2006 on 7 December 2006 and entered into force in 2007 (the Public Private Partnership Act (“ZJZP”) of 2007)</p> <p>The concessions were legally possible also before the Public-Private Partnership Act entered into force. The concession were mentioned already in the year of 1993, when Public Utilities Act entered into force. Before that the Institutes Act, which entered into force in 1991, already mentioned the term concession. On this legal basis it was possible to grant a concession to an institute (not a public institute) for performing of public services.</p>



2. Does the country have an act that allows BOT or derived forms such as BOOT, BOO or other forms either as part of a specific act or as part of a general PPP Law?	✓ ✓ ✓	Art 2	The definition of PPP and concession covers all forms of PPPs
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?	✓ ✓ ✓	Art 26	The definition of PPP covers PFI
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		

**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?**



**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>Art 27</p> <p>Article 28</p> <p>Article 29</p> <p>Public procurement Act, Art 11,</p>	<p>Not always very clear</p> <p>a) Special provisions on the process of granting of the concession are set out in the PPP Act, but these provisions only extend to cases, defined as concession partnerships (where the concessionaire bears the majority or entirety of the commercial risk involved in operating a PPP project). In the event of the opposite allocation of the risk (if the public partner bears the majority or entirety of the commercial risk involved in operating a PPP project), the provisions of the PPP act shall not be applicable. In this case the rules of the Public Procurement Act shall apply for the procedure of selection of concessionaire.</p> <p>If it is not possible from the circumstances of a PPP to determine who bears the majority of commercial risk, where there is doubt, it shall be deemed to be a public procurement partnership.</p> <p>The rule regarding the distinction between public procurement and concession partnerships provided in the previous articles shall also apply mutatis mutandis for adjudication of the status of equity partnership.</p> <p>b) The procedure, set out in the Public-Private Partnership Act is applicable to all types of concessions, as far as they meet the criteria for concession partnership; but there are some distinctions in the procedure of selection of concessionaire for the “works concession” and for “services concession”.</p>
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		17	<p>c) Always, when public-private partnership is a public procurement partnership, one of the procedures of public procurement shall be used for selection of the concessionaire.</p> <p>d) Public procurement Act shall not be applicable for the service concessions (that meet the criteria for the public procurement partnership). However, when a contracting authority grants special or exclusive rights to carry out a public service activity to an entity other than a contracting authority under the PPP Act, the act by which that right is granted shall provide that (in respect of the supply contracts which such entity awards to third parties as part of its activities for which it has special or exclusive rights) the entity concerned must comply with the principle of non-discrimination on the basis of a registered office location or nationality.</p>
<p>6. If the country has sectoral laws regulating PPP in specific sectors, is it clear which law is applicable to the granting of PPP for each particular sector?</p>	<p>✓ ✓ ✓</p>		<p>The principle of subsidiarity shall apply except with respect to some specific issues for which the provisions of the respective laws apply. "This Act shall be applicable for the procedures of establishing and operating public-private partnerships with regard to those issues that are not regulated otherwise by a special act or regulation issued on the basis thereof for individual forms of public-private partnership."</p> <p>Concessions are regulated in numerous sectorial laws:</p>



		<p>Maritime Code, 2001</p> <p>Aviation Act, 2001</p> <p>Roads Act, 2010</p> <p>Energy Act, 1999,</p> <p>Water Act, 2002, art.149</p>	<ul style="list-style-type: none"> <li>- Concessions can be granted for the operation and development of port infrastructure.</li> <li>- Concessions may be granted for the construction and operation of new public airports (airports designated and open to air traffic and public air transport).</li> <li>- Concessions can be granted for the construction of public roads, in accordance with the PPP Act.</li> <li>- The Energy Act regulates in several provisions the granting of concessions in sub-sectors (system operator of transmissible networks, system operator of distributional networks, supply of electricity)</li> <li>- Most water related activities are regulated by water permits and not by concessions. Concessions are <i>inter alia</i> required for the use of water for production of drinks, for baths, health resorts etc.; the production of electricity in hydroelectric power plants and the construction of ports if the investor is a private entity. Other activities in the water sector may require a water permit.</li> <li>- Concessions can be granted for exploitation of mineral raw materials.</li> <li>- Concessions can be granted for the performance</li> </ul>
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		<p>Mining Act, 2010</p> <p>Law on Education</p> <p>Health Care Act</p> <p>Social Care Act</p>	<p>of the educational activities</p> <ul style="list-style-type: none"> <li>- Concessions can be granted for the health care activities.</li> <li>- Concessions can be granted for social care activities.</li> </ul>
<p>7. Does the country have a Law allowing the Institutional form of PPP (IPPP) which regulates IPPP participation to PPP?</p>	<p>✓ ✓ ✓</p>	<p>Art 96 to 103</p>	<p>PPP or concession may be granted to an Equity Public Private Partnership.</p> <p>Relationships of institutional or equity partnership:</p> <ol style="list-style-type: none"> <li>1. by establishing a legal person under the conditions provided by PPP Act;</li> <li>2. through the sale of an interest by the public partner in a public company or other entity of public or private law;</li> <li>3. by purchasing an interest in an entity of public</li> </ol>



16.

			<p>or private law, recapitalization or</p> <p>4. in another manner in comparative terms legally and actually similar and comparable to the aforementioned forms, and through the transfer of the exercising of rights and obligations proceeding from the public-private partnership to such person (for instance performing commercial public services).</p> <p>The selection of the Private equity partner is regulated under the articles 97 to 103.</p>
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## 2. DEFINITIONS AND SCOPE OF THE PPP LAW(S)

### 2.1 PPP definition<sup>3</sup>

QUESTION	ANSWER	ARTICLE	COMMENTARY
<p>1. Does the Law define one or several term(s) (<i>i.e.</i> "PPP", "Concession", "BOT", "Partnership" etc. and/or respective agreements) for the arrangements to be regulated by the Law which specify the limits of application of the Law?</p> <p><i>For our general information, please provide the given definition(s), if any.</i></p>	✓ ✓ ✓	Art 2	<p>"Public-Private Partnership":</p> <p>Public-private partnership represents a relationship involving private investment in public projects and/or public co-financing of private projects that are in the public interest, and such relationship is formed between public and private partners in connection with the construction, maintenance and operation of public infrastructure or other projects that are in the public interest, and in connection with the associated provision of commercial and other public services or activities provided in a way and under the conditions applicable to commercial public services, or of other activities where their provision is in the public interest, or other investment of private or private and public</p>

<sup>3</sup> 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))



		Art 26	<p>funds in the construction of structures and facilities that are in part or entirely in the public interest, or in activities where their provision is in the public interest."</p> <p>"Concession": a bilateral legal relationship between the state or self-governing local community or other person of public law as the awarding authority and a legal or natural person as a concessionaire, in which the awarding authority awards to the concessionaire the special or exclusive right to perform a commercial public service or other activity in the public interest, which may include the construction of structures and facilities that are in part or entirely in the public interest</p>
<p>2. Does the Law apply to all contracts entered into that fall under the definition(s) given above, irrespective of the name given to such contract (<i>concession, license, usufruct right, lease, etc.</i>)?</p>	<p>✓ ✓</p>	<p>Art 3</p> <p>Art 5.11</p>	<p>Yes subject to the subsidiary principle:</p> <p>"This Act shall be applicable for the procedures of establishing and operating public-private partnerships with regard to those issues that are not regulated otherwise by a special act or regulation issued on the basis thereof for individual forms of public-private partnership".</p> <p>Where a a special or exclusive right in the sense is granted through an administrative or other act, irrespective of how it is referred to under a special act (concession, licence, permit, authorisation and so forth), such right shall be deemed to be a special or exclusive right</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> )?	✓ ✓ ✓	Art 66	
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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 5.1          Art 5.2	"Public partner" is the state or a self-governing local community, which in a relationship of public-private partnership within the framework of its real and local jurisdiction establishes a public-private partnership in which it also grants the right and obligation to perform activities...."  "Other public partner" is a legal person of public law established by the state or self-governing local community or by another person that performs public procurement pursuant to the provisions of the act governing public procurement, and may establish public-private partnerships only where provided by an act or a regulation issued on the basis thereof. Unless otherwise expressly provided by law, other public partners shall be governed by the same rights and obligations that apply to a public partner referred to in point 1 of this article";



20.

		Art 5.9	<p>“Awarding authority” is the public partner in the case of a concession form of public-private partnership; ”</p> <p>It is not clear if it also involves Other Public Partners.</p> <p>Government of the Republic of Slovenia has the power to award concessions for the PPP on the state level, whereas the mayors of the municipalities are empowered on the local level. This is the general rule, but it is possible that sectorial legislation regulates this issue in a different way.</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?*

### 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 1(2) Art 7 Art 13	Purpose of transposing EU Directives No discrimination principle Equality Principle
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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?*

#### **2.4 Concerned sectors<sup>4</sup>**

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?	✓ ✓	Article 2	Based on EU Directives Public Procurement in the Water, Energy, Transport and Postal Services sectors is treated by a specific Public Procurement in the Water, Energy, Transport and Postal Services Sector Act  No list of sectors in which concession or PPP can be granted but the definition of PPP includes all activities in connection with the construction, maintenance and operation of public infrastructure or other projects that

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



		Article 34.3	<p>are in the public interest, and in connection with the associated provision of commercial and other public services or activities provided in a way and under the conditions applicable to commercial public services, or of other activities where their provision is in the public interest, or other investment of private or private and public funds in the construction of structures and facilities that are in part or entirely in the public interest, or in activities where their provision is in the public interest.</p> <p>The public partner must deliberate and decide on any application regarding interest in operating a public-private partnership within four months of receipt, and in that time it must also decide, wherein it shall not be bound to initiate a preliminary procedure (test of public-private partnership):</p> <ul style="list-style-type: none"> <li>– whether the proposed project runs counter to the Constitution or law,</li> <li>– whether it involves activities that are so closely linked to the protection of state, official or military secrets that implementing the procedure would prevent the protection of such secrets,</li> <li>– whether the conditions referred to in Article 8 of this Act have been fulfilled (value of project, public partner, subject of public-private partnership), or</li> <li>– whether the activity that is the subject of the proposal is already being performed.</li> </ul>
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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”?	N/A		
8. Do the sectors eligible for PPP include 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> ).	✓ ✓ ✓		See above

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



### 3. SELECTION OF THE PRIVATE PARTY<sup>5</sup>

#### 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 42	Yes but subject to specific sectorial law or other applicable Law under the subsidiary principle.  "(public tender procedure)"  Irrespective of the form of selection instrument, a public-private partnership contractor shall be selected, unless otherwise provided by law, on the basis of a public tender, notice of which must also be published on the Internet.
2. Is there reference in the Law to the principles of transparency, equal treatment and proportionality?	✓ ✓ ✓	Art 12 Art 13 Art 14 Art 15 Art 16	
3. Is there a provision in the Law concerning the publication of information related to the competitive procedures in the country media	✓ ✓ ✓	Art 48 Art 82	

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





and in the international media ( <i>for large projects</i> )?			
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> )?	✓ ✓ ✓	Art 42 to 52	
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> )?	✓ ✓ ✓	Art 53.5	An official record shall be kept of the opening of bids. Any remarks by representatives of the candidates on the progress of the public opening shall be recorded therein. The expert committee shall send the official record of the public opening to all candidates within eight days.

### 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 55.1	(report)  After the completion of its review and evaluation, the committee shall draw up reports and indicate which applications fulfil the tender requirements, and shall rank these applications such that it is clear which of the applications are most successful in meeting the criteria

### Checklist **Slovenia**



		Art 50	set and what subsequent ranking they achieve in terms of meeting the criteria.  Weight of criteria
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 70.3	The information entered in the record, except for personal data, shall be public.
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 20  Art 70  Art 21	(3) Records of PPP projects to be kept with the Ministry of Finance.  (6) The substance and record-keeping for projects and records of public-private partnership contracts shall be regulated by an implementing regulation issued on the basis of this Act by the minister competent for finance.
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?	✓ ✓	Art 13	Website publication

### 3.3 Final negotiations

#### Checklist **Slovenia**



QUESTION	ANSWER	ARTICLE	COMMENTARY
10. Does the Law contain provisions regulating final negotiations (i.e. post contract award) so that transparency, equal treatment and competition are preserved?	✓ ✓ ✓	Art 54.2	"The committee may demand explanations from the candidates that would assist it with the review, comparison and evaluation of the applications. In so doing it must not allow a candidate to supplement or amend an application in any way. In particular, it must not allow a candidate to alter those documents in the application that would influence the evaluation of the application of a specific candidate (change of subject, price and other criteria)."
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?	✓ ✓ ✓	Art 60	

### 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 only in limited/	✓ ✓	Art 57	Exceptions to be provided in specific sectorial or Municipal law with the only limitation of the protection of public interest.



<p>exceptional circumstances?</p>		<p>Art 83</p>	<p>"If the subject of the public-private partnership is a concession to perform commercial public services or other activity where for the purpose of protecting the public interest the law expressly provides the issuing of an administrative decision, the selection instrument shall be an individual administrative act (hereinafter: selection decision), on the basis of which a public-private partnership contract shall be made with the selected private partner in compliance with the provisions of Article 68 of this Act. "</p> <p>(1) The awarding authority may select a concessionaire of works whose estimated value in compliance with the regulations on public procurement amounts to at least 5,278,000 euros without the issuing of a public tender notice (direct agreement) in cases where the conditions pursuant to the Public Procurement Act have been fulfilled and they apply to the selection of the works contractor (such as protection of exclusive rights, unforeseeability and urgency and so forth).</p> <p>(2) The awarding authority may award an existing works concessionaire addition concessionary works that were not envisaged in the concession contract, if in view of unforeseeable circumstances they have become necessary for implementation of the project, under the condition:</p> <p>— that the joint value of the works does not exceed 50% of the value of the project under the concession</p>
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			<p>contract,</p> <ul style="list-style-type: none"> <li>– that the additional works cannot be technically or economically isolated from the concession contract project without causing serious difficulty for the awarding authority, or</li> <li>– that such works, even though they could be isolated from the execution of the original works concession, are urgently necessary in order to complete the project that is the subject of the concession contract.</li> </ul>
13. Does the Law provide for a procedure, set of rules or principles to be respected when awarding a PPP without a competitive process?	✓ ✓ ✓	Art 58 Art 84	

*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?	✓ ✓ ✓	Art 32.1	<p>The law contains a specific provision to call for potential promoters to make proposal in various sector of interest for the public sector but also unsolicited proposals.</p> <p>(call to promoters)</p> <p>"The public partner shall as a rule issue once a year a call to potential promoters to submit applications regarding their interest in operating a public-private partnership in areas where the conditions might be met for public co-financing of a private project (such as constructing a private, publicly accessible car park) or where there exists an interest in private investment in public projects (such as commercial municipal services in the areas of sewerage or gas supply)."</p> <p>Promoters of an unsolicited proposal shall have the same rights than other candidates.</p>

### 3.6 Review procedures

QUESTION	ANSWER	ARTICLE	COMMENTARY
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## Checklist **Slovenia**



<p>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?</p>	<p>✓ ✓ ✓</p>	<p>Art 61 to 64</p>	



#### 4. **PROJECT AGREEMENT**<sup>6</sup>

##### 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)?	✓ ✓ ✓	Art 90	

##### 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	✓ ✓ ✓	Art 71.2	The duration of the public-private partner relationship shall be determined as such that it affords the public-

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





<p>of time taken for the amortisation of the Private Party's investment and an appropriate return on the capital?</p>			<p>private partnership contractor stability and security of investment, the possibility of effective and safe financial investment and the return of what it has invested, and in view of the nature of the subject of partnership during the relationship the return to the partnership of funds invested and the achievement on this of a proper market yield, while at the same time the contractor keeps, assumes and manages, depending on the nature of the public-private partnership, part of the commercial risk.</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>✓ ✓ ✓</p>	<p>Art 71</p>	<p>(3) The duration of the public-private partnership may be extended in a manner provided in advance by the public-private partnership instrument, where:</p> <ul style="list-style-type: none"> <li>– owing to the measures of the public partner or other measures by an authority the contractor cannot implement the relationship;</li> <li>– this is necessary owing to additional investment by the public-private partnership contractor resulting from requests of the public partner or its measures in the public interest.</li> </ul> <p>(4) The duration of the public-private partnership may not be extended by more than half of its established duration.</p> <p>(5) In the event of a public procurement partnership, any extension of the relationship must also be in compliance with the Public Procurement Act.</p>



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

### 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 ?	✓ ✓ ✓	Article 90	
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?	✓ ✓	Art 14.2	Unilateral violations by the public partner of the public-private partner relationship shall be governed, unless otherwise provided by law, mutatis mutandis by the rules of obligational law regarding compensation liability owing to breach of contract (reimbursement of actual damages and lost profits).



		Article 64.2	If the revocation of a decision or other instrument would mean a disproportionate burdening of the private partner that has hitherto carried out the public-private partnership contract, the court shall not revoke such decision or other instrument, but shall determine its unlawfulness, and shall upon request award the plaintiff compensation or in respect of claiming recompense it shall direct the plaintiff to pursue litigation.
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?	✓ ✓	Article 73.3	The amount of compensation upon termination of the public-private partnership shall be regulated by the public-private partnership contract, where there shall be no application of the rules of the act regulating legal material relations regarding the consequences of terminating the building right.

#### 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?	✓ ✓		Act regulating commercial Public Services to apply.

#### 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?	✓ ✓		Does not prevent
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> ) ?	✓ ✓		Does not prevent



## 5. SECURITY AND SUPPORT ISSUES<sup>7</sup>

### 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?	✓ ✓		Does not specifically prevent
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)?	XX		

**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;*

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



- *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?	✓ ✓	Art 9  Art 10	Yes but subject to other law governing government aid.  "(providing incentives) (1) The public partner may in compliance with regulations provide incentives designed to enable a specific investment in a public project being carried out as a public-private partnership".  But: "(prohibition on state aid) In establishing and operating a public-private partner relationship pursuant to this Act the public partner must continuously act so as not to violate the regulations on the permissibility and monitoring of state aid".
4. Does the Law provide for ( <i>or does not specifically prevent</i> ) the Public Authority to	✓ ✓		See 4.3 above

## Checklist **Slovenia**



provide financial or economic support for the implementation of PPP?			
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> )?	XX		



### 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> )?	✓ ✓		Not specified , not prevented
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?	✓ ✓ ✓	Art 90	Reference made in the list of concession provisions: “the possibilities of entering into a concession relationship in place of the existing concessionaire (“step in”)”





## 6. SETTLEMENT OF DISPUTES AND APPLICABLE LAWS<sup>8</sup>

### 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?	✓ ✓	Art 140	(1) The parties to a public-private partnership may agree that disputes directly related to their relationship and which are not within the exclusive jurisdiction of a court in Slovenia, may be resolved through an agreed arbitration service.  (2) Relations between public-private partnership contractors and users shall lie within the exclusive jurisdiction of the locally competent court in Slovenia (prohibition on prorogation of foreign court or arbitration).
2. Has the government of the country ratified the Washington Convention on the Settlement of Investment Disputes (ICSID) (1965)?	✓ ✓ ✓		Since 1994

<sup>8</sup> 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)?	✓ ✓ ✓		Since 1991
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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 139	"Irrespective of the affiliation of the public-private partnership contractor, Slovenian law shall be applicable for the relationship between the public partner and public-private partnership contractor and for relations with users." Relations other than between the public and private party are not concerned by this article.
5. Has the country ratified any international convention for the protection of foreign investments?	✓ ✓ ✓		Numerous bilateral agreements for "protection of investments".  EU principles since the accession.



## 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 PPP Act seeks out to promote and develop public private partnerships.</p> <p>the <i>Local Government Act</i> dated 1993 sets out a framework that permits municipal entities to award concessions for the performance of public services, but does not describe the conditions under which such concessions will be granted. Article 62 allows the methods and conditions for performance of public services to be set by the Municipality.</p> <p>In addition, numerous sector-specific acts regulate the granting of concessions in specific sectors (e.g., <i>Maritime Code</i> of 2001, <i>Aviation Act</i> of 2001, <i>Roads Act</i> of 2010, <i>Energy Act</i> of 1999, <i>Water Act</i> of 2001, <i>Mining Act</i> of 2010, laws regulating education, health care and social care).</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?	✓ ✓ ✓		The Rules on the content of the eligibility of execution of a project according to the model of public - private partnership, which have been adopted in 2007.
3. Is there a municipal/regional policy framework (explicit or implicit) for PPPs in infrastructure or public services?	✗ ✗ ✗		

## 7.2 PPP Awareness and Sustainability

4. Is there a national and/or municipal /regional long term programme for PPP promotion and awareness?	✗ ✗ ✗		
5. Are there PPP training programmes on a national and/or municipal/regional level for public servants and other PPP concerned people?	✓ ✓	Article 20	Some trainings have been organised at the time when the PPP Act entered into force.  The PPP Act also states that the Ministry of Finance is available for consultation and also for collaboration during the project preparation phase.
6. Are there PPP courses as part of university curriculum or specialist departments and faculties in universities teaching PPP?	✓ ✓ ✓		Among other, the following universities contain courses on PPPs:  University of Ljubljana – Faculty of Economics, European Law Faculty Nova Gorica, University of Primorska – Faculty of Management



### 7.3 Obstacle to implementation of PPP Policy

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.)?	✓ ✓		Some local interests may prevent a municipality to go forward with a PPP project.
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.)?	✓ ✓		Generally, there are no such legal obstacles to implementing a PPP, however, the interpretation of the PPP Act, being not very well structured, may cause problems in the PPP implementation.



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?	✓ ✓ ✓	Art 20	Department for Public Private Partnership (" <i>Sektor za javno-zasebno partnerstvo in sistem javnega naročanja</i> ") is an organisational unit within the Ministry of Finance. Its tasks are to develop, monitor and cooperate in implementing public-private partnerships in Slovenia, to draw up manuals for operating public-private partnerships, to formulate expert proposals for amendments to regulations and the adoption of other measures that might help in improving practices and eliminating problems in this area, and to perform other tasks provided by the PPP Act.
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?	✗ ✗ ✗		Only civil servants from the Ministry of Finance.
3. Is the role of such Central PPP Unit comparable	✓ ✓ ✓		Such Central PPP unit is available for coordination and



to a "task force" assisting in the development of projects in general and not limited to promotion of PPP?			consultation for single PPP projects.
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> )?	× ×		Officially not, however, the Government established a working group on a ministerial level for such matters.
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?	✓ ✓ ✓	Art. 20	According to the PPP Act, the Ministry of Finance (i.e. the Central PPP Unit) shall work to provide education, information exchange, public presentations and promotion of the possibility of public-private partnership on the national and local levels.

**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 sectorial level?	× × ×		
8. Is there either a specific "one stop shop" for PPP	× × ×		

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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?	✓ ✓		Officially not, however, the Government established a working group on a ministerial level for such matters.

## 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>There is no tradition of public-partnership projects in Slovenia except tje Maribor water Concession project in the years 1998 in which EBRD was involved . EU accession process, lack of public finance and the increased demand for public services led to the introduction of the law on Public Private Partnerships in the Republic of Slovenia at the end of 2006. This law became fully operable in 2007 when all the necessary laws were adopted.</p> <p>The Government Council for Public Private Partnership issues a report on closed PPP projects every year. The last report that set out details of PPP projects for 2008 waspublished in April 2009.</p>



		<p>The report shows that around 67% of all municipalities in Slovenia have entered into at least one PPP project. The sectors, excluding the health sector, in which most PPP projects have been awarded, are:</p> <ul style="list-style-type: none"> <li>— waste management;</li> <li>— drinking and waste water management;</li> <li>— funeral services; and</li> <li>— distribution of earth gas.</li> </ul> <p>Contractual partnerships are the most common form of municipal PPP, with 256 concessions entered into in 2007, and 367 in 2008.</p> <p>There also have been five examples of PPP projects in the form of institutional or equity partnerships in 2008. An example of a recent major municipal PPP project is a project known as “Stožice”, where the Municipality of Ljubljana is the public partner in the project to build and operate a multifunctional football stadium, sport centre and a commercial marker.</p> <p>Contractual partnerships are also the most popular at national level. To date, most PPPs have been entered into by the Ministry of Justice, the Ministry of the Environment (passing more than 200 concessions) and the Ministry of Health. These have included such projects as:</p> <ul style="list-style-type: none"> <li>— court services;</li> <li>— waste and waste water management;</li> <li>— hydro electronic electricity generation; and</li> <li>— more than 310 specialist outpatient clinics.</li> </ul> <p>The run-of-river hydropower plants on the middle Sava</p>
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			River will connect the cascades on the upper and lower Sava River into a closed chain. Nine power plants are envisaged on the section. The hydropower development of the Middle Sava River section is regulated by the Concession Act; concession has been granted to Holding Slovenske elektrarne
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> )?	✓ ✓ ✓		
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?	✓ ✓ ✓		

*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?	✓ ✓ ✓		
5. Has a PPP project ever been awarded and implemented in the country at the local /regional	✓ ✓ ✓		Municipality of Ljubljana is at the forefront of PPP development in Slovenia. At the moment Municipality

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/municipal level in compliance with the Law?			of Ljubljana is involved in several large PPP projects, including The Sports Park Stožice, Emonika City Center, and Partnership Šmartinska District Redevelopment. Nevertheless there is still space for smaller PPP projects in the fields of social care, tourism, culture, sport and others.
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> )?	✓ ✓ ✓		In particular, housing for elderly people.

#### 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)? ***No publicly available information on this.***
- Please give some examples of the most significant project awarded:
  - under which legal form have such PPP projects been awarded (Concession, BOT, PFI, other): ***Most of the projects are awarded as concessions.***
  - have such PPP project been granted by (i) central, (ii) sub-sovereign/regional (if applicable) or (iii) municipal government as Contracting Authority; ***At central level and at the level of municipalities.***
- 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 ***Under the PPP Act, only within the past few years under the PPP Act. Concessions, for example have been awarded already in the last 10 years or before.***
- ***please give examples of any PPP projects awarded but not implemented (or not implemented under a PPP form) No publicly available information.***

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- are there any PPP/Project Agreements in discussion? *No publicly available information.*

### 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?	✓ ✓		
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?	✓ ✓		
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?	✓ ✓ ✓		According to the information as provided by the Ministry of Finance.
10. If any Project Agreement has been terminated prior to the end of the contractual period by the Contracting Authority, has fair compensation been paid to the Private Party in compliance with the Law?	N/A		We are not aware of any such cases.

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

