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**For comments by the expert platform**  
**and others**

*[Unofficial working translation  
into English from Czech  
original]*

**Public Private Partnership**  
*(Partnerství veřejného a soukromého sektoru)*

*Legal feasibility study  
in the Czech Republic*

*September 2003*

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**ANNEX: OVERVIEW OF LEGISLATIVE BASIS IN THE KEY SECTORS**

## INTRODUCTION

*This study was performed in anticipation of the planned reform of the public budgets in co-operation with the Czech Ministry of Finance and the National Property Fund.*

**The purpose** of this study is to analyse the legal environment in the Czech Republic in the light of the planned implementation of public services and public infrastructure projects by way of Public Private Partnership ("**PPP**") and to provide recommendations concerning changes to be made in Czech law in order to facilitate the execution of such PPP projects.

*This study could not have been drafted without the unselfish support and expertise offered to us by some other experts – mainly members of the individual government departments. A list of their names is carried in the enclosure and the author wishes to thank them sincerely.*

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## 1. EXECUTIVE SUMMARY

### 1.1 Partial Readiness; Requirements for Change

*Although the legal environment in the Czech Republic has not undergone any specific preparation in order to accept PPP project, some projects can be implemented without any further amendments.<sup>1</sup> However, the implementation of projects in some areas (e.g., funding of medical or educational projects, the implementation of projects involving collection of fee (e.g., toll) etc.) and any further expansion of PPP projects would be conditioned by a certain legislative amendments and organisational readiness of the public sector.*

### 1.2 Requirements for Legislative Amendments – General laws

*Successful implementation of PPP projects would require certain material legislative amendments in the following spheres:*

**Public procurement:** *PPP projects involve public contracts and must comply with the provisions of the Public Procurement Act. This act (both the current one and the relevant Government Bill) has not been drafted with a view to making public procurement of such scope and nature as those inherent to PPP projects; therefore it does not allow for a special treatment of contracts made by way of concession in compliance with EU directives.*

**Government property:** *PPP projects contain elements that exceed the limits currently applicable to legal management of the Government property – they concern certain conditions applicable to the acquisition, disposal, encumbering, and lease of property. It is recommended that the Ministry of Finance should be authorised to approve any required exemptions from any such statutory limitation.*

**Concessions:** *With the exception of brief provisions in certain legislation (e.g., the Roads Act) Czech law does not contain any rules governing Government concessions. The required change means the adoption of rules in respect of concession agreements, rules governing their execution, and enforcement by courts.*

**Fee collection:** *If a fee is to be collected from the direct users of any public infrastructure in connection with certain projects, the relevant legislation will have to be adopted along with a manner of regulation of the amount of such fee.*

**Fiscal discipline:** *There is no mechanism present allowing for the monitoring or regulating of the creation of mandatory expenses from future budgets by way of execution of long-term agreements over and above the current budget as well as the three-year expenses plan. It is recommended that such projects should be subjected to an approval by the Ministry of Finance. At the moment, the Government is not in the position of supervising the creation of the public debt on the part of the regions ("the autonomous self-administration territorial units"). It is recommended that certain projects should be conditioned by an approval of the Ministry of Finance.*

### 1.3 Requirements for Legislative Amendments – Special laws

*The implementation of PPP projects in individual sectors and the funding of the relevant infrastructure may also require amendments made to certain special legislative provisions. A list of amendments required in those fields where PPP projects would be most probably introduced is carried in the enclosure.*

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<sup>1</sup> This is confirmed by projects implemented so far (e.g., Pražské vodovody a kanalizace, a.s.)

#### 1.4 Special PPP Legislation and Definition of PPP

*PPP projects are affected by a wide variety of legal provision. Although it is recommended to amend certain legislation and to adopt some new, its is not suggested that a specific PPP projects act be made.*

*That solution also relates to the requirements for a definition of the term "Public Private Partnership". It may be necessary to define certain key features of regulated projects in connection with any proposed legal amendments and Government regulation; however, there is no need to introduce a general definition of the term of Public Private Partnership in Czech law.*

#### 1.5 Fiscal Discipline

*The execution of contracts for PPP projects that would establish a liability of the public budget to make future mandatory expenditure may in fact represent the creation of public debt that – however – shall not be approved as part of the current budget under the existing rules. Such public debt would result in higher mandatory disbursements burdening future budgets and in limitations imposed upon their "administrators". Thanks to PPP projects, the public sector will be capable of developing infrastructures that otherwise could not be funded from its current budgets, and/or debt, as applicable. The relevant beneficiaries, however, may be facing a situation as a result of liabilities entered into in connection with PPP projects where they would have to limit certain public services spending in the future, and/or risk insolvency in certain extreme cases.<sup>2</sup> Due to the above risks and also due to the below described limitations on creating public debt it is desirable to have set up controlling mechanisms in order to prevent that future budgets were "overloaded" with mandatory disbursements. The proposed mechanisms would consist of obligatory approval of PPP projects, including those carried out by regions, by the Ministry of Finance.*

#### 1.6 Fair Sharing of Public Debt Limitations

*The total public debt rate must not exceed 60% of the Gross Domestic Product (GDP)<sup>3</sup>. With some PPP projects, their entire scope of future liabilities (i.e., the total volume of the executed investment or acquired funding) may be characterised as public debt. Moreover, the public debt also incorporates debt generated by the regions. Some regions or communities that would be more active in developing their infrastructures through PPP projects would exhaust the entire authorised public debt limits thus preventing the implementation of other PPP projects (or any other manner of infrastructure funding) by others.*

*It is desirable in view of the financial scope of potential PPP projects that the Government should regulate the manner in which its organisational units as well as the regions implement their PPP projects (or any other projects that generate public debt). Since the self-administration may only be interfered with by law, such measures will have to be in the form of an act.*

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<sup>2</sup> The banks that would finance PPP projects would carry-out analyses to check that a region would not become insolvent due to a PPP project but this natural controlling function will not go beyond this point and would lack the aspect of protection of public interest.

<sup>3</sup> So-called Maastricht Criteria contained in the EU Treaty dated 07/02/1992 (Treaty of Maastricht)

## 2. PPP LEGISLATION

### 2.1 Special PPP Legislation?

*The routine question that the task force has been confronted with during debates concerning the PPP was whether, and if so, in what manner, PPP projects should be governed by special legislation. A simple answer is that **it does not matter whether a PPP project is or is not governed by special legislation.** Some European countries (Ireland, Portugal, Belgium) have chosen to adopt such special legislation. Some other countries, though, do not have any such special provisions (UK, France), still they have been successfully implementing a number of PPP projects.*

*PPP projects and their implementation are governed by several pieces of legislation (that govern, e.g., public procurement, authorities of Government departments, authorities of regions, etc.) so it would be an unsystematic move to have merely transferred such provisions in connection with PPP projects into a special act.*

*However, there still are several fields remaining that have not been governed by any special legislation so they, too, will have to be incorporated either in the existing, or in a new piece of legislation. They are the following:*

- *Authority of the Ministry of Finance to supervise projects implemented by the regions and their "drawing on" limited public debt.*
- *Provisions governing the execution of concession agreements.*

### 2.2 Definition of PPP

*Another routine question related to the legal analysis was whether and how to define PPP projects.<sup>4</sup> A simple answer is that in general **there is no reason why a general definition of a "PPP project" should be introduced in Czech law.** The introduction of any potential legislation governing fiscal supervision, any special legislation governing concession-type contracts, or any concession legislation, may require specifications of eligible projects. Still, such definition(s) cannot be regarded definitions of the PPP projects.*

*It may be necessary to define projects subjected to approval in connection with the regulation or fiscal supervision by the Ministry of Finance, such as: (1) any contracts made by public sector beneficiaries and private sector contractors, (2) under which the public sector accepts liabilities to make payments burdening any future budgets and being in excess of a given percentage (e.g., 10%) of the relevant current budget of the beneficiary.*

## 3. PPP POLICY

### 3.1 General Public Sector PPP Exposures

*PPP projects may be bearing fruit but they may be paid for by certain risks and additional burdens to the public sector. By executing PPP contracts to source public services and/or public infrastructure the public sector will have shifted to the private sector a portion of its responsibility and also a portion of its exposure related to the development and operation of such project. However, if such PPP projects were*

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<sup>4</sup> *The term PPP (Public Private Partnership), or PFI (Private Finance Initiative – in UK), PSP (Private Sector Participation) or PPI (Private Participation in Infrastructure) is a widely applied technical term describing a broad group of projects characterised by participation of both the private and the public sectors whose aim has been the satisfaction of requirements usually provided for by the public sector; at times, such terms may be applied in a somewhat unsystematic manner to any combination of the public and private sectors. e.g., regular supplies of goods or services.*

*implemented incorrectly the public sector will be exposed to the risk of insufficient public services without any option to seek efficient and effective remedy. Such exposure is increased particularly due to the long-dated nature of PPP project contracts. On the other hand, it is this long run feature that makes the core of the partnership and that makes it advantageous for the public sector. Long-term provision of services makes the private sector to seek similarly long-term efficient solutions. Security of long-lasting projects and their long-lasting cash flows for a certain term also is important for the financing of projects by the private sector.*

*There are risks in the application of the PPP format to the provision of public services but they can be well hedged by simultaneously employing the following two measures: (1) legislative amendments described below; and (2) provision of good quality institutional support for the public sector so that it can act as an equal partner of the private sector in the negotiations and implementation of PPP projects.*

### **3.2 Minimum But Necessary Regulation**

*The private sector that plays an essential role in the implementation of PPP projects has been sensitive to (1) excessive regulation; and (2) legal uncertainty resulting from unclear regulation or policy. The public sector exposures described in this study may certainly be diminished by applying "authoritative" approaches and dictating by the private sector. Such approaches, though, are counterproductive because they increase the risk or costs of the private sector while the ability of the private sector to absorb such risk or costs without shifting them to the public sector is fairly limited. If the Government would think of extending regulation of PPP projects over and above any measures drawn in this study, it is recommended that such measures should first be consulted with members of the private sector so that the Government can make informed decisions about any such measures also with the knowledge of any side effects for PPP projects.*

*Any attempts to regulate the PPP projects by the public sector<sup>5</sup> in an "authoritative manner" should be limited to the following:*

- (1) Limitation of risks from PPP projects executed in an inappropriate manner, (see Institutional Backup)*
- (2) Limitation of risks from breaches of fiscal discipline, (see Fiscal Discipline)*
- (3) Far access to drawing on limited resources in the form of public debt limits, (see Fiscal Discipline)*
- (4) Transparent and equal treatment/selection of partners, (see Public Procurement and Concessions).*

*The following table compares the most important elements of both the existing and recommended legislation. Also, the table sums up any recommended amendments; it needs to be noted, however, that such amendments should be conditioned by the simultaneous authorisation of the Ministry of Finance to perform certain measures that have also been included in the review.*

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<sup>5</sup> *Yet another way of less risky regulation is represented by inserting provisions protecting public interest in PPP contracts. The public sector would thus be able to get the information about the "cost" for the required right immediately during negotiations about the contract.*

Criterion	Level	Present state	Recommendation
Authority to enter into concession agreements	State	In most cases unclear at all levels	Explicit open provisions providing for controlling authority of the MoF
	Regions		
	BudgOrg		
Authority to create future mandatory disbursements over and above approved budget deficit	State	Disputable at all levels	Explicit authorisation subject to approval of the MoF
	Regions		
	BudgOrg		
Transfers of property	State	Criteria of permanent lack of use or Govt. approval	No limitations, exemption to be set out by the Govt. and approved by the MoF
	Regions	For "arms-length price"	
	BudgOrg	Like the Govt.	Unambiguous authorisation
Acquisition of property	State	In a tender or based on expert evaluation	Remove the evaluation requirement
	Regions	No limitations	
	BudgOrg	Like the Govt.	Remove the evaluation requirement
Guarantees for financing	State	By law only	Special authorisation by law in specific cases, if necessary.
	Regions	To a limited scope	
	BudgOrg	No/Subject to founder's approval	
Pledge of property	State	No	With approval by the MoF
	Regions	With approval of relevant council	
	BudgOrg	No	With approval of the MoF
Involvement in private companies	State	Founding an "a.s." with approval of the Govt. No limitations to acquisition if approved by the MoF	No limitations, financial liabilities subject to approval by the MoF, exemption from statutory liability of controlling entity under the Commercial Code
	Regions	No limitations	
	BudgOrg	No limitations	

MoF - Ministry of Finance  
Regions - (Autonomous self-administration territorial units)  
BudgOrg - Budget Organisations

### 3.3 Approval Level

Simply speaking, the higher the required level of approval the higher the risk that the quality or feasibility of a project would be affected by political decisions and that a lower number of project would be implemented. On the other hand, the lower the required approval level the higher the risk that the project would be factually or politically difficult. In view of the balance of risks and support to the highest possible dissemination of PPP projects it would be desirable that most of the projects – beside approval by the project originator – **should only be further approved by the Czech Ministry of Finance unless the Government reserves the right of approval of certain projects.**

### 3.4 Institutional Backup

In order for a project to represent a genuine partnership the public sector must have comparable information and experience in implementing PPP projects as the private sector in negotiations and in making the project documentation.

Some other countries have found it useful to provide the public sector with a team of specialists for analysis, negotiations and implementation of PPP projects (the "**PPP Centre**"). Since the operation of PPP Centres is closely interconnected with fiscal policy, they are attached to the Ministry of Finance in all countries where such PPP Centres exist.

A PPP Centre may exist in a number of forms but it should always be controlled by the Government. Because a PPP Centre "serves" a number of public sector members, they, too, should be given some influence over the PPP Centre's operations.

### 3.5 Fiscal Discipline

#### (a) Public debt and private funding of projects

*PPP projects may sometimes be understood to represent private alternatives to funding of projects that otherwise would have to be financed by the Government. It needs to be stressed that PPP projects in fact possess other advantages than such private funding of public projects. From the point of view of their funding, PPP projects, may not be more advantageous than public debt financing, for the following reasons:*

- (1) Private entities that initially fund the project (with their capital or with debt) expect future return on their investment plus a profit margin (either from the public budget or from direct payments by the public);*
- (2) Interest paid for funding of private entities is higher than interest paid for funding of the public sector;*
- (3) Transaction costs of funding PPP projects are higher than costs for public debt;*
- (4) The involvement of banks and other financial institutions in the implementation of PPP projects incorporates higher risks and limitations for the public sector (see "Project Implementation").*

*In spite of the above-described disadvantages of private funding of PPP projects – whose impact can be limited after all – PPP projects have been considered for a number of other reasons an advantageous form of funding certain public services and public infrastructures. However, it is beyond the scope of this study to describe such advantages.*

#### (b) Maastricht Criteria

*The Czech Republic has acquired certain liabilities in order to achieve and maintain so-called Maastricht Criteria. Compliance with the Maastricht Criteria means that the total public debt must not exceed 60% of the GDP and the annual public budget deficit must not exceed 3% of the GDP.<sup>6</sup>*

*Therefore, it is of material importance for the Czech Republic exactly how such PPP projects should be recorded in respect of the amount of both the public debt and deficit. In some cases, public debt would not be affected by such future liabilities of the public sector while in other cases it will. The exact assessment shall follow the methodology drafted by EUROSTAT. At the time of the work on this analysis a discussion was under way concerning an alteration of the EUROSTAT methodology, specifically in connection with PPP projects. Its outcome was not known yet, though. Still, the following criteria, inter alia, can be expected to be applied in deciding on whether a PPP project be reflected in public debt immediately and in full (or whether it would just burden future budgets with mandatory disbursements and would affect their deficit):*

- (1) The type of services provided and the exposure rate of the individual parties;*

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<sup>6</sup> Clause 1, Protocol on the Excessive Deficit Procedure of the Treaty of Maastricht

- (2) *The manner of determination of payments for the private entity and the ratio of "non-public" cash flow either from direct consumers of the service (e.g., toll or tuition) or from any associated activities (e.g., lease of petrol stations);*
- (3) *Ownership of any relevant assets throughout the contracted term by the service provider, and the manner of the subsequent transfer of such assets;*
- (4) *Existence of a guarantee from the public sector for the financing of the private sector.*

*The above-described parameters may be influenced with a number of PPP projects, although a concession with a single parameter (e.g., higher exposure rate for the private sector) may result in higher costs or concessions with other parameters. The fact whether the funding of a specific project reflects in public debt or not should be one of the chief factors in the determination of the structure of such specific projects, and in the relevant approval process.*

(c) *Regions' Autonomy versus Fiscal Discipline*

*According to the Maastricht Criteria public debt consists of both the Government (State) debt and debt generated by the regions. PPP projects implemented by a single community or a region thus affects indirectly but materially the rest of the public sector, specifically by limiting its option to "draw on" public debt. At the same time, the regions have been constitutionally guaranteed self-administration and management according to their own budgets.<sup>7</sup>*

*Since PPP projects, due to their major financial scopes, may as a result substantially boost public debt, it is feasible that the Government should be able to manage, and/or prevent, any such PPP projects that would have an unacceptable impact on public debt or deficit.*

*Side by side with public supervision of public debt increases, certain controls should be imposed on the manner of "drawing on" the public debt limits by the individual sections of the public sector. It is obviously not in the public interest that certain future projects might be impaired to the previous implementation of other projects – often by other regions or communities.*

*As shown above, the regions have guaranteed their self-administration by the Constitution that – however – allows for Government interventions, though exclusively subject to law.<sup>8</sup> Therefore, the provisions recommended here would require to be enacted as a law.*

(d) *Regulatory Measures*

*It is recommended that (1) the execution of any contracts for periods in excess of the statutory periods under which any component of the public sector or the public itself were to pay any amounts in excess of statutory amounts were subject to approval by the Czech Ministry of Finance; and (2) the Ministry of Finance should draft a methodology governing procedures*

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<sup>7</sup> Clause 100(1) and Clause 101(3) of the Constitution of the Czech Republic

<sup>8</sup> Clause 101(4) of the Constitution of the Czech Republic

*applicable to public debt "drawing allocation" to any individual components of the public sector.*

#### **4. AUTHORITY**

##### **4.1 Authority of PPP Project Originators**

*With projects of such financial scope and social import as PPP projects all parties involved are concerned about the issue of contractual authority of the relevant public law entities.*

*Since this authority – with few exceptions – has not been properly defined yet, the parties involved must base the relevant reasoning on certain generally binding principles governing the authority of administrative bodies.*

*It is recommended in the interest of maintaining legal certainty that the authority of individual components of the public sector was duly defined. In connection with administrative bodies, the current draft Administrative Code will suffice. It would also be proper if the authority of the regions and communities was confirmed in a similar manner – either immediately in the community or regional constitution or, e.g., in the proposed law on concessions.*

##### **4.2 Contractual Rights**

*Project contracts always contain liabilities of the private partner that facilitate such public services quality control by the public partner. Those liabilities, if part of a regular master-slave (administrative body – subject) relationship, would have to be enacted as a law because they limit the subjective rights of private partners. However, in case of contractual supplies, private partners are free to negotiate their own contractual liabilities. Any accepted liabilities and any associated rights of the public partners thus derive from a contract rather than from law. The exercise of any related rights by the private partners does not represent the execution of the authority of a relevant (administrative) body, rather the exercise of certain contractual rights. Therefore, no specific amendment to the legislation is required.*

##### **4.3 Authority Limited by Budget**

*Authority of public sector subjects to accept liabilities over and above their approved budgets represents a very complex administrative law issue.*

*It is one of the fundamental rules in parliamentary democracy that it is the Parliament that sets out taxes and charges.<sup>9</sup> Logically, the Parliament should also determine payments made by the public sector. It may be claimed that the logic and the purpose of those rules mean that the public sector is not in the position of accepting liabilities over and above any approved budgets, thus that any contracts entered into by the public sector that bind it over and above any approved budgets are invalid because counter to law. It is not the purpose of this study to assess the risk of success of such claim before a court. Uncertainty regarding the binding nature of any relevant contracts may result in certain unwillingness of the private sector, specially banks, to provide funding. And if they do agree to provide funding, this uncertainty may have an impact on the price. It is recommended that such uncertainty could be removed by adopting certain clear-cut rules that would govern acceptance of liabilities over and above any current budgets as well as liabilities that will make mandatory disbursements in future budgets. It may also be practical to authorise*

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<sup>9</sup> The state budget of the Czech Republic is solely adopted by the House of Deputies

*explicitly all sections of the public sector to enter into such contracts provided that contracts in excess of a certain statutory limits would be subject to prior approvals by the Czech Ministry of Finance.*

## **5. CONCESSIONS**

### **5.1 Historic and International Contexts**

*Concessions as a legal tool were used as early as by the princes of the Přemyslid House (before 1300). Originally, they served the distribution of special and exclusive rights, e.g., the brewing right. Later on – in the Austro-Hungarian Empire – concessions were issued, e.g., to railway developers.*

*Currently – due to many reasons – concessions have not been widely used in the development of public infrastructures and the public sector has so far been more inclined to build such infrastructures in its own name with help of budgetary funding. However, in Europe and elsewhere, public infrastructure has been to a growing extent significantly developed with help of PPP concessions.*

*The current legislation, too, has accepted to a limited extent the concept of concessions as contracts made between the public and the private sectors.<sup>10</sup> However, it still needs to be waited for any substantial expansion of the application of this tool in any other spheres of public administration.*

### **5.2 Contract or Authoritarian Act?**

*A concession can be viewed from two angles: a unilateral authoritarian act or a bilateral contract reflecting the will of its parties. The authoritarian option possesses certain limitations, the paramount one being that a public administration body is incapable of binding a concession holder to do anything that such public administration body has a statutory powers to do. This type of concessions does not seem to be suitable in PPP projects – as against some other fields where it is applied in the sense of granting concessions to perform certain activity. It is recommended to apply contracted concessions in the implementation of PPP projects.*

### **5.3 Closed and Open Concession Policy**

*In respect of concession contracts, the legislators may take a double approach: (1) an open one where the public sector is free to enter into concession contracts with the exception of spheres that have been reserved; or (2) a closed one where the public sector may enter into concession contracts exclusively in specific and explicitly approved cases.*

*A closed approach<sup>11</sup> means a limited risk of uncontrolled execution of concession contracts with an unpredictable impact on public interest. At the same time, though, it means a material limitation of expansion of PPP projects because it is time consuming to acquire a statutory authority to execute a concession contract, and once acquired, it may not count with all options that may appear in practice. The open approach helps advance PPP projects at the cost of a higher risk of uncontrolled impact on public interest. In view of the interest in advancement PPP projects voiced by the Government and in the interest of the achievement of the targets of the public budget reform, it is recommended that the open approach to*

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<sup>10</sup> E.g., the Roads Act

<sup>11</sup> This approach has been applied to public law contracts in the Government Bill of the new administrative code

*concession contracts should be opted for. Any risks for the public sector would be limited by the work of the PPP Centre as well as the suggested required approval by the Ministry of Finance to implement any specific PPP projects. If the Government wishes to apply stricter controls to the execution of concession contracts, it may, e.g., reserve the right to determine such reserved fields to which open approach would not apply and which would remain subjected to governmental or parliamentary approval.*

#### **5.4 Legal Relations between Concession Holders and Consumers**

*A private partner authorised to operate public infrastructures would come in direct touch with their consumers. There is a special issue that needs to be resolved in connection with the introduction of concession contracts, namely the legal relationship between the concession holders and consumers. In some cases, such as operation of roads, only the issue of loss liability for, e.g., bad technical state of the road, needs to be resolved. Such relationship would be more complex if a fee is collected. A special category is made up, e.g., by concessions to operate municipal transport where a very intense relationship exists between the concession holder and consumers.*

*In most of the areas involved the public sector has already had in place provisions governing such relations with consumers of services (e.g., specifically in public transport<sup>12</sup>). Success in certain PPP projects may require special statutory provisions that would govern relations between the concession holder and the general public.*

#### **5.5 Private Law Nature of Contracts**

*If concessions should be issued in the form of agreed concession contracts it is not necessary specifically to issue any new legislation to govern the related contractual issues because private law has already had a well-tested legislation in place. In some areas, concession contracts may have to comply with special rules (e.g., the contracts must be in writing and made as a single deed) that serve the protection of public interest but in principle contractual freedom of parties must be observed. It is therefore recommended that private law contractual rules should be interfered with as little as possible, and always with proper assessment of any resulting impact from specific interference.*

#### **5.6 Protection of Public Interest**

*PPP project contracts are made for very long terms. The legislators may wish to protect public interest, e.g., by giving the public sector special rescission rights.<sup>13</sup> Such rights may prove difficult for the feasibility of PPP projects because the private partners and financiers may see them as risky. The existence of such risk may boost the price of projects for the public sector or even cut down on the expansion of PPP. Moreover, the value of such right is fairly limited for the public sector because unilateral statutory acts may bring about risks of international investors claiming breach of investment protection agreements.*

*It is recommended in respect of concession contracts for PPP projects to eliminate a statutory right of rescission in public interest and any similar rights of the public sector and rely on the protection of public interest contained in the individual contracts. Such contracts would be more often than not entered into in the form of*

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<sup>12</sup> S.18b of the Road Transport Act no. 111/1994 Collection of laws

<sup>13</sup> See, e.g., the provisions contained in the Government Bill of the administrative code, s.142 et seq.

*certain standard contract drafted by the PPP Centre so it may be expected that public interest will be properly protected in them.*

## **5.7 "Expropriation" of Rights**

*A simple rescission right due to conflict with public interest is not appropriate. Efforts on the part of the public sector to protect public interest in certain extraordinary cases by terminating rights from concession contracts are understandable. Similarly as with the expropriation of rights in rem, it also is possible to discuss the "expropriation" of contractual rights – subject to certain conditions and for compensation. However, it is recommended that any specific provisions should be discussed with the private sector in much detail because it might have a materially negative impact on advancement of PPP projects by scaring off banks and sponsors.*

## **5.8 Judicial Review**

*A foreseeable and objective system serving the enforcement of rights under concession contracts and the resolution of potential disputes concerning the content of contractual liabilities represents an essential condition of feasibility of PPP projects for the private sector – as well as of protection of the public sector.*

*The private sector would find it more feasible if concession contracts were reviewed by courts rather than by any other administrative body. If the enforcement of any claims and resolution of disputes were to be the responsibility of bodies belonging to the executive power, that would violate the balance and the fundamental PPP principle, namely partnership. It is recommended that concession contracts should be subjected to regular jurisdiction of general courts of justice.*

## **5.9 Draft Administrative Code**

*At the time of drafting this study a draft of the new Administrative Code<sup>14</sup> was in the second reading in the House of Deputies of the Czech Parliament. The draft contained, inter alia, certain general provisions governing public law contracts to be made between the public sector and the private sector. The draft envisages the following:*

- *The introduction of a closed system of public law contracts to be made in certain specific cases instead of making administrative decisions.*
- *Contracts made between the public and the private sectors should be subject to review by a superior administrative body.*
- *Introduction of certain provisions governing rescission of contracts that may prove harmful to PPP projects.*

*The provisions governing public law contracts as moved in the Administrative Code draft aim at governing legal relations other than those emerging in connection with PPP projects, and seem to be totally improper for PPP projects. It is therefore recommended that beside public law contracts governed by the Administrative Code also a specific category of "concession contracts" be created and subjected to different rules.*

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<sup>14</sup> Parliamentary Paper no. 201/0 submitted to the Parliament by the Government on 04/02/2003

## 6. PUBLIC PROCUREMENT

### 6.1 Public Procurement and Their Importance for PPP Projects

*Basically every PPP project<sup>15</sup> contains an obligation of the public sector to pay to the private sector for the provision of certain public services. Therefore the relevant contracts will be "Public Procurement" and shall be placed accordingly.*

*This chapter sums up an analysis of the Public Procurement Act<sup>16</sup> in respect of PPP projects, and certain European rules applicable to public procurement and distribution of concessions.*

*It is essential for the success of PPP projects that the public sector had as much flexibility as possible in the execution of contracts. Therefore it is important that the Czech Republic should allow maximum flexibility in the placement of orders in connection with PPP projects that would conform to the relevant European directives.*

### 6.2 EU Rules

*The system of placing public procurement in the EU Member States is broken down by the type of services provided and the orders that meet such criteria would be subjected to the relevant order placement under the EU Directives:*

*(a) Construction<sup>17</sup>*

*Orders in excess of EUR 5 million are subject to the European regime. However, orders considered "**concession contracts**" are subjected to a less strict regime that only incorporates the duty of making a notification in the Official Journal of the European Communities.<sup>18</sup>*

*(b) Services<sup>19</sup> and Supplies<sup>20</sup>*

*Orders of supplies of services and goods in excess of EUR 200 000 are subject to the European regime.*

*(c) Water, energy, transport, telecommunications<sup>21</sup>*

*Orders for supplies for the public sector or for holders of exclusive rights in the above-described sectors are subject to the European regime if in excess of EUR 200 000.*

*Projects involving waste water cleansing plants and roads fall within the "construction" category.*

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<sup>15</sup> Projects fully paid for from collected fee may constitute an exception; however, such projects, too, usually contain to a certain extent title to payments from the public sector.

<sup>16</sup> At the time of drafting this study, the Parliament reviewed a new Government Bill governing public procurement. This study therefore reviews any currently available wording of the above bill as if it were in force.

<sup>17</sup> 93/37/EEC dated 14 June 1993

<sup>18</sup> The Official Journal of the European Communities

<sup>19</sup> 92/50/EEC dated 18 June 1992

<sup>20</sup> 93/36/EEC dated 14 June 1993

<sup>21</sup> Directive 92/13/EEC dated 25 February 1992

*A construction shall be considered a concession contract if the relevant costs are "covered" in full or in part by the provision of rights to exploit it. No ratio has been established in respect of any revenues from such exploitation and any direct payments from the public sector. Every single project would be assessed on a case to case basis and all criteria would be taken into account.*

*Even if a construction is classified as a "concession contract" the Government, beside so-called "joint rules of notification", cannot be released of the duty also to respect certain common rules<sup>22</sup> of equal treatment, ban on discrimination, proportionality, transparency, and mutual respect.*

### **6.3 Future EU Rules**

*At the moment, the European Union has witnessed a process of changes of the system of directives governing public procurement that in several months' time should result in the adoption of new directives. The new directives will in the majority of cases only simplify the existing ones in a formal manner; however, they are expected to introduce certain alterations that are of importance for PPP projects.*

*The most important of them comprises the freeing of the manner of placing very complex orders, thus allowing for a multi-stage tenders under which the beneficiaries will first be capable of discussing the conditions of the relevant public tender with the bidders prior to making the decision.*

*Besides, the future rules will maintain the existing exemption applicable to "construction concessions".*

### **6.4 Public Procurement Act**

*At the time of drafting this study a draft of the new Public Procurement Act was in the second reading in the House of Deputies of the Czech Parliament. Since it is expected that the proposed legislation will be in force at the time of implementation of the PPP projects, this analysis concerned the draft rather than the existing act.*

*In view of feasibility of PPP projects it would be desirable to apply the existing directives as well as the current practical approach on the part of the European Commission and to amend the Public Procurement Act:*

- *by freeing of the process of order placement so that the beneficiaries could enter into detailed talks concerning some less material but still important aspects of concession contracts prior to making the bid;*
- *by introducing an exemption applicable to "construction concessions".*

*In certain special cases the public sector may find it fit to offer the private sector partial reimbursement of costs of bidding. It is recommended that this option be introduced as well.*

*Since the public sector, too, incurs considerable costs in the process of placing PPP projects it would be advantageous to give it certain mechanisms guaranteeing "serious" approach by bidders. The deposit bond proposed currently seems to be sufficient.*

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<sup>22</sup> Treaty establishing the European Community dated 25/03/1957 (Treaty of Rome)

## **7. PAYMENTS BY USERS OF SERVICES (CUSTOMERS)**

### **7.1 Taxes and Charges Payable by Law**

*It has been the sole authority of the Parliament to impose taxes and charges.<sup>23</sup> Since any fee collection in connection with public services (e.g., toll) provided as a result of PPP projects can be viewed as a certain charge, their collection must be either governed by a law or such payment must beyond any doubt represent a fee for services rather than a charge; that would not require statutory backing.*

### **7.2 Boundary Line between "Charge" and "Fee for Services"**

*It is claimed that beside taxes and charges that may be collected solely by law there is yet another category of payments for services by their users that can be described as being outside of both taxes and charges, so they can be collected even in the absence of any special statutory provisions. In order for this payment not to be considered a charge under the Charter of Basic Rights and Liberties, it will be necessary duly to defend the claim that users are not naturally entitled to such public services; that may be fairly difficult with a number of such services.*

*The requirement for the introduction of legislation governing the collection of charges within the framework of PPP projects is obviously very limiting and the implementation of first such PPP project in any relevant sector will be conditioned by the enactment of such legislation.*

*Since it is not possible to define a clear boundary line between a "charge" and a "fee for services" it is recommended with projects requiring payments made by their users to enact the relevant governing legislation unless all doubts have been eliminated in specific cases as to their classification.*

### **7.3 Amount of Charges**

*From the public sector angle it would be unacceptable for any such charges to be determined without public control. The private partners as well as their funding institutions, however, will require an assured level of certainty in respect of the amount of charges. Therefore the amount of charges, or at least the exact manner of their determination, must be set out in the relevant PPP contracts. If the public sector reserved the right to interfere in the amount of charges it would have to bear in mind that the private partners would require compensations payable from the budget of the public partner in the event of any reduced charge.*

## **8. MANAGEMENT OF PUBLIC ASSETS**

### **8.1 Public or Private Ownership**

*One of the fundamental issues to be resolved in connection with PPP projects concerns the ownership of the relevant infrastructure. The ownership title may either remain with the public sector while the infrastructure is managed by the private sector. At the same time the infrastructure may constitute private ownership that would shift to the public sector upon the expiration of the contract(s). Both models have their advantages and disadvantages and it is hard to make a general statement that PPP projects should prefer any of them. The partners to any single PPP project should opt for an optimum solution of ownership. Therefore, the legislation should*

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<sup>23</sup> Clause 11(5) of the Charter of Basic Rights and Liberties (no. 2/1993 Collection of Laws)

*allow both: either maintained public ownership of the relevant infrastructure while establishing a long-term right to use to the benefit of the private partner, or the ownership title transferred to the private partner with a reassignment option upon the expiration of the contract(s).*

## 8.2 Government Property

*Acquisition, disposal, and any other management of Government property has been governed by strict statutory rules.<sup>24</sup> PPP projects mostly contain the element of acquisition, lease, or disposal of property by the beneficiary (i.e., the Government in many instances) or their combinations. At the same time, ownership of infrastructures by private entities may be of importance, e.g., in assessing whether their development costs should make part of public debt, or if the relevant contract is a concession one or just a construction one.<sup>25</sup> The act governing the management of the property of the Czech Republic and its involvement in legal relations thus may have a limiting effect upon the implementation of PPP projects, specifically by the following provisions:*

### (a) Statutory Evaluation

*Under s.12(4) of that act the price payable for the acquisition of property for consideration must not exceed the evaluation of that property pursuant to special legislation. Although the State must be protected in one way or other, this provision seems to be counter-productive and fails to provide adequate cover.*

*Although this provision may not be applied in the majority of cases because the relevant contracts will be executed pursuant to the Public Procurement Act, it cannot be excluded that the Government would only deal with a single bidder in some cases.*

*The uncertainty of this provision could be removed and Government protection maintained or even improved if the relevant provision instead required the price to be agreed as "usual" under all relevant circumstances. At the same time the Government would retain its right to reimbursement of any difference in prices.*

### (b) Duty to Enforce Liabilities and Late Interest/Charges

*S.14(5) of the above-mentioned act. If any delay should occur under a PPP project either in respect of delivery or payment by the private partner the public sector (partner) should have an option. In some cases it can be in public interest to postpone enforcement of late interest of charges. As a result Government agencies should have an option to refrain temporarily from applying their statutory rights. In order to protect public interest properly any such postponement/refraining should be subject to approval by the Ministry of Finance.*

### (c) Limited Conditions for Transfers of Government property

*S.21(1). A thing may be disposed of by the Government only if it has been **permanently useless**. Any exemptions are subject to Government approval.*

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<sup>24</sup> Act no. 219/2000 Collection of Laws governing the management of the property of the Czech Republic and its involvement in legal relations

<sup>25</sup> This difference is of importance in respect of the scope of the European rules governing the placement of public procurement that should also govern PPP.

*Here, it may prove practical to delegate by law such making of exemptions to the Ministry of Finance.*

*S.22(1). A thing may be sold for a usual **price** and not for less. It may be transferred without consideration only if it is in public interest. Although PPP projects may comply with the public interest condition, the Ministry of Finance should be able to allow exemptions.*

*(d) No Lease-purchase*

*S.24(1). A thing cannot be lease-purchased. This provision may be essential for fiscal discipline but at the same time it smothers PPP projects. The Ministry of Finance should be able to allow exemptions.*

*(e) No Encumbrance*

*S.25 and s.26(1). Government property cannot be pledged. Easements may only be established against consideration and subject to approval by the Ministry of Finance due to "material reasons". Some PPP projects may contain pledges and easements of Government property. As a result, the Ministry of Finance should be allowed to grant appropriate exemptions. Conditioning an exemption by the existence of "material reasons" may be tricky, though, because it is a very subjective test not embedded either in the legislation or in legal practice. That is why it is recommended to remove this condition.*

*(f) Limited Lease*

*S.27 sets out limits on leases of Government property in respect of reason (only temporarily useless property), term (5 years), and rent (usual rent). These conditions may not be complied with in connection with certain PPP projects. There may be an option of an exemption granted by the Ministry of Finance but such exemption must be conditioned by "material reasons". It has already been mentioned how tricky such subjective test may be. It is recommended that the condition be removed.*

*(g) Right to Cancel Exemptions*

*Exemptions duly granted may be cancelled under s.44(5) that would not even allow for an appeal/remonstrance or judicial review. Project sponsors and financiers would probably request higher regulatory comfort, i.e., at least the right to judicial review.*

*At present, right to an exemption is limited by having been issued "on a case to case basis".<sup>26</sup> In order to simplify the administrative proceedings the Ministry of Finance or the Government may be authorised to issue a decree or an order containing a once-for-all approval applicable to certain types of transactions involving Government property.*

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<sup>26</sup> S.44(1)

### **8.3 Property of Regions and Communities**

*There are no limitations imposed on the regions and communities (the autonomous self-administration territorial units) in the management of their property; still, certain acts require approval by certain relevant bodies.*

### **8.4 Public Sector Involvement in Private Entities**

*Certain PPP structures may require the founding of joint ventures co-owned by public and private sector entities. The legislation should not limit this option. A review of existing limitations imposed on the individual members of the public sector is enclosed, along with recommendations.*

### **8.5 Risk of Concessionaire's Insolvency**

*In the event of transfers of title to certain public infrastructures to concessionaires, the Government should be able to hedge against the risk of their insolvency. If a concessionaire goes bankrupt, their property would make the bankruptcy estate serving the satisfaction of creditors' claims. That would be unacceptable with most of public infrastructures. The public sector may utilise two options in order to protect public interest: (1) the ownership title would return to the public sector in the event of insolvency; or (2) the project contracts on provision of services and potential reassignment of infrastructures upon the expiration of such contracts would continue to apply to certain "things" constituting public interest. Purchasers of any bankruptcy assets would continue to be bound by them to the same extent as the original private partner. The public sector would in such cases obviously reserve the right to rescind the contract unless the purchaser meets certain conditions.*

## **9. PROJECT FINANCING**

### **9.1 Principles of Project Financing**

*It is typical of PPP projects that any initial costs of the underlying infrastructure are covered and funded by a private partner. The public sector would then make payments to the private partner according to the quality of the service.*

*The private partners usually apply their own funds only to a minor portion of the projects. Most of the funding would be provided by financiers – commercial banks and international financial institutions.*

*Projects' ability to attract funding (so-called "Bankability") – is one of the key issues to be resolved by both the public and the private sectors in connection with the feasibility of their PPP projects. Non-bankable projects are not PPP-feasible.*

### **9.2 EU Funds**

*Some PPP projects may in future be co-funded from the structural funds and from the cohesion fund. We wish to point out in this connection (1) the requirement for the relevant projects to be placed in keeping with the EU public procurement rules; (2) the co-funding requirement; and (3) the requirement of drawing funds to "public" projects – with the associated issue of ownership title to such co-funded infrastructure. The initial stages of any PPP project must include the assessment of co-financing potential from funds in accordance with the EU rules<sup>27</sup>.*

### 9.3 Certain Cash Flow

*A "bankable" PPP project must offer sufficient certainty in respect of factors that influence cash flow. It is anticipated that the PPP Centre will assist the public sector in removing any potential obscurity.*

### 9.4 Security

*In some cases, bankability will require that any receivables and assets obtained within the framework of the project were pledged to the financiers. The existing legislation excludes any such concept, banning as it does the pledging of any property of the Czech Republic and the offsetting of its receivables.*

### 9.5 "Step-in" Provisions

*In some cases (e.g., military or penitentiary projects) the public sector may reserve special rights to interfere in such projects. The higher the scope of such rights the higher the risk of reduced "bankability" of projects in that field. It is recommended that any special "step-in" statutory provisions should be duly consulted with the private sector.*

### 9.6 Public Guarantee

*Although it is the concept of PPP projects that should help the public sector to get rid of certain costs and risks related to the development, maintenance, and operation of certain types of public infrastructure, it may be useful in some cases to provide public guarantees covering liabilities of private partners or the relevant joint venture(s).*

#### (a) Government Guarantee

*The Government may guarantee things by law only.<sup>28</sup> It is not expected that the Parliament would be inclined to break this rule.*

#### (b) Regional/Community Guarantee

*The regions, communities, and the Capital of Prague, may only provide guarantees in cases that would not cover any guarantees potentially required in respect of PPP projects.*

## 10. HUMAN RESOURCES, ETC.

### 10.1 Membership of Bodies of Private Entities

*Participation of members of public bodies in private entities may involve certain risks both for the Government and for the relevant individuals. Talk goes here of risks of so-called liability of shadow directors. Under sections 66 and 66a of the Commercial Code, persons influencing the performance of a company in a material way shall be liable to the same extent as if they were members of its bodies. Since it is fairly certain that the public sector would influence to a significant extent any entities involved in PPP projects (although such influence will be of a nature different to that*

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<sup>27</sup> Regulation no. EC 1260/1999 dated 21 June 1999  
EC 438/2001 dated 2 March 2001  
EC 1685/2000 dated 26 July 2000

<sup>28</sup> S.73 of the Budgetary Rules Act no. 218/2000 Collection of Laws

*envisaged in the relevant provisions) it is recommended to introduce an exemption applicable to PPP projects.*

## **10.2 Movement of Staff between Public and Private Sectors**

*Certain PPP projects also involve transfers of human resources that previously were in charge of such public services in question within the public sector. Such transfers may bring about difficulties if those people enjoyed special privileges that a private partner cannot offer (e.g., the Public Service Act). Since it is not probable that career officers would be transferred under PPP projects, it is not necessary to make any precautions. However, subject to future substantial expansion of the PPP model of provision of public services it may also involve certain (privileged) tiers of the Government. A success of PPP projects would then require to launch a discussion about amendments to the Public Service Act.*

## **11. STATE ASSISTANCE**

*The Czech Republic has been bound by the European rules<sup>29</sup> that prohibit public assistance – with few exceptions.*

*Although the development of public infrastructures through PPP does not involve public assistance at the first glance (at least, public assistance is not its purpose) it may come out as a side effect of certain structures applied in those projects. In order to prevent any negative effects either for the project or for the Government if such project is later on classified to fall within illegal public assistance, each single project must be reviewed exactly in view of this aspect.*

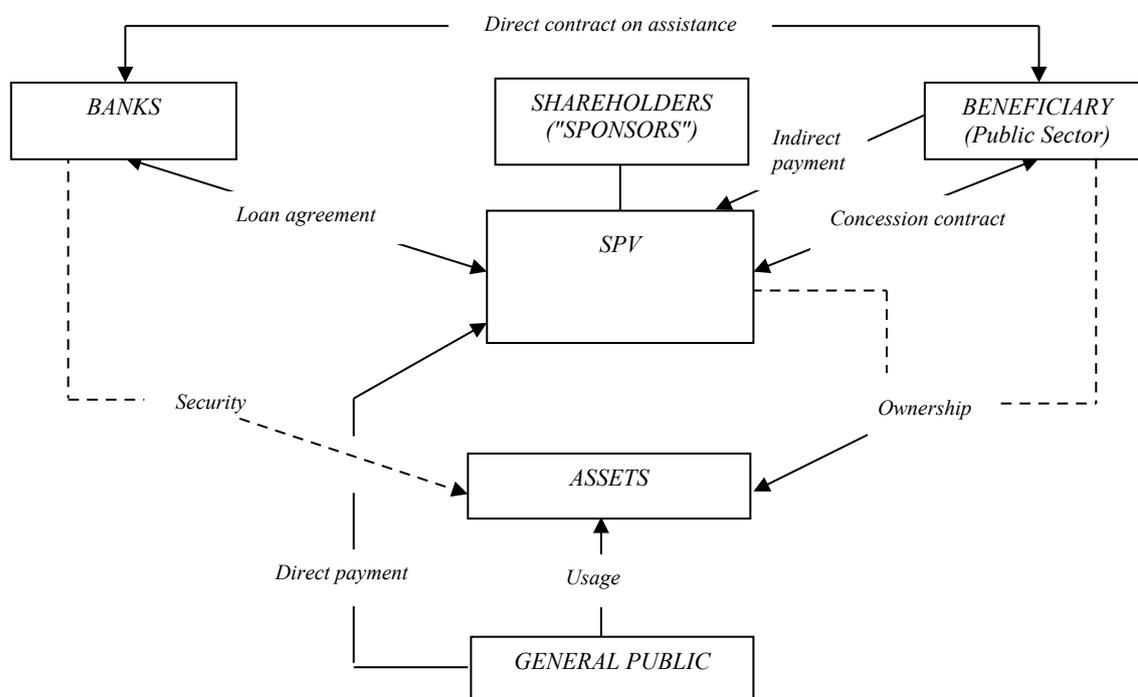
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<sup>29</sup> Clause 64 of the Association Agreement between the Czech Republic and the European Communities, dated 4 October 1993, Luxembourg (the European Treaty) and Clause 87 (ex. clause 92) of the Treaty of Rome.

## 12. PROJECT IMPLEMENTATION

### 12.1 Structures Employed

The structure depicted in the following chart is typical of PPP projects:



Still, PPP projects would always be implemented depending on their specific circumstances so it is hard to claim that they should follow a certain pattern. Project patterns may differ especially in the following parameters:

Parameter	Options
Service provider format	SPV – suppliers in their own name
Ownership of infrastructure	Maintained by the Government, suppliers solely operate in order to fulfil contract – transferred / acquired by suppliers that hold for the entire contract term
Fate of infrastructure after term of contract	Transferred to the Government – retained by suppliers
Payments by public sector made in respect of:	Availability – utilisation, - quality
Term of contract	Without limitation, subject to project

### 12.2 Breaches of Contract; Consequences

PPP projects are governed by contracts subjected to routine rules applicable to agreements between private parties. Still, contracts entered into by the public sector in order to arrange for the provision of certain services have some specific features. Therefore, they contain special provisions governing claims for breaches of contract.

*The usual private law claims for breaches of contract would include the following:*

**The right to require reinstatement** – *this title is important, however, if a private partner chooses to breach its primary obligation it may be unwilling to comply with the obligation to reinstate;*

**The right to claim damages** – *this title may represent a negative incentive to a private partner, still it would not guarantee the public sector exactly what it wants, i.e., due discharge of public services; the effects of bad public services are hard to express in money;*

**The right to rescind the contract** – *this represents the extreme possibility; its application would always bring about high additional costs of switching private partners, blackouts in provision of public services, etc.*

*Because none of the consequences of breaches of contract would give the public sector sufficient comfort that the public services in question would be properly discharged, the public sector must seek special rights under the contracts that would help prevent such breaches of contract and their consequences. It is recommended that the PPP Centre should draft standard contracts that would contain the relevant provisions.*

### **12.3 Accounting; Taxes**

*Book keeping (accounting) and payment of the appropriate taxes make a separate chapter regarding PPP projects. PPP projects have certain specifics that could not have been taken into account in the drafting of the current tax and accounting standards. They mainly concern the system of write-offs and creation of provisions for maintenance and renovation of infrastructures.*

*Value added tax (VAT) makes a special issue. The public sector should make the relevant decision whether payments to the private partners (either from the Government or from users of such public services – utilities) should be subject to VAT. Similarly, attention will probably have to be paid to taxes levied on transfer of real property in connection with PPP projects.*

*It is recommended to make certain alterations in the accounting and tax systems and/or to empower the Ministry of Finance to have those issues agreed in contracts with partners contrary to the language contained in legislation.*

### **12.4 Application of Commercial Code**

*Under Czech law contracts are made under two codes: the Civil Code and the Commercial Code. By law<sup>30</sup>, all contracts made by the public sector in connection with the satisfaction of public requirements are governed by the Commercial Code. It is recommended that contracts continue to be governed by private law with any differences to be governed by a Concessions Act.*

## **13. PRELIMINARY ANALYSIS OF SECTOR STANDARDS**

*Beside the above-described generally binding legislation applicable to all sectors where PPP projects may eventually be introduced, also the feasibility of PPP projects needs to be checked against any special legislation limited to the individual sectors.*

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<sup>30</sup> S.261(2) of the Commercial Code

*The enclosure lists some fundamental parameters of such "sector" legislation applicable to those fields where PPP projects would most probably be implemented.*

## 14. LITERATURE AND SOURCES

### 14.1 Literature about PPP

*[To be inserted]*

### 14.2 Experts Approached

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	<i>EBRD</i>	
	<i>State Technical Library</i>	

Sector	Typical PPP project	Originator	Special Feasibility Obstacles	Sources of Cash Flow	Recommendations
Road transport	The private partner would build or repair a road and operate it for a determined term. In exchange, genuine or shadow toll is collected	<ul style="list-style-type: none"> <li>Motorways and Class I roads.– Ministry of Transport</li> <li>Class II and Class III roads – Regions</li> <li>Local roads – Communities</li> </ul>	The existing Roads Act only governs concessions in respect of motorways and is rather restrictive.	<ul style="list-style-type: none"> <li>State Fund of Transport Infrastructure</li> <li>Toll</li> </ul>	Adjust and extend concessions to apply to all roads. Identify sources of funding.
Railway transport	The private partner would build or repair a portion of a railroad and operate it for a determined term. In exchange, railway operators pay a fee. The private partner would establish and operate a service along an existing route.	<ul style="list-style-type: none"> <li>Railways Administration</li> <li>Ministry of Transport</li> </ul>	Not identified.	<ul style="list-style-type: none"> <li>State Fund of Transport Infrastructure</li> <li>Fee for use of railways</li> <li>Fare</li> </ul>	Formulate the policy of privatisation of Czech Railways and clarify the system of subsidies.
Municipal transport	The private partner would build or be transferred a portion of the infrastructure (e.g., one route of the underground train or operation of trams) and operate it for a determined term.	<ul style="list-style-type: none"> <li>Communities, municipalities, municipal transport enterprises</li> </ul>	Uncertainty in respect of determining the fare and availability of subsidies	<ul style="list-style-type: none"> <li>Community budget</li> <li>Fare</li> <li>State Fund of Transport Infrastructure</li> </ul>	Allow for fare adjustment in concession contracts, agree system of subsidies
Health care	The private partner would build, repair, or be transferred an operational (not medical) portion of a hospital and will operate it for a determined term.	<ul style="list-style-type: none"> <li>Regions</li> <li>Ministry of Health with specialised hospitals</li> </ul>	Uncertain cash flow	<ul style="list-style-type: none"> <li>Health insurers</li> <li>Regional budget</li> <li>State budget</li> </ul>	Formulate state policy in health care and introduce a transparent and foreseeable system of payments to hospitals
Development projects	The private partner would build, or reconstruct or renew a building for the public sector and will operate it for a determined term for a fee.	<ul style="list-style-type: none"> <li>Ministry for Local Development</li> <li>Regions</li> <li>Communities, municipalities</li> </ul>	Limitations of availability of EU funds for revitalisation projects	<ul style="list-style-type: none"> <li>State budget</li> <li>Regional budget</li> <li>Community budget</li> <li>Fee paid by users</li> </ul>	
Housing	The private partner would develop blocks of flats to be rented under determined rules. Communities of the Government may co-fund the development.	<ul style="list-style-type: none"> <li>Communities, municipalities</li> </ul>	Unclear cash flow, unclear policy, unclear regulation of rent	<ul style="list-style-type: none"> <li>Housing Development Fund</li> <li>State/community budget</li> <li>Rent</li> </ul>	Adjust rules governing subsidies rules from the Housing Development Fund, formulate state policy
Universities and colleges	The private partner would develop university/college/dormitory buildings and will operate them for a determined term.	<ul style="list-style-type: none"> <li>Universities and colleges</li> </ul>	Not identified.	<ul style="list-style-type: none"> <li>State budget</li> <li>Fee paid by users</li> <li>Income generated by universities/colleges</li> </ul>	
Secondary and elementary schools	The private partner would develop or be transferred building(s) housing of a secondary school and will operate it for a determined term.	<ul style="list-style-type: none"> <li>Regions for secondary schools</li> <li>Communities for elementary schools</li> </ul>	Not identified.	<ul style="list-style-type: none"> <li>Community budget</li> <li>Regional budget</li> </ul>	
Defence	The private partner would develop and operate army logistics, or purchase a repair shop from the Government in order to continue to repair army hardware.	<ul style="list-style-type: none"> <li>Ministry of Defence</li> <li>State enterprises</li> </ul>	Protection of information, issue of public interest in potential abrupt reassignment to the army	<ul style="list-style-type: none"> <li>State budget</li> <li>Extra revenues</li> </ul>	Resolve the issue of both introduction and at the same time limitation of the "step-in" right
Water utilities	The private partner would build a water cleansing plant and will operate it for a determined term for a community. The private partner would be transferred the water mains and sewage by its operator and will operate it for a determined term, including upgrading as set out.	<ul style="list-style-type: none"> <li>Communities</li> <li>Community enterprises</li> </ul>	Not identified.	<ul style="list-style-type: none"> <li>Community budget</li> <li>State Environmental Fund</li> <li>Fee paid by users</li> </ul>	