



• PPP on the increase • • • • •

After years of huge discussion concerning the public-private partnership (“PPP”) and the use of PPP projects in the Czech Republic as a

standard alternative for the funding, construction, management or maintenance of a public infrastructure or the provision of public services, it now seems that words are becoming acts and the “first” PPP projects may prove that PPP is a vital structure for the delivering of public services.

In this respect, one always has to bear in mind that the very term PPP is a difficult one, perhaps even impossible, to precisely define. However, the following elements are normally characteristic of a PPP.

- The projects are funded by the private sector usually by means of complex arrangements where the private sector raises the funds from lenders (banks or bondholders) and/or shareholders. This, however, does not mean that public funds can not be added to private funds;

- The role of the public sector in PPP projects is purely to define the objectives of the project which satisfy the public interest, the required quality of the services to be provided under a PPP scenario and the pricing policy. The private sector then takes the responsibility of designing, funding, completing and operating the project.

The public sector therefore focuses on what public services should be provided, i.e. which services should be provided for which users and whether such services should or must be guaranteed by the public sector. The private sector gives the answer as to how to provide such services.

- The risks normally borne by the public sector are transferred to the private partner. This, however, does not mean that the private partners bear all the risks concerning the PPP project.

- The projects are normally designed for a relatively long time period.

To sum up, a PPP is a contractual arrangement under which a private partner delivers public services or performs various administrative functions for public authorities and assumes the associated risks and receives for the performance of its obligations a fee, which may be (i) entirely from the public budget, (ii) entirely from user charges or (iii) a combination of both.

While PPP is for the public sector a new approach for delivering public services, for the private sector PPP creates new business opportunities and any private partner in PPP must therefore be capable of sustaining a business plan which is sufficient for other parties to invest in that business.

In effect, PPP projects involve many interests and entities, which are not involved in traditional procurement processes. Consequently, the participation of experienced legal, technical, financial and economic advisors in both the public and private sectors is a must when establishing and concluding relationships between all the parties to PPP.

With regard to PPP in the Czech Republic two recently enacted pieces of legislation should be mentioned.

Act No. 139/2006 Coll., on concession contracts and concession procedures (“Act on Concessions”), provides for the conditions and procedures under which public contractors may conclude a contract on concession establishing a partnership between the private and public sectors.

A contract on concession is defined as a contract under which the concessionaire undertakes to provide services and/or carry out the work and the public contractor undertakes to enable the concessionaire to take the profits from the provision of such services or from the use of work carried out, including the respective obligation to pay the fees as a partial payment for the obligations of the concessionaire.

Some rules established by the Act on concession will also apply to public contracts awarded under the new Act on public procurement No. 137/2006 Coll. which are concluded for a period of more than five years and where the risks normally borne by public contractors are transferred to the private party.

As far as the awarding procedures are concerned both Acts are based on the basic principles of transparency, equality of treatment and proportionality. Of pivotal importance for the awarding of contracts concerning PPP projects is the adoption of a new procedure called “Competitive” or “Concession” dialogue, which allows the contracting entities to open up dialogue with candidates for the purpose of identifying solutions capable of meeting their needs. The candidates to the dialogue will then be invited to submit their bid on the basis of the solution(s) found during the course of the competitive dialogue.

Whereas the aim of this Article is not to describe the content of the Acts passed, it suffices to conclude that these Acts confirm the possibility of using PPP projects in the Czech Republic and it should be hoped that PPP will become a standard structure for delivering public services in the Czech Republic as the private sector has much to offer in the process of delivering these services.

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