For years, public-private partnership has been considered an extraordinarily beneficial form of realizing infrastructure investments in many countries of the world. In Europe, this form of cooperation became the most popular in Great Britain, Spain, and Portugal; however, more and more projects are currently being realized in the central, southern, and eastern part of the European continent. In Great Britain projects realized in PPP constitute approximately 15% of all public investments. Concession contracts have been successfully used since the end of the sixties in such countries as Spain, France, and Italy. PPP is also gaining more and more popularity in Germany. Many enterprises in this model, especially at the local government level, are realized in the Czech Republic, Romania, Bulgaria, Slovakia, and Hungary. PPP is starting to enjoy a growing popularity in Poland as well.

1. LEGAL FRAMEWORK FOR PPP AND CONCESSIONS

In the Polish law the legal framework for PPP is established by two acts that regulate the cooperation between public entities and private partners:

• the act of December 19, 2008 on public-private partnership (Journal of Laws of 2009 No. 19, item 100 as amended), hereinafter referred to as the Act on PPP;
• the act of January 9, 2009 on concession for construction works and services (Journal of Laws of 2009 No. 19, item 101; No. 157, item 1241 as amended), hereinafter referred to as the Act on Concessions.

Both the aforementioned acts were intended by the legislator to facilitate performing public tasks on the basis of cooperation between the public and the private sector in Poland. At the same time, among others in the context of the ongoing preparations for the 2012 UEFA European Championship, the investment needs in Polish local governments, as well as current financial determinants, public-private partnership has a chance to become an equal model of financing infrastructure enterprises. Regardless of the aforementioned legal grounds, in the sector of toll motorways and expressways, PPP is regulated by the act of October 27, 1994 on toll motorways and the National Road Fund (Journal of Laws of 2004, No. 256, Item 2571 as amended), hereinafter referred to as the Act on Toll Motorways.

It should be indicated that from the legal perspective both PPP and concessions constitute a special form of tender agreements. This character of the analysed types of agreements will be determined by the involvement of public means (financial and nonfinancial, e.g. fixed properties) in a contract with a private entity oriented towards realization of a public task. Such a position of PPP and concessions in the legal system makes it necessary to utilize the rules of the Directive 2004/18 and the primary legislation of the UE (Treaty on the Functioning of the European Union) and the judicature of the Court of Justice based on it, concerning among others a contract notice, equal and competitive procedure of choosing a private partner (a licensee in particular). Due to this, during concluding PPP agreements, the act of January 29, 2004, Public Procurement Law (Journal of Laws of 2010, No. 113, item 759 as amended), hereinafter referred to as PPL, shall apply.

2. POLISH PPP MARKET – FIRST 2 YEARS.

Due to the growing demand for investment capital, Polish local governments have been using nonstandard sources of financing for several years. A popular tool for obtaining additional capital is the issue of municipal bonds, for which the liabilities of local governments have already amounted to approximately PLN 10 billion. Also, tools originating from commercial credit, including first of all the institution of transfer of debt, are becoming more and more popular with local governments. An important shortcoming of the abovementioned financial tools is the lack of neutrality for the limit of liabilities of local government. Therefore, due to growing debt level, local governments are forced to look for new, more financially attractive tools for financing council investments. For this reason, local governments resort to other solutions, out of which PPP comes to the fore.

The experience of the last two years shows that the legal framework of PPP in Poland described above have brought about an increase in the interest of public entities, especially local government units, in public-private partnership and concessions. Many public entities started to prepare to realize partnership enterprises, choosing the right investment projects, conducting necessary analyses, and employing expert advisors. Finally, many public entities took steps to choose a private partner. On this ground, the Polish PPP market has started to develop. The undermentioned pieces of information come from the Local Government PPP Report for 2010, published by the Institute for Public-Private Partnership (“Forum PPP” - Magazine of Public Investments, No. 2(15)/2011).

2.1. Concluded agreements

Between 2009 and 2010 there were twelve agreements concluded in Poland, eight of which were concession agreements, including six concessions for construction works and two for services, and four agreements on PPP. This scope does not include agreements that are related to PPP but were concluded based on regulations other than the Act on PPP or the Act on Concessions. Those are, for instance, an agreement on concession for construction works concluded under the PPL, three agreements on construction and usage of toll motorways, and agreements concluded based on the principle of contractual freedom or by other procedure.

In 2009, three agreements were concluded, whereas in 2010 there were ten agreements of the PPP type. Despite the fact that the number of concluded contracts is still small, a clear increase in the interest of the public sector in PPP can be noticed.

The total value of the PPP market, with reference to the agreements concluded, amounts to PLN 373,004,023.24.

The agreement of the PPP type with the highest value, i.e. the agreement on concession for construction works: “Design...”
and construction of the facility called: Central Park of Recreation, Balneology, Tourism and Relaxation “Termy Gostynińskie” [thermal springs in Gostynin], amounts to PLN 285 million, while the subsidy from the resources of the EU is to be PLN 72 million.

The object of concession for construction works: “Construction of underground car park and necessary infrastructure under the New Market square in Wroclaw together with the surface of the square and developing it” will be utilized the longest. The agreement will last for 40 years.

Agreements of the PPP type were concluded in nine different sectors of economy, among others in the sector of health care, road infrastructure, public transport, and revitalization.

![Chart No. 1. Division of concluded agreements according to the sector of cooperation and the model of cooperation (source: “Forum PPP” No. 2(15)/2011)](http://www.percis.ru/)

2.2. Pending procedures

The PPP market in Poland is also comprised of projects, in which a private partner has not been chosen yet. For this reason, those projects, for which notices on procedures to choose a private partner (licensee) were published in 2012, should be highlighted. There were fifty-one such projects in Poland; twenty-eight procedures concerned concluding a concession agreement, including twenty-five aimed at concluding an agreement on concession for construction works, three aimed at concluding agreements on concessions for services, and twenty-three at concluding agreements on PPP.

3. FINANCIAL TOOLS FOR PPP

Certainly, PPP enterprises mean a division of tasks and risks, including the financing, between the public entity and the private partner. There is, however, a possibility to obtain an additional source of financing – first of all in the form of aid resources from the EU. Poland is the largest beneficiary of the support of the EU in the financial perspective 2007-2013, the total amount of which, as a part of the Coherency Fund, amounts to EUR 347 billion as a part of the Coherency Fund for the development of infrastructure serving transport and environment, and the support of EUR 8 billion as a part of the “TEN-T” fund (Trans European Networks – Transport), serving the development of trans-European transport networks: road, railway, water, and air.

The support coming from the listed aid resources may be granted only to those projects, which meet the aims specified precisely, set out in specifications of particular subsidy programs. It naturally creates advantageous conditions for choosing PPP as the way of financing the remaining part of project. The PPP model of financing public tasks has strong predisposition to become one of the most significant predictable factors stimulating the development of the EU in the future.

3.2. European Investment Bank (EIB)

The European Investment Bank is one of the members of EPEC, a European centre for consultation in PPP (European PPP Expertise Centre), created at the end of 2009 as a result of communication between the European Commission (hereinafter referred to as the “EC”) regarding PPP, intended to support member states of the UE in utilizing PPP in practice, provide long-term support in realizing projects of the PPP type, and help to optimize using the resources from the EU funds: the structural and coherency fund.

EIB is an institution of the EU, the aim of which is to finance long-term investments according to the non-for-profit principle, support in implementing directives of the EU, and provide support to particular infrastructure projects. By the end of 2010, EIB had invested in almost 20 funds, being an additional source of capital for particular projects.

3.3. JASPERS

JASPERS stands for Joint Assistance to Support Projects in European Regions, and it is a tool supporting countries from the central and eastern part of the EU in realizing large investments utilizing resources from the funds of the EU: the structural and coherency fund. Countries included in the JASPERS program are Bulgaria, the Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia. The program itself provides public entities with free support in managing particular projects and applying for subsidies of the EU, so that the applications for financing that land in the EC have the right high quality and significant chance of being accepted. The JASPER program is managed by the EIB, the EC, the European Bank for Reconstruction and Development (hereinafter referred to as the “EBRD”), and Kreditanstalt für Wiederaufbau (hereinafter referred to as the “KW”) – German bank supporting the processes of transformations and innovations in Germany, Europe, and around the world.

3.4. JESSICA

JESSICA stands for Joint European Support for Sustainable Investment in City Areas, an initiative of the EC realized in cooperation with the EIB and the Council of Europe Development Bank, promoting balanced investing, growth and improvement in social conditions in municipal areas of the EU, offering to provide credits, for instance for construction of council flats or other infrastructure that municipal centres need.

3.5. Project Bonds

Project Bonds is a tool currently developed by EPEC intended to provide enterprises with financial guarantee at the initial implementation stage, i.e. in the period during which the risk of market failure of a project is the highest. PB is dedicated to municipal large-scale revitalization projects, and the method of calculating support reserved for a given project is to be based on...
the forecast of income generated by the created and revitalized municipal infrastructure through taxes. The main aim of PB is to make capital finance municipal infrastructure investments.

3.6. LGTT Guarantee Fund

LGTT stands for Loan Guarantee Instrument for Trans-European Networks – Transport the purpose of which is to finance pan-European investments in transport infrastructure immediately after it is put to use, when the risk of economic unprofitability of an enterprise is the highest, and to increase the involvement of the private sector is this type of investments.

3.7. “Marguerite” Fund

The “transport, power industry and waste recycling. The main sponsors of the estimated for 20 years MF are the EIB, French Caisse des Dépôts et consignations, Italian Cassa Depositi e Prestiti, Spanish Instituto de Crédito Oficial, German KfW and PKO Bank Polski. Assumed target capitalization of the MF amounts to EUR 1,5 billion (out of which EUR 700 billion has already been paid), and the financial activity is planned to start in 2012, when the 4-year period of investing in large-scale infrastructure projects is to start.

4. POLISH PPP MARKET – FORECASTS

Based on numbers, especially in the context of investments in the PPP form and concessions planned by Polish local governments, it can probably be said that the market will have good and balanced future of continuous growth. In 2010, there were 51 PPP or concession proceedings announced of total value of approximately PLN 2,4 billion. Moreover, as the analyses of the PPP Institute showed, Polish local governments are planning or have already started preparations to realize next 107 projects (data for 2010) of estimated total value not exceeding PLN 15 billion. It should be clearly stressed that we are dealing at present with a PPP and concession market that is still emerging in Poland.

Along with a growing awareness on PPP, increasing support of the central administration and advisory companies, and better and better understanding of mutual needs by both sectors, the chances for more effective realization of an increasing number of projects are growing, which opens a brand new and very prospective chapter when it comes to realizing public tasks in Poland.

4.1. Prospects for the development of the PPP market in Poland

Proper substantive support of local governments at the stage of preparing this type of projects by professional advisors will be of key significance for the development of PPP projects. Analyses carried out in this field by the PPP Institute show, admittedly, that local governments realizing PPP on their own, i.e. without advisors’ help, are exceptions, yet the essence is to use advisory services of high class, which have real chances of generating real solutions reconciling the interests of both parties – the public sector realizing public tasks, and the private sector making profits.

The total number of Polish PPP projects, both the ones that have already been realized and those which have not, as well as their great diversity in the context of economy sectors they concern, allow to state that public investments realized in the PPP model and concessions are in high demand in Poland.

In every third case of a PPP and concession agreement concluded between 2009 and 2010, the remuneration of a private partner will come directly from the budget of a public entity. The fact that in 2010 three agreements were concluded based on the Public Procurement Law, whereas in 2009 there was no such agreement, may also indicate two phenomena. First, local governments are more ready to co-finance partnership enterprises, and consequently, the attitude of local governments to PPP is changing, as there are benefits noticed other than just the fact that local authorities are provided with additional capital. Second, the private sector is less inclined to assume the whole demand risk. It also indicates indirectly what banks and other financial institutions expect from PPP.

Financial situation of Polish local governments, especially the largest ones included in the analyses, hinders on a large scale indebted financing of council investments. At the same time, the scale of investment needs does not decrease, and in many cases clearly increases. The financial gap created in this way has already been partially filled by PPP. In the perspective of the next years, this tendency will be upward. The fact that PPP agreements will, as a rule, be neutral for the public debt will create favourable conditions for concluding them. Polish regulations set out the neutrality rules of PPP projects for debt ratios, implementing in this way the Decision of Eurostat No. 18/2004 of February 11, 2004.

4.2. Challenges

The greatest challenges that the entities responsible for the development of the PPP market face include for sure the necessity to continuously lower the level of concern about the clarity of public-private relations. The remedy for this state of matters, as the experience of other countries in which PPP has functioned for a long time shows, is reliable education in PPP, practical support of professional advisors for public entities in carrying out PPP projects, and the willingness of both sectors to cooperate – completely possible to achieve thanks to the benefits of PPP for both parties to enterprise. Due to the long-term nature of PPP investments, continuous work on the standards of conduct, substantive education of administration, and perfecting legal regulations are necessary for PPP enterprises to be possible. It will be particularly important to set out clearly the obligations resulting from PPP and concession agreements in the system of the budget law, and to open more widely the system of implementing EU resources into enterprises of the PPP type in the new financial perspective. The second demand seems to be realized in the context of the Communication of the European Commission on PPP of November 19, 2009, in which the EC encourages to establish PPP enterprises.
creditors and to improve dispute resolution mechanisms. Application of best practice environmental and public consultation standards will also increase the attractiveness of the market as this will reduce the likelihood of difficulties and delays in construction.

A further constraint is the limited capacity of the public sector to provide financial support and take on long term budget commitments under PPP/concession contracts. Required financial support might include initial investment grants or availability payments, as well as commitments under termination arrangements.

And finally public authorities often do not have experienced staff and do not allocate sufficient budget resources to engage consultants to prepare a PPP project properly, which may lead to project failure.

Do you think that adoption of infrastructure bonds law could improve the situation on the market?

What is important in my view is not a separate law on infrastructure bonds, but efforts to improve the legal framework for project finance overall so as to allow a modern security regime including the pledging of accounts or future cashflows, as well as the simplification of enforcement procedures and creation of a security trustee. This would facilitate financing of PPPs both by creditors directly and through the issuance of bonds by the concessionaire project company.

What are the factors of success in infrastructure PPP projects in Russia?

A public authority that is committed to make the project succeed; thorough preparation of the project with the assistance of experienced and competent advisors (technical, financial and legal); a transparent, competitive and fair tender and a balanced distribution of risks between the public and private sector. And the necessary arrangements and resources for the public authority to monitor the project throughout its lifetime and make necessary adjustments as these are inevitable in such long term and complex arrangements.

With whom can companies contact on questions of infrastructure investments from EBRD in Russia?

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