
Public-Private Partnership in Poland



Warsaw, 31 March 2009

Dear Sir/Dear Madam,

The public-private partnership market will develop intensively in Poland, with its value estimated at € 40-50 billion. Public partners are interested in implementing projects in this area as they continue to gain a better understanding of the needs and expectations of investors. The approval of this partnership is also evidenced by numerous promotional and informational activities undertaken with government support.

PPP has a clear legal framework in Poland. Two new statutes devoted to public-private investments have just come into force: the Act on Public-Private Partnership and the Act on Concessions for Construction Works or Services. Public-private undertakings can also be pursued on the basis of many other statutes.

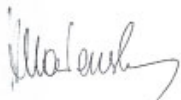
The purpose of this publication is to encourage you to undertake public-private investment projects in cooperation with the public administration in Poland. This study contains basic information on the PPP market in Poland – its present state and the prospects for development in various sectors, the scope of activities of the public administration and the principles of conducting business.

Our main goal is to present to you the possibilities and requirements associated with executing public-private investment projects in the Polish legal framework. We trust this guide will be of assistance to you in better understanding the nature of the Polish market.

We strongly encourage you to pursue public-private investment projects in Poland!

Yours faithfully,

Agata Kozłowska
President
Investment Support



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CHAPTER I

THE PPP MARKET IN POLAND

1. Investment needs of local governments

There is a widespread and increasing interest in public-private partnership in Poland as a means of implementing public investment projects, as the funds that are available to local governments, or EU funding, are not sufficient to meet all the investment needs. The needs of public entities arise not only from the necessity to speed up closing of the development gap in the infrastructure, which is particularly acute in transport (motorways and railway lines). New challenges are associated with the preparation of the sports infrastructure and attendant facilities to EURO 2012 - to be co-hosted by Poland - but also with the necessity to adapt the country's infrastructure to EU requirements, for example in the transport sector or the health service.

For public entities public-private partnership is mainly a method of acquiring new funds by them for investment. PPP promotes growth, as more projects can be executed at the same time. According to a survey of local governments commissioned by the Ministry of Economy in 2008¹, as much as 46% of investment expenditure of public bodies will be in the transport and communications sectors (in large municipalities of 50,000 inhabitants or more), 16% in education, 16% in environmental protection, 11% in construction and 11% in municipal services. However, in reply to a question concerning their investments needs, 36% of respondents stated that they lay in transport and communications, 33% in municipal services, 14% in sports infrastructure, 11% in municipal housing and 6% in revitalization of towns.

In view of the limited availability of EU funds and resources of public entities, as well as the scale of necessary investments, the market value of public-private projects in Poland between 2008-2012 is estimated at € 40-50 billion.²

Municipality authorities are planning to carry out public-private investment projects. **As much as 45% of public entities surveyed in 2007 planned to cooperate with private entities in executing public tasks in the future.** Public entities also pointed to the fact that public-private partnership will favour increased effectiveness of the

¹ Ed. by E. Kornberger-Sokołowska *Partnerstwo publiczno-prywatne w samorządzie polskim na przykładzie regionów mazowieckiego i śląskiego, The Public-Private Partnership in the Polish Local Self-Government on the Example of the Regions of Mazovia and Silesia*, Ministry of Economy, Warsaw 2008, p. 97 - 98

² Ditto, p. 103

investment process and better management of the infrastructure. Public entities see the biggest potential savings primarily in **municipal housing, road construction and transport**. This attitude of decision-makers is supported by ordinary citizens – close to 60% reacted positively to the idea of joint financing by private entities of investment projects in the construction and maintenance of road infrastructure, hospitals, public transport or water supply and drainage networks³.

**Expectations of the public sector
concerning public-private partnership**

- Supplementary funding for investments to enable execution of typically public projects with own funds;
- Faster development in many fields;
- Acquisition of market know-how, better quality of services;
- Faster investment process;
- Greater accessibility of services;
- Cohesive development of urban spaces;
- Opportunity to complete prestigious projects.

Source: Investment Support

Why is it worthwhile carrying out public-private partnership investment projects in Poland?

In view of the fact that the public-private partnership market in Poland is only at the threshold of its development, it **offers a great opportunity to private entities to use the knowledge and know-how they gained in similar projects in other countries**. It should be stressed that in the Polish market there are only a few operators with experience in managing infrastructure developed as part of a public-private partnership project. In preparation for public-private partnership projects, many towns and cities have allocated land and real properties in attractive locations. Thus they offer an opportunity for private investors to make their mark in places where availability of attractive spaces is limited.

³ Badanie opinii Polaków i przedstawicieli jednostek samorządu terytorialnego o PPP, *A Study on Opinions of the Polish People and Representatives of Local Governments on the PPP* - Dr. Agnieszka Kopańska, Faculty of Economic Sciences, University of Warsaw, 2007

Practical aspects of cooperating with Polish public entities

- **The possibility of using PPP should be examined in conjunction with other alternatives: the more traditional methods of project financing or through the acquisition of EU funds.** It is necessary to examine all the options and to demonstrate the benefits and cost-effectiveness of the PPP option in order for the project to be profitable and for it to gain long-term community support.
- Public sector entities **are subject to social and fiscal control**, which is associated with the requirement to document each activity and with strict observance of procedures.
- **Political risk** must be examined in detail.
- **Public entity employee turnover**, which is tenurial and often political in nature. The team of individuals who prepare a project and negotiate terms of cooperation with the private partner may keep changing.
- The vital importance of **a positive image of cooperation** in the eyes of the media and public opinion. Misconceptions as to the usefulness of PPP or a lack of transparency may result in a negative perception of the partners' activities and hinder cooperation or even wreck the entire investment project.
- The private partner will be **subject to constant scrutiny** and will have to go through the selection process even if that partner's cooperation in other cities with public entities runs smoothly. The main reason for this is the imperative of legality and sound management in operating public entities and the fact that despite all endeavours and efforts, the background and behind the scenes operations of the project are not always known to the public.
- **The specific dates and promises made should be treated with caution.** These details may appear in the media and originate from the public party. They are aimed at building an image of the project and showing the public party's hunger for success and satisfying the public opinion that is awaiting completion of the project.

Source: Investment Support

EU funds and the PPP

From 2007 to 2013 **over € 67 billion** will be allocated to Poland, of which almost **€ 28 billion** for investments in infrastructure (within the Operational Programme Infrastructure and Environment) and **over € 16 billion** for projects related to Regional Operational Programmes. Public-private partnership may play a significant role in the implementation of that assistance. It is emphasised in the new PPP Act that **public-private partnership**

projects may benefit from supplementary financing with EU funds, which may significantly lower investment outlays by private partners.

2. Development prospects for public-private partnership in Poland in various sectors

TRANSPORT SECTOR

a) Road construction

The General Directorate for National Roads and Motorways is responsible for executing motorway projects, express roads and national roads. Thus far public-private partnership has been applied in the construction of stretches of the A2 motorway (Nowy Tomyśl – Konin, private partner: Autostrada Wielkopolska), the A1 (Gdańsk – Nowe Marzy, private partner: Gdańsk Transport Company) and A4 (Katowice – Cracow, private partner: Stalexport). Currently, the following stretches are being built under the public-private partnership formula: the A1 (Stryków - Pyrzowice, private partner: Autostrada Południe; Nowe Marzy - Toruń, private partner: Gdańsk Transport Company) and the A2 (Świecko – Nowy Tomyśl, private partner: Autostrada Wielkopolska).

b) Modernization of railway terminals

Many railway stations in Poland are in need of refurbishment. PKP SA, a company which owns railway facilities, is responsible for modernization projects of railway terminals. Currently, a process is underway to hand over some of the railway station buildings to municipal authorities.

Plans for modernization are widely discussed and in some cases design work is proceeding in cooperation with private partners (e.g. stations in Warsaw, Gdańsk, Katowice and Sopot). Revitalization projects of the Warsaw Wileńska terminal and the main terminal in Cracow are considered a success. In both cases, refurbishment of the station building was co-funded by a private partner in exchange for attractive spaces being made available to the developer for its own use (in both cases shopping centres).

c) Transport projects in cities

In view of the increasing passenger traffic and the urgent problem of traffic jams in cities, investments in public transport have become a priority for local authorities. Investments in tram and bus infrastructure are undertaken by municipal companies in charge of transport. In many Polish towns and cities the process of merging private bus carriers with municipal transport systems is underway. Many municipal authorities are considering adopting public-private partnership in rail transport projects. Such plans have been announced e.g. in Warsaw (a tram line from Piaseczno has been listed as a project to be completed under the public-private partnership formula)

and Bytom (a project intended to link the Silesian conurbation with the Katowice airport and to establish an integrated interchange centre).

Towns and cities are also considering cooperating with private partners to carry out airport projects.

d) Car parks

One of the most urgent transport problems in city centres is the parking shortage – hence the numerous plans to build underground car parks. The first successful concession for construction works has been granted by the Cracow municipal authorities. A Spanish investor will finance and build car parks and as remuneration the investor will collect charges from car park users. Currently more than ten car park projects are being developed while public-private partnership is being considered by the city authorities, e.g. in Cracow, Gdańsk, Warsaw and Ruda Śląska.

HEALTH SERVICE

Large investment needs in the health care sector are associated with the requirement to adapt the standards of health care establishments to new quality standards, and also with the increased demand for such services as well as the rise in health care costs. PPP is seen as a method enabling the financing of the necessary investments. The new law on public-private partnership allows the execution of the PPP projects in the health care sector.

Initial examples of public-private cooperation in the health sector in Poland have been based on the provision of medical services by a private partner. In Nowy Sącz, a private company is rendering services in a leased part of a hospital, using equipment purchased by that company. In Wałbrzych, a private medical company has built an extension of a public hospital that houses a radiotherapy centre. The company leases the land from the hospital and upon expiry of the lease contract, the centre will be handed over to the hospital. Patients use, in both mentioned cases, the services free of charge within the National Health Fund system.

WATER AND SEWERAGE INFRASTRUCTURE

Specialized municipal companies are responsible for investments in water and sewerage infrastructure. Investments in water distribution are primarily financed with EU funds, as such assistance is relatively easy to procure and the supplementary financing may cover up to 85% of the project's value.

The first successful public-private investment contract dates back to 1993 and is between the city of Gdańsk and the SAUR company. The city of Gdańsk signed with Saur Neptun Gdańsk a 30-year lease contract

for the operation and management of the local water supply and sewerage systems. The city remains the owner of the infrastructure, while SNG is responsible for uninterrupted supply of a high quality service and the proper operation of water and sewerage systems.

PRISON SERVICE

Supervision of the prison system in Poland is vested with the Ministry of Justice and is carried out by the Central Board of the Prison Service and its regional branches.

Public-private projects in the prison service have not yet been undertaken in Poland, but it is allowed under the Polish law. The increasing number of convicts in Poland, combined with the existing regulations concerning the minimum space per inmate, will force the Polish authorities to build new penal facilities. A formula that could be applied is private partner financing of the construction of a prison and assuming part of the administrative duties in running the prison.

It should be stressed that prisons in Poland often are located in city centres, which creates additional opportunities for public-private ventures.

SPORTS AND LEISURE SECTORS

The value of sports and recreation investments associated with EURO 2012 in Poland is estimated at € 4 billions. Because the EURO 2012 championships will be held in Poland and the fact that investments in sports and recreation are treated as prestigious projects that are also important for local inhabitants, there has been a lot of interest in executing public-private projects in this sector. **In the Good PPP Practices competition organised by Investment Support, a business consultancy, 31 out of 71 projects entered by public entities in 2007 and 2008 were in the sports and recreation sector.**

Public entities well understand the need to combine sports and recreation infrastructure with commercial functions, and this assumption has been the starting point of many investment projects in that area. Some examples of public-private projects which are at the preparatory stage: stadiums (e.g. in Szczecin, Łódź and Gdańsk – management), show and sports halls (Cracow and Łódź), water parks (Szczecin and Katowice), congress and exhibition centres (e.g. Warsaw, Cracow).

CONSTRUCTION OF COUNCIL HOUSES

Poland faces a council housing shortage. The actions undertaken by the government (credit subsidies, Social Housing Associations) have not produced the expected results. Faced with the problem of financing the housing

needs with loans and a shortage of public resources, public-private partnership offers an opportunity for development of council housing.

Towns and cities own flats that require immediate renovation and which are often located in attractive places. It has become fashionable to acquire converted flats in old tenements or factories.

An educational programme of the Association of Polish Banks, which deals with the opportunities of applying PPP in the council housing construction, is currently underway. A pioneering public-private project was completed by the City of Gdańsk, where attractively located properties were exchanged for council flats. In a deal arranged in 2007, local authorities acquired 115 flats (from the primary and secondary market) in exchange for a real property of two hectares located in an attractive seaside tourist location. A council housing construction project has also been prepared by the City of Łódź, which envisages renovation of listed tenement buildings that the private investor will acquire in exchange for constructing council flats for the city.

* * *

Public-private partnership possibilities are also being discussed in relation to other sectors, such as waste disposal, incineration plants, education, revitalization projects and in relation to the power industry.

3. Support for PPP projects in Poland

Both public bodies and private companies undertake many promotional activities to help develop public-private partnership in Poland.

Ministry of Economy

The Ministry of Economy actively supports the development of the public-private partnership in Poland. The newly passed Public-Private Partnership Act prepared under the auspices of the Ministry has come into force. As part of the Good PPP Practices Competition, the Ministry carried out a programme of pilot PPP Project and it financed analyses for four undertakings.

The Ministry of Economy actively participates in conferences promoting PPP in Poland, and it publishes guides and other information on this subject on its internet pages.

www.mg.gov.pl

Ministry of Infrastructure

The Ministry of Infrastructure has passed new regulations on concessions for construction works or services which

have now come into force. The Ministry has supported the Good PPP Practices Competition for the last three years and it also takes part in other initiatives aimed at promoting the popularity the PPP in Poland.

www.mi.gov.pl

PPP Centre

The foundation PPP Centre was set up in July 2008. Its aim is to develop public-private partnership in Poland by promoting the concept of PPP, proposing legal solutions and sharing experiences of other countries. The founders of the PPP Centre are 41 organizations, among them development agencies, banks, law firms, consultancies, companies, foundations, unions and commercial chambers and associations.

Currently, the PPP Centre activity focuses on staging conferences in 16 Polish cities under the topic: Public-Private Partnership in Poland in the Light of New Legislation.

www.centrum-ppp.pl

PPP Institute

The PPP Institute is the first institution in Poland that promotes public-private partnership. The mission of the Institute is to exchange experiences in implementation of projects in Poland and abroad, as well as promote PPP solutions.

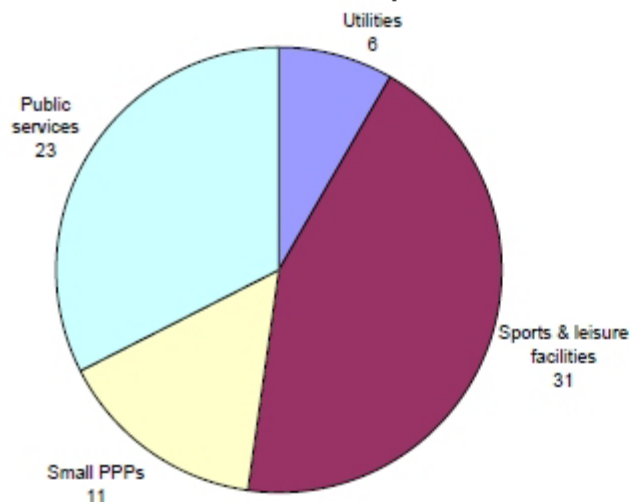
www.ippp.pl

Good PPP Practices Competition

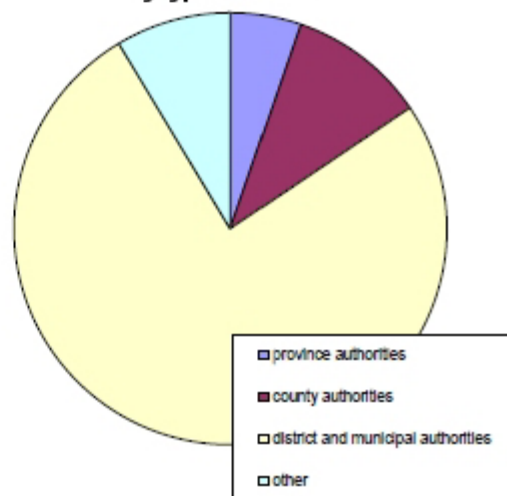
The Good PPP Practices competition organized by Investment Support consultancy is an initiative directed at public entities, with the objective to promote the public-private partnership as an effective method of executing public investment projects. Two editions of the competition have been held to date and a total of 71 investment projects were entered. The objective of the competition is to give support to projects at their early stage. The Ministry of Economy helped organize the Second Edition and financed preparatory analyses for the winning projects. Participants in the competition complete special forms to provide information on entered projects. An independent jury composed of experts on PPP in Poland selects the best projects in different categories (municipal infrastructure, sports and recreation, utilities and the small PPPs).

www.dobrepraktykippp.eu

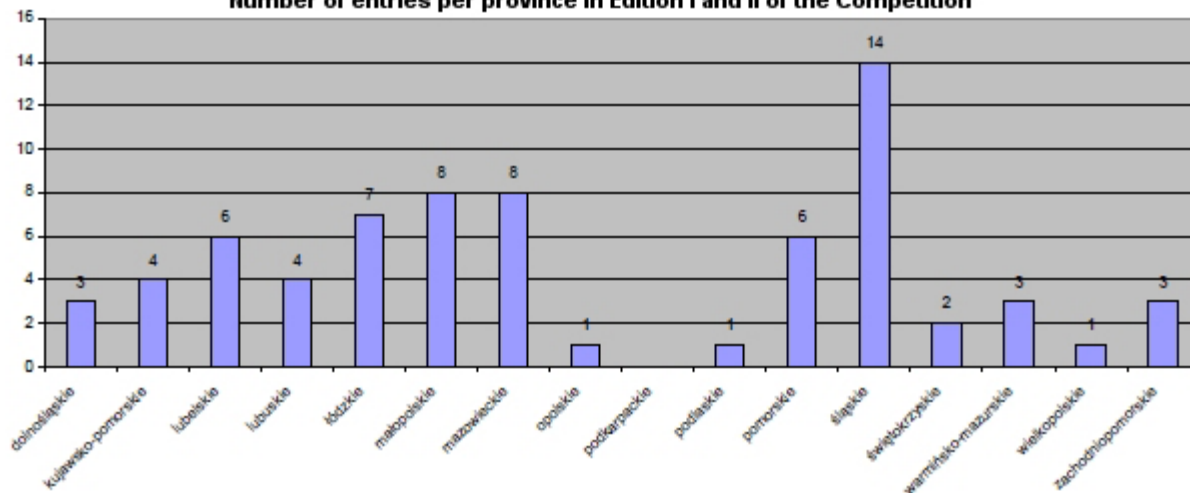
Number of entries per category in Edition I and II of the Competition



Edition I and II of the Competition by type of entrant



Number of entries per province in Edition I and II of the Competition



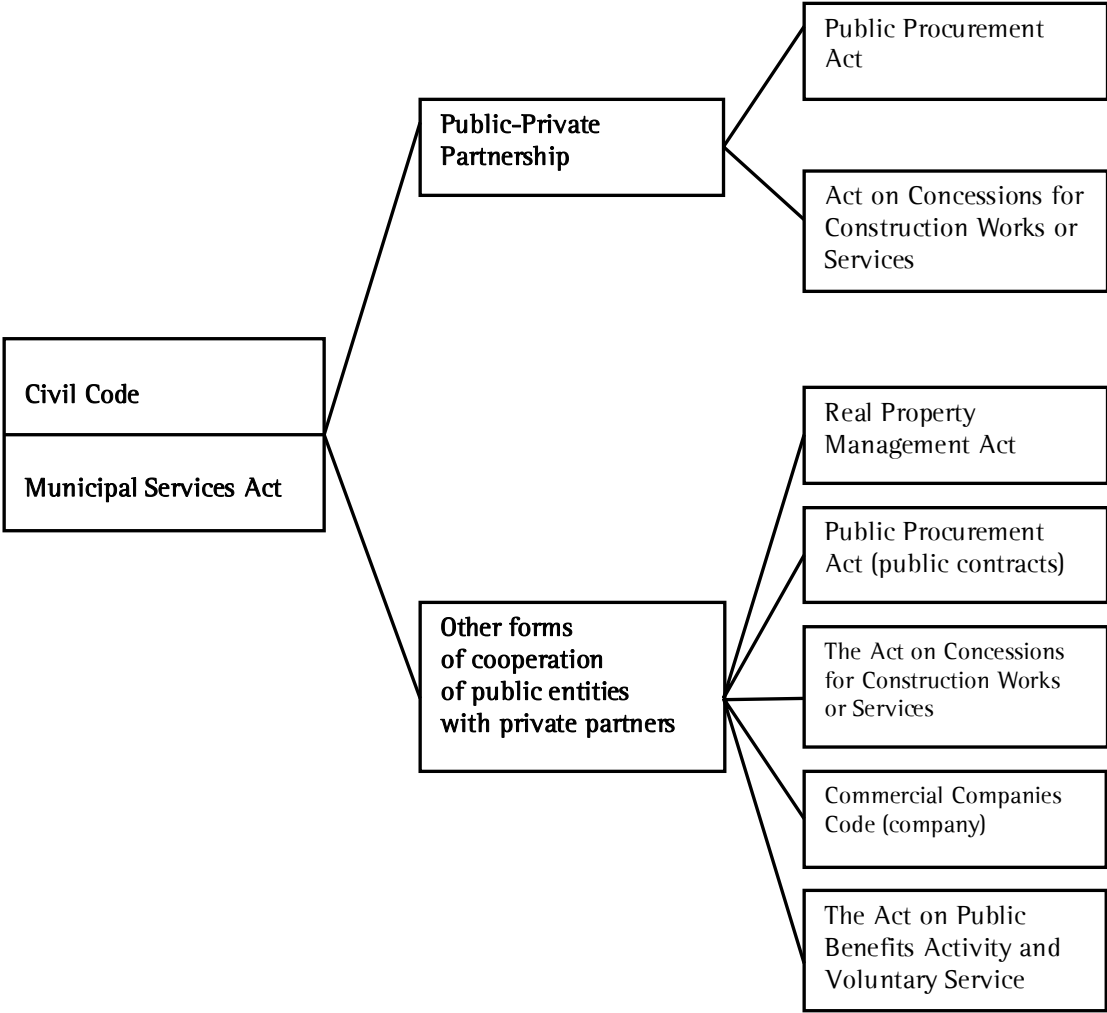
CHAPTER II

LEGAL AND FINANCIAL ASPECTS OF EXECUTION OF PUBLIC-PRIVATE INVESTMENT PROJECTS IN POLAND

In Poland public-private partnership continues to be a novel method of executing public tasks with participation of private investors. Since the 1990s local self-governments have been setting up companies together with private investors and they have been administering public property as part of their real estate management activities. However, until now the basic form of cooperation between the public and private sector has taken the form of public contracts being awarded by the administration. More comprehensive forms of cooperation, i.e. the use of private capital in complex undertakings, making private partners part of several stages of a project and finally, allowing them to make use of the created infrastructure for profit – continue to be of interest to only a few pioneers. This is due in part to lack of guidelines and experience in establishing cooperation based on PPP principles, and partly due to the reluctance of private investors to become more involved in joint activities in the public sphere.

The new Act on Public-Private Partnership of 19 December 2008 charts a new direction in cooperation between the two sectors, and it came into force together with new legislation on concessions for construction Works or services. The PPP Act sets a framework and gives guidelines on setting up and carrying out partnerships. It has become a part of the tools which already function in the Polish legal system, creating a cohesive whole with other statutes. Although only practice will show to what extent the new Act will contribute to the development of partnerships in Poland, there is no doubt that together with the already functioning instruments, it will enable the creation of various forms of cooperation between public entities and private partners.

Possible forms of cooperation between public entities and private partners - legal frameworks



Source: Investment Support

1. Introduction – possibilities for cooperation between the public and the private sector

In the Polish legal system, apart from the new Act on Public-Private Partnership, the following legislation allows the public and private sectors to cooperate with each other:

a) **The Municipal Services Act of 20 December 1996 (Journal of Laws of 1997, No. 9, item 43), hereinafter the MS Act – the basis upon which public-private cooperation may be established.**

In accordance with Art. 2 of the MS Act, municipal services may be maintained by local government entities in the following forms:

- entities financed by local governments;
- commercial law companies: such as joint stock companies, limited liability companies and (pursuant to the PPP Act) limited partnerships and limited joint-stock partnerships;
- on a contractual basis, subject to provisions of the legislation on public finances, or as appropriate, to provisions on public-private partnership, provisions on concessions for construction works or services, or to provisions on public procurement and provisions on public benefit activities and volunteer work.

In accordance with Art. 10 (3) of the MSA, municipality [gmina] authorities may outside the public benefit sphere form or join companies for the benefit of the local government, which will operate in the banking, insurance, consultancy, promotion or publishing sectors, as well as in other sectors essential for the municipality's development.

SUMMARY:

1. The MS Act is a general legal instrument which provides a basis on which local government entities may engage with external bodies and it sets out the framework of their cooperation related to public duties.
2. The MS Act contains a number of restrictions on the object of cooperation that is undertaken in the form of a joint-stock commercial law company (e.g. the need to prove that a public objective will be fulfilled).
3. The Act does not regulate in an exhaustive manner the principles of cooperation between a local government unit and a private entity.

b) **The Act on Real Property Management of 21 August 1997 (Journal of Laws of 1997, no. 115, item 741), hereinafter the RPM Act**

Under the RPM Act public-private „cooperation” takes place in a very limited number of cases:

- in cases where management of real properties belonging to local government units takes place;

- in cases where management of a real property by a private partner on the basis of a management contract takes place.

Real properties belonging to local government units may be sold, assigned under a perpetual usufruct contract, leased or rented to specified entities⁴.

Another option for “public-private cooperation” is the conclusion of a management contract between a local government unit and a private entity – a manager.

The management of real property is a professional activity performed by facility managers. Such a manager is a natural person holding a professional licence awarded by a procedure performed under the RPM Act. Entrepreneurs having facility management qualifications may manage such properties.

Facility management consists of making decisions and taking actions primarily aimed at ensuring the proper economic and financial functioning of a property, ensuring that it is used safely and securely, ensuring its proper operation, day-to-day administration of the facility, as well as keeping it in good repair in accordance with its intended use and making the necessary investments in it (MSA art. 185 (1) and following).

SUMMARY:

As far as public-private cooperation under the RPM Act is concerned, actions taken have a structured format and relate to cooperation within the framework of specific contracts, which set out the manner of use of such properties, which, as it is defined by the PPP, constitutes one of the stages of wider cooperation.

c) The Public Procurement Act of 29 January 2004 (Journal of Laws of 2008, no. 10, item 24), hereinafter the PP Act,

The implementation of a public procurement contract between a public entity – the ordering party, and a private entity – the contractor, on the terms defined by the PP Act, is characterized by several important factors.

A public procurement contract concerning services, supplies of goods or construction works is a contract for consideration concluded between the ordering party and contractor (Art. 2 (13) of the PP Act).

In contrast to the „flexible” methods of cooperation provided by the PPP Act or the Act on Concessions, the ordering party has no right to freely set the terms of remuneration of the private partner or to determine

⁴ As a rule such transactions follow a public tender. Art. 37 (2) of the RPM Act contains a list of circumstances absolving from the requirement to hold a tender in order to dispose of a property.

the partner's share in the costs of completing the project. Under the PP Act, the contractor is to receive full remuneration for the performed work, that represents the value of the contract (the main selection criterion for the best bid is the price).

The PP Act provides for several procedures for granting a contract:

- unlimited tender,
- limited tender,
- negotiations with announcement,
- competitive dialogue,
- negotiations without announcement,
- non-tendered contract,
- electronic bidding.

Making use by the ordering party of each procedure is conditional upon it meeting specified criteria set forth by the Act.

Under the PP Act, a contractor and ordering party are not required to create a special purpose vehicle.

SUMMARY:

The PP Act is a piece of legislation regulating the method of “cooperation” between the ordering party and the contractor, setting clear boundaries for execution of a specified order for a specified sum of money. The Act also determines formalized procedures for selecting a contractor.

d) The Act on Public Benefit Activities and Volunteer Work of 24 April 2003 (Journal of Laws of 2003, no. 96, item 873), hereinafter the PBA Act.

The PBA Act states that a public benefit activity is a socially beneficial activity conducted by non-governmental organizations in execution of public tasks set out in the Act.

In accordance with Art. 3 (2) of the PBA Act non-governmental organizations are entities which do not belong to the public finance sector (as defined by the public finance regulations), do not act for profit and are legal or unincorporated persons set up under statutory provisions, including foundations and associations.

The statutory activity of a non-governmental organization relating to its public benefit activity, is not, except as provided in Art. 9 (1) of the PBA Act, a commercial activity as defined by the provisions of the Business Activity Act and may be conducted free of charge or for a fee.

In the public benefit sphere, public entities i.e. organs of the public administration, support non-governmental organizations carrying out their statutory activity in a given area to implement public tasks. These organizations are also entrusted to carry out the public tasks.

SUMMARY:

The PBA Act is a set of rules which regulate a strictly defined framework of cooperation between public bodies and entities not belonging to the public finance sector, and concern the use of services of non-governmental organizations by such bodies for the purpose of performing their public tasks.

e) The Public-Private Partnership Act of 19 December 2008 (Journal of Laws of 2009, no. 19, item 100), hereinafter the PPP Act.

The PPP Act has done away with the restriction that the partnership is to be limited solely to the execution of public tasks. Therefore it is now possible to establish cooperation between the public and private sector in a wide range of tasks⁵. The subject of public-private partnership is the joint execution of an undertaking based on a division of tasks and risks between the public and private partner⁶.

In the public-private partnership cooperation framework, the remuneration of the private partner is determined, first of all, by the actual use or availability of the subject of the partnership. Moreover, the source of origin of remuneration of the private partner determines the procedure for selecting such a partner. This is due to the fact that under Art. 4 of the PPP Act, if the remuneration of the private partner is to be in the form of the right to receive benefits from the subject of the public-private partnership or, above all, that right is to be

⁵Independently of using the concept of „public task” in the PPP Act, each public entity may engage in a partnership only to such an extent as it corresponds to its scope of activities. Therefore, more often than not – due to the nature of the public entities – the subject of partnership will be the execution of public tasks. Thus if the Act of Municipality Self-Government of 8 March 1990 in Art. 6 (1) states that to the scope of commune's activities belong all public affairs of local significance, which are not prescribed by law to other entities, this means that the municipality may – provided other regulations do not contravene that – fulfil all tasks associated with the local affairs in the form of the public-private partnership; Statement of Reasons to the PPP Act, page 6.

⁶ The PPP Act defines an undertaking as:

- a) construction or refurbishment of a facility;
- b) provision of services;
- c) delivery of work, in particular fitting out an asset with equipment enhancing its value or utility, or
- d) other performance

- connected with the maintenance or management of an asset which is used for the purpose of implementing the public-private undertaking or which is associated with it. (Art. 2 (4) of the PPP Act).

This provision „opens a catalogue of possible undertakings in all areas and for all kinds of services by the private partner (...) the objective of undertakings will be simply construction of facilities, performance of work or rendering of services or other performance or combination of those”, Statement of Reasons to the PPP Act, page 12.

combined with the payment of an amount of money, the private partner will be selected on the basis of the application of the provisions of the Act on Concessions for Construction Works or Services. In other cases (e.g. where the remuneration will originate entirely from a public entity), the private partner will be selected under the provisions of the PP Act.

As part of the cooperation undertaken, a public-private partnership contract (hereinafter: “PPP contract”) may provide that the public entity and the private partner set up a joint-stock company, a limited partnership or a limited joint-stock partnership (Art. 14 (1) of the PPP Act). A company set up under such a provision is a special purpose vehicle created for the purposes of implementing a specific undertaking. The objective and subject of activity may not go beyond the scope defined by the PPP Contract.

SUMMARY:

The PPP Act has introduced into the Polish legal system a new form of executing a range of investment projects by a public and private entity acting jointly, by using the technical and financial potential of the private partner. The PPP Act, in contrast to the MS Act, does not limit the object of the cooperation undertaken and the tasks thus realized. The inclusion of flexible definitions into the Act may ensure that such “public-private” cooperation will be organized in manner most suited to the interests of the parties at a given time.

f) The Act on Concessions for Construction Works or Services of 9 January 2009 (Journal of Laws of 2009, no. 19, item 101), hereinafter the CC Act.

The aim of introducing the Act on Concessions for Construction Works or Services into the Polish legal system was to offer a new possibility of executing public tasks by using private funds and the potential of private entities, which may significantly improve the accessibility and quality of available services.

A concession contract is a contract for a fee, and the remuneration of the private entity – the concessionaire, consists either solely of assignment of the right to use the subject of the concession or of assignment of such a right together with a supplementary payment(s) by the public entity – the grantor of the concession⁷.

The subject of the contract may be construction works or a service, as they are defined by the PP Act.

The procedure for selecting the concessionaire has been introduced by the Act on concessions. This procedure enables the grantor of the concession to limit the formalities associated with conducting the proceedings to conclude the concession contract (e.g. verification as to whether conditions for participation in the proceedings have been met or the best bid selected) and to speed up the proceedings.

⁷ „As opposed to the public procurement contract, a concession is not a contract under which the contractor receives all remuneration from the public entity, without consideration to the fact whether the task is economically justified”, Statement of Reasons to the Act on Concessions..., page 14.

Unlike the PPP contract which provides for the division of tasks and risks between the parties to the contract, the Act on Concessions sets out that "in major part, the economic risk of performance of the concession contract" is to be borne by the concessionaire.

The concessionaire's remuneration may consist of, either exclusive right to use the facility / service (a concession for construction works / concession for service), or of such a right combined with a supplementary payment(s) from the grantor of the concession. This payment, in turn, may not lead to recovery of all outlays associated with execution of the concession contract which had been incurred by the concessionaire (Art. 1 (2) and (3) of the CC Act).

SUMMARY:

The CC Act has introduced concession – otherwise known as „small PPP”, as a form of PPP. Concession for construction works or services is a method of executing a task where the economic risk of the undertaking is in its major part moved to the private entity.

The table below presents the main features of each type of cooperation between a public and private entity.

The main features of different types of cooperation between a public and private entity

	Subject of cooperation	Method of cooperation	Selection procedure	Remuneration of the private partner	Contribution by the public entity	Duration of cooperation	Scope of cooperation
MS Act	Municipal services of local governments	Commercial law company	Negotiations based on provisions of the Civil Code	Defined by partnership deed	yes	Defined by partnership deed	narrow
RPM Act	Holding of real property belonging to the local government, management of real properties	Civil law contract (e.g. assignment under a perpetual usufruct), management contract	Tender by procedure under the RPM Act	Defined in contract	yes	Defined in contract	narrow
PBA Act	Execution of tasks in the public sphere	Contract	Competition	Free of charge	no	Defined in contract	narrow

	Subject of cooperation	Method of cooperation	Selection procedure	Remuneration of the private partner	Contribution by the public entity	Duration of cooperation	Scope of cooperation
PP Act	Construction works, services, supply of goods	Public procurement contract	Procedure selected according to the PP Act	An amount of money	no	Fixed-term contract, maximum 4 years ⁸	narrow
PPP Act	Joint execution of an undertaking based on division of tasks and risks	PPP contract	Depending on the source of remuneration of the private partner: appropriate application of the Act on Concessions for Construction Works or Services or PP Act	Right to collect gains or above all, this right together with payment of an amount of money or different method from above	yes	Defined in contract	wide
CC Act	Execution of the subject of concession in exchange for the right to operate or the right to operate with supplementary payment(s) by public entity	Concession contract for construction works/services	Negotiations by procedure under the CC Act	Exclusive right to use the facility / services or such right combined with payment of the grantor of the concession	no	Up to 30 years – concession for building works Up to 15 years – concession ⁹ for services	wide

Source: Investment Support

⁸ A contract for a term longer than four years requires justification, see Art. 142 of the PP Act. A contract may be open-ended, if it is for the supply of:

- 1) water through a water supply network or collection of sewage through a sanitary drainage network,
- 2) energy through a power distribution network,
- 3) gas through a gas distribution network,
- 4) heat through a distribution network,
- 5) licence for computer software (Art. 143 (1)).

⁹In case where concessionaire's investment outlay payback period is longer than the period stated, the contract may be concluded for a longer term (Art. 24 (2) of the Act on Concessions).

2. Public-private partnership defined by the Act of 19 December 2008

Public entity and private partner

In the context of public-private projects being executed in Poland, it is essential to define the concept of a public entity and a private partner.

The bodies which may be considered as public entities are listed in Art. 2 (1) of the PPP Act. They are:

- a) a public finance entity as defined by the regulations on public finance;
- b) a legal person other than under a) created specifically for the purpose of fulfilling general needs, a person that is non-industrial and non-commercial in its nature, and if the entities referred to in this provision and under item 1, individually or jointly, directly or indirectly by another entity:
 - contribute more than 50% of its funding or
 - own more than half of its shares, or
 - exercise supervision over its managing body, or
 - have the right to appoint more than half of the composition of its supervisory or managing body;
- c) associations of entities referred to in item a) or b).

Thus public entities are: organs of public authorities, including organs of government administration, state control and law enforcement bodies and their associations, municipality, county and provincial authorities, entities financed by the state and local governments, special funds, state-owned institutions of higher education, research and development entities, independent public health care establishments, state and local government cultural institutions, the National Insurance Institution as well as the Agricultural Social Insurance Fund and funds administered by them, the National Health Fund, the Polish Academy of Sciences and other central or local government legal persons created under separate legislation for the purpose of performing public tasks, with the exclusion of enterprises, banks and commercial companies.

According to the PPP Act, another category of public entities are bodies which are defined in directives as subjects of the public law, whose main objective is to satisfy the needs of the population on day by day and uninterrupted basis¹⁰. An example of the above-mentioned persons are entities of the public radio broadcasting and television, which include Telewizja Polska Spółka Akcyjna, Polskie Radio Spółka Akcyjna and regional radio companies

¹⁰ Art. 7 of the Municipality Self-Government Act of 8 March 1990 (Journal of Laws of 2001, no. 142, item 1591, consolidated act) regulates such matters as spatial governance, site management and protection of the environment, water supply, physical culture, education, health protection, local public transport or organisation of traffic.

acting under the Act on Radio Broadcasting and Television of 29 December 1992¹¹. Next, entities under Art 2 (1)(b) include also the National Bank of Poland and Poczta Polska [Polish Mail].

The PPP Act also provides a definition of a private partner, by referring in Art. 2(2) to an entrepreneur or foreign entrepreneur as laid down in Art. 4 of the Freedom of Business Activity Act¹².

An entrepreneur is each entity which according to the applicable Polish legal regulations has the status of a natural or legal person or of an organisational entity that is not a legal person, and which under a separate statute has been granted a legal personality, and which in its own name conducts profit-oriented manufacturing, construction, commercial or service activity or pursues activity consisting of prospecting, exploring and extracting minerals from deposits, or pursues a professional activity performed in an organized and continuous fashion. Thus a condition for obtaining the status of an entrepreneur by entities listed in Art. 4 of the Freedom of Business Activity Act is the conduct in one's own name of an organised, continuous and profit-oriented activity that may be qualified as either manufacturing, building, trading or service activity.

Natural persons who undertake business activity qualify as entrepreneurs, having first been entered in the register of business activity, so do legal persons undertaking and carrying out such an activity, having first obtained a registration in the appropriate register, or persons who acquire legal personality under the acts.

Under Art. 36 of the National Court Register Act¹³ (NCR Act) entrepreneurs are:

- general partnerships;
- European groupings of commercial interests;
- professional partnerships;
- limited partnerships;
- limited joint-stock partnerships;
- joint-stock companies;
- limited liability companies;
- European companies;
- cooperatives;
- European cooperatives;
- state-owned enterprises;

¹¹ Journal of Laws of 2004, no. 253, item 2531, as amended.

¹² The definition adduced in the above regulation is considered as common for the whole system of law – some legal instruments (e.g. the Act on Combating Unfair Competition or the Bankruptcy Act) give a different definition of the entrepreneur, but each of those definitions applies only and exclusively in the interpretation of the provisions of the statute in question.

¹³ Journal of Laws of 2001, no. 17, item 209, as amended.

- research and development entities;
- companies defined by regulations on the rules of conducting business activity in the Republic of Poland in the area of small-scale manufacturing by foreign legal and natural persons, termed “foreign companies”,
- mutual insurance companies;
- other corporate bodies if they perform business activity and are subject to the obligation of being entered in the register referred to Art. 1 (2)(2) of the Act;
- branch offices of foreign entrepreneurs active in the Republic of Poland;
- main branch offices of foreign insurance companies.

Associations, social organisations, trade unions, foundations, business and professional self-governing bodies and public health care establishments have the status of an entrepreneur (Art. 47 of the NCR Act). And so have housing cooperatives¹⁴, craftsmen and franchise holders¹⁵.

The group of entrepreneurs includes partners in a general partnership who perform business activity. Partners, that is each of them, and also each spouse, if he or she sets up a partnership, is obliged to secure an entry in the register of business activity. Thus activity of these persons is treated by the Act on Freedom of Business Activity as separate activity of two natural persons.

Summing up, an entrepreneur may be any entity acting on the basis of the Code of Commercial Companies Act¹⁶ of 15 September 2000, as well as a foreign entrepreneur, i.e. a person performing business activity abroad¹⁷.

Assets

According to the list in Art. 2 (3) of the PPP Act, the concept of an asset covers the following: real property, an enterprise as an organised whole or its part, building, structure or other facility firmly attached to land, movable property and a right in property. It is obvious from the above that the list includes practically all assets which may act as a person's own contribution to the public-private partnership.

An enterprise is defined in the Art. 551 of the Civil Code, whereby an enterprise is an organised set of intangible and tangible assets used for the purpose of conducting business activity, namely the name of the enterprise,

¹⁴ According to the opinion of the Team of Arbiters contained in the Supreme Court Judgement of 25 June 1991 (file ref. III CZP 53/91, LEX no. 9060), a housing cooperative is a business entity within the meaning of Art. 479² § 1 of the Code of Civil Procedure (Journal of Laws of 1964, no. 43, item 296, as amended).

¹⁵ Judgement of the Supreme Administrative Court of 21 January 1998, I Sa/Kr 507/97, LEX no. 32135.

¹⁶ Journal of Laws of 2000, no. 94, item 1037 as amended.

¹⁷ According to Art. 5 (2) of the Freedom of Economic Activity Act a foreign person is: a natural person having no Polish citizenship, a corporate body domiciled abroad, an organisational unit having no legal personality, but having legal capacity and which is domiciled abroad.

its trademark and other identification which distinguishes the enterprise, books of accounts (book-keeping records), patents, registered designs or patterns, liabilities and charges associated with the conduct of the enterprise (i.e. obligations arising from existing contractual relationships which the persons conducting business activity are the subject of) or rights resulting from renting and leasing of premises occupied by the enterprise.

Furthermore, assets are also property rights, understood as a set of entitlements to which the author of a work is entitled to, with particular consideration given to the economic aspects of such entitlements. The concept of author's economic rights is regulated by Art. 17 of the Act on Copyright and Related Rights¹⁸ of 4 February 1994, according to which the most important part of such rights is the so-called right to use and exercise control over the work in all fields of its exploitation (the so-called author's monopoly).

An asset which is used by a private partner in the course of executing a contract in a manner that is flagrantly contrary to its intended use as defined in the PPP contract, is to be returned to the public entity (Art. 9 (2) of the PPP Act). This provision constitutes the basis on which return of an asset may be claimed on terms set out in the PPP contract. It does not, however, infringe the provisions of that contract and the regulations allowing the filing of claims due to non-performance or improper performance of contractual obligations, or even the possibility to withdraw from the contract as such.

In the case of an investment project being executed through a PPP Company – the conditions for handing over or return of an asset used contrary to its intended purpose should be set out in the deed of company formation or in its articles of association (Art. 9 (4) of the PPP Act).

Own contribution

By own contribution the legislator means an advance by the public entity to the private partner, which in particular may consist of:

- a) payment for some of the expenses of the undertaking, including financing of supplementary payments to the services rendered by the private partner in the undertaking;
- b) contribution of an asset.

¹⁸ Journal of Laws of 2006, no. 90, item 631, consolidated act.

The purpose of furnishing an own contribution by the parties to the partnership is to facilitate the implementation of the undertaking. It may take the form of incurring part of the expenses needed to carry out the project, such as for instance the purchase of materials used for the project, or to cover costs of energy or contracted services.

Additionally, an own contribution may consist of financing supplementary payments to the services rendered by the private partner.

It should be noted that an own contribution may be furnished in particular through selling, lending, using, renting or leasing an asset (Art. 9 (1) of the PPP Act). Also important is the fact that the act uses the words "in particular", which does not exclude other forms, as long as they fulfil the functions assigned to objects constituting an own contribution, for example, a contribution in the form of an input to capital.

In view of the fact that an own contribution by public entities usually takes the form of real property, application of the provisions of the PPP Act is to a large extent determined by the relationship of the entities to the regulations which govern the use of the properties belonging to the state and local governments, contained in the Act on Real Property Management of 21 August 1997.

This Act generally requires that a sale or assignment under a perpetual usufruct contract of properties belonging to the state or local authorities should be arranged through a tender procedure (Art. 28(1) of the Act). An exception to this rule in the context of applying the PPP Act is an assignment to a private partner or a company referred to in Art. 14 of the PPP Act, of a public entity's contribution, for the purpose of executing public tasks within the framework of public-private partnership.

Assignment of real property

The new PPP Act has maintained the possibility of a gratuitous assignment of a real property to a private partner or a PPP company for the duration of a PPP project. Moreover, the PPP Act has introduced some improvements concerning administering of real properties, such as:

- a) possibility of assignment of a property to a private partner or special purpose vehicle without holding a tender (Art. 37 (2)(11) of the Act on Real Property Management);
- b) possibility of sale with a discount (Art. 68a (1) of the Act).

The above is justified by the need to facilitate the creation of partnerships, but also by the fact that public interest is protected by the rule that real property is to return to the owner once the contract is terminated, and the sale with a discount is subject to the proviso guaranteeing the right of buy back. It is possible that such arrangements

concerning assignment of real properties belonging to local governments will reduce incidence of disallowed public assistance.

PPP Company

In order to carry out an investment project under the PPP formula, a public entity and private partner may form a joint-stock company (a limited liability company or a company limited by shares), a limited partnership or a limited joint-stock partnership, which for the needs of the PPP is called the PPP Company. It is a special purpose vehicle – its objective and subject of activity may not exceed the scope provided for in the PPP contract (Art. 14 (2) of the PPP Act). Due to this fact any amendment of the contract or of the articles of associations which impacts the objective or the subject of the company's activity - must fall within the scope set out in the PPP contract, and each resolution of partners must fall within the scope defined by the purpose of the company's existence, which is to implement the PPP contract. It applies in particular to resolutions concerning administration of assets that are key to the partnership: real properties or the company itself, as defined by Art. 55 of the Civil Code.

The parties may agree that on completion of the PPP Contract the public entity will purchase the stake or shares in the partnership held by the private partner. Such situation may also occur once the objective of the cooperation has been achieved, and the purchase of the stake or shares of the private partner by the public entity is an alternative to liquidation of the company on expiry of the PPP contract.

Art. 16 of the PPP Act provides that the public entity holds the pre-emption right to purchase shares or the stake of the private partner in a company referred to in Art. 14 (1). The decision concerning the use of that right is to be communicated by the public entity to the private partner not later than two months from the date of the private partner notifying of the intention to sell shares or the stake.

The creation of a PPP company by a public entity and private partner is not an obligatory form of effecting public-private partnership, as it is defined by the PPP Act. It will be the choice of the parties to a PPP contract whether they set up a company or not. However, such a special purpose vehicle for the purposes of the PPP Act (i.e. a company set up to perform the objective of public-private partnership) may not be created without the parties first signing the PPP contract.

PPP Undertaking

An undertaking is defined by Art. 2 (4) of the PPP Act as:

- a) construction or refurbishment of a facility;

- b) provision of services;
 - c) delivery of work, in particular fitting out an asset with equipment enhancing its value or utility, or
 - d) other performance
- connected with the maintenance or management of an asset which is used for the purpose of implementing the public-private undertaking or which is associated with it.

The Act does not define or determine the type of undertaking, and it only indicates specific actions that are possible for the purpose of implementation in the partnership. Therefore, if the parties decide that the remuneration of the private partner will be determined by the results of the private partner's performance and the parties to the partnership decide to share the risk, a wide range of possibilities will exist, which are available under the general legal system in Poland, the civil law in particular.

Implementation of an undertaking understood in that way will be most often associated with performance of public tasks, on account of the nature of public entities, because each public entity will be able to engage in partnership only to the extent allowed by its remit. In view of this undertakings performed in cooperation of a public entity with a private partner will mostly relate to public matters of local significance, to which Art. 7 of the Act on Municipality Self-Government of 8 March 1990 refers¹⁹.

Undertakings in this category may be for example: underground and multi-storey car parks, waste processing plants, recreation facilities (water parks, sport and multi-function halls, stadia, sports fields, etc.), sports and hotel complexes, hospitals, technology parks, tram lines, roads, airports and many other things.

3. Tasks of the administration

Local government is a form of organization of local communities appointed to manage public affairs in the interest of the inhabitants. It is an institution that is active in all democratic systems and it also enjoys the protection of international law (e.g. the European Charter of Local Self-Government).

The current division of local governments is determined by the Act of 24 July 1998 which has introduced the basic three-tier system of territorial division of the state²⁰. Under this Act the executive branch is divided into the following units: municipality (*gmina*), county (*powiat*) and province (*województwo*). The legal framework for the activities of local governments is provided by statutes, namely the Act on Municipality Self-Government

¹⁹ Journal of Laws of 2001, no.142, item 1591, consolidated act.

²⁰ Journal of Laws of 1998, no. 96, item 603 as amended.

of 8 March 1990, the Act on County Self-Government²¹ of 5 June 1998 and the Act on Provincial Self-Government of 5 June 1998²².

All three tiers of local government are independent and there is no hierarchical interdependence between them. Bodies of the provincial government have no supervisory rights over the lower tiers; similarly, county authorities do not have any control functions over municipalities.

Municipality authorities perform all the tasks which are not exclusively reserved for other units of local government, firstly ones intended to satisfy the needs of the local community and that are defined as the direct responsibility of municipalities (Art. 166 (1) of the Constitution).

Because public-private partnership is to facilitate the execution of public tasks, it should be noted that the public sector engaging in such undertakings should first and foremost be guided by the public interest.

Generally, the term public interest denotes an activity that is for the benefit of the community as a whole and which is superior in relation to the interest of an individual – it is a common good.

Art. 163 of the Constitution states that local government performs public tasks not reserved by the Constitution or statutes to organs of other public authorities. Art. 166 provides that public tasks performed by local government are aimed at satisfying the needs of local communities. The European Charter of Local Government²³ in Art. 3 (1) says that local government denotes the right and ability of local communities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interest of the local population.

Doctrine and judicature have assigned a meaning to the concept of a “public task”.

A public task can be defined, among other things, by its scope, which is:

- a) differentiated, relative to the range of responsibilities of a public entity for a given sphere of public needs;
- b) variable, relative to the social situation (nature of unsatisfied needs in a given field), economic situation (ability to use the results of efforts of public entities) and financial situation (of the public entity and its choice of method of satisfying social needs);

²¹ Journal of Laws of 2001, no. 142, item 1592, consolidated act.

²² Journal of Laws of 2001, no. 142, item 1590, consolidated act.

²³ Journal of Laws of 1994, no. 124, item 607.

c) open, as regards newly-appearing needs (the necessity to react to new tasks and methods of fulfilling them on individual and collective basis)²⁴.

4. Bodies supervising activity of administration and their tasks

Supervision and control over tasks implemented under the public-private partnership formula, because of public entities' participation in these undertakings, will be exercised by such institutions as:

1. Regional Audit Chambers (Regionalne Izby Obrachunkowe, RIO);
2. Supreme Chamber of Control (Najwyższa Izba Kontroli, NIK);
3. Central Anti-Corruption Bureau (Centralne Biuro Antykorupcyjne, CBA).

According to the applicable law, the above supervision and control bodies have been set up to scrutinize and appraise the financial and commercial activities of organs of the state, including public entities.

REGIONAL AUDIT CHAMBERS

According to the Act on Regional Audit Chambers²⁵ of 7 October 1992, the Chambers are state bodies supervising and controlling the financial management of such entities as:

- local government units;
- inter- municipality associations;
- associations of municipalities and associations of municipalities and counties;
- unions of counties;
- associations of counties;
- self-governing organisational units, including self-governing corporate bodies;
- other entities, as regards the use of grants awarded from budgets of local government units.

The tasks of the Chamber include: control of financial management, including meeting of tax liabilities, control of public procurement contracts of those entities, with regard to the criteria of compliance with the law, and conformity of documentation to the actual state of affairs. Other tasks include: control over financial management activities of local government units, also in terms of their efficacy, integrity and sound management.

²⁴As for example R. Sowiński, „Warunki prawne funkcjonowania spółek komunalnych i ich specyfika”, *Legal Conditions for Functioning of Municipal Companies and Their Specificity*, Rejent no. 6 of 2003, M. Bitner, A. Kozłowska, M. Kulesza „Ustawa o partnerstwie publiczno – prywatnym. Komentarz”, *The Act on Public-Private Partnership. A Commentary*, publ. by Dom Wydawniczy ABC, Warsaw, 2006, pp. 32-33.

²⁵ Journal of Law of 2001, no. 55, item 577, consolidated act.

Supervision over the Chamber's operations is exercised by the Minister in charge of the public administration on the basis of the criterion of its compliance with the law.

SUMPREME CHAMBER OF CONTROL

The principal state control body that is subordinate to the Sejm is the Supreme Chamber of Control, acting on the basis of the Constitution of the Republic of Poland and the Act on the Supreme Chamber of Control of 23 December 1994²⁶.

According to Art. 2 of the Act the Chamber controls activities of the organs of government administration, the National Bank of Poland, state corporate bodies and other state organisational units. Additionally, the Chamber is empowered to exercise control over operations of other organizational units and businesses (entrepreneurs), in respect of their use of assets or funds of the central or local governments and their compliance with financial obligations towards the state, in particular in the areas of:

- a) execution of tasks assigned or allocated by the state or local governments;
- b) execution of public procurement contracts for the state and local governments;
- c) organization and execution of intervention or public works;
- d) activities involving the participation of the state or local governments, use of state or local government assets, including funds allocated on the basis of international agreements;
- e) use of individually allocated assistance, guarantees or sureties granted by the state, local governments or entities defined by the Act on Guarantees and Sureties Granted by the State Treasury and Certain Legal Persons (Journal of Laws of 2003, no. 174, item 1689, as amended);
- f) public assistance granted or used by them which is subject to monitoring as defined by separate regulations;
- g) execution of tasks belonging to the sphere of the national health insurance;
- h) compliance with obligations under the provisions of the Tax Statute of 29 August 1997 (Journal of Laws of 2005, no. 8, item 60, as amended), other obligations towards the state budget, extra-budgetary economy, state earmarked funds and financial contributions to the state arising from civil law relations.

The Chamber exercises control with regard to legality, sound management, efficacy and integrity, except that control of activity of local authorities concerns legality, sound management and integrity only, whereas control of organisational units and entrepreneurs referred to in Art. 2 (3) of the Act on Supreme Chamber of Control concerns legality and sound management.

²⁶ Journal of Laws of 2007, no. 231, item 1701, consolidated act.

CENTRAL ANTI-CORRUPTION BUREAU

Bearing in mind the need for correct application to the PPP Act of the public procurement law, a law which regulates the largest market in Poland which handles funds from the national budget and a major part of the EU funding, it is necessary to make a reference to a institution in charge of supervision and control, which the Central Anti-Corruption Bureau is, i.e. a body fighting corruption in the public and business sphere, particularly in central and local government institutions, and also any activities contrary to the economic interests of the state and which is acting under the Act on the Central Anti-Corruption Bureau of 9 June 2006²⁷.

The Bureau, in execution of its obligations laid down by the maker of laws, pays attention to irregularities that may occur where public funds are spent on goods and services and also in investment processes.

5. Characteristics of private partner's activity

Forms of conduct of business activity

In accordance with the Freedom of Economic Activity Act (Journal of Laws of 2007, no. 155, item 1095, consolidated act, hereinafter: the FEA Act), an economic activity consists of profit-oriented manufacturing, construction, commercial or service activity, prospecting, exploring and extracting minerals from deposits, or professional activity performed in an organised and continuous fashion.

The manner in which such economic activity may be performed depends on a number considerations, e.g. financial, organizational or personnel factors. These features should be considered at each stage of economic activity, both at the start (e.g. what initial capital is available to the business entity), as well as in the course of business (e.g. change in the legal form of performance of the activity).

An activity may be pursued in the form of a sole proprietorship, a partnership or company.

Sole proprietorship

Commencing activity as a sole proprietor is not determined by possession of a specified amount of money, as is the case with the start-up capital of some commercial companies. Furthermore, the costs of obtaining the required official registrations are not excessive either. The financial liability of a sole proprietor is unlimited.

²⁷ Journal of Laws of 2006, no. 104, item 708 as amended.

Additionally, books need to be kept in an uncomplicated format for this form of business: the revenue and expense ledgers.

When choosing this form of business, four taxation possibilities exist: the tax schedule, linear tax, flat-rate tax on registered revenues or a fixed-amount tax.

Entrepreneurs²⁸ who are natural persons are obliged to be entered in the Register of Business Activity. Only after such an entry has been made, it is possible to commence activity²⁹.

A partnership or company

Activity in the form of a partnership or company may take various organizational forms that are compared in the table below:

Various organizational forms of a partnership or company

	General partnership (sp.j.)	Professional partnership (sp.p.)	Limited partnership (sp.k.)	Limited joint-stock partnership (S.K.A.)	Limited liability company (spółka z o.o./sp. z o.o.)	Joint-stock company (S.A.)
Type	personal	personal	personal	personal	capital	capital
Definition	Conducts business under own business name.	Established by partners to conduct professional activity in form of partnership under own business name. The partnership may be formed to conduct business in more than one profession, unless the statute provides otherwise.	A partnership conducting business under own business name, at least one partner's liability is unlimited (general partner) and at least one partner's liability is limited (limited partner).	A partnership conducting business under own business name, at least one partner's liability is unlimited (general partner) and at least one partner is a shareholder.	Can be created by one or more persons for a lawful purpose, unless the statute provides otherwise.	Can be set up by one or more persons.

²⁸ Under the Polish law an „entrepreneur” is a natural person, legal person or an unincorporated organizational unit granted legal capacity by law, which conducts in its own name business or professional activity.

²⁹On 31 March 2009 Art. 23-45 of the Act on Freedom of Economic Activity came into force, which deals with the Register of Business Activity. Until then these matters had been subject to the provisions of Art. 7 and 7i of the Act on Economic Activity (Journal of Laws of 1999, no. 101, item 1178, as amended). The new legal status is taken into account in this study.

	General partnership (sp.j.)	Professional partnership (sp.p.)	Limited partnership (sp.k.)	Limited joint-stock partnership (S.K.A.)	Limited liability company (spółka z o.o./sp. z o.o.)	Joint-stock company (S.A.)
Deed of partnership/ company/articles of association	A written contract on pain of invalidity.	A written contract on pain of invalidity.	A notarized deed of partnership.	Notarized articles of association.	A notarized deed of company formation.	Notarized articles of association.
Required starting capital	None required	None required	None required	At least PLN 50,000	At least PLN 5,000 share capital divided into shares of equal or unequal value. Nominal value of one share may not be less than PLN 50.	At least PLN 100,000 share capital divided into shares of equal nominal value. Nominal value of one share may not be less than one grosz.
Assets	All assets brought in or purchased during partnership lifetime.	Same as for general partnership	Same as for general partnership	Same as for general partnership	All assets brought in or purchased during company's lifetime.	All assets brought in or purchased during company's lifetime.
Contribution	Partner's contribution may be in form of an assignment or transfer of things or other rights, or take the form of a different contribution for the benefit of the partnership.	Same as for general partnership.	If contribution of a limited partner is entirely or in part in non-financial form, the deed of partnership specifies the subject of such contribution (contribution in kind), its value and the name of person making such non-financial contribution. A commitment to render work or services for the benefit of the partnership and remuneration for services rendered in order to set up the	Same as for limited partnership, and in addition: general partner's contribution to authorized capital does not exclude his unlimited liability for company's debts.	Contribution to company's capital may not be in form of a non-transferable right or by rendering work or services.	Contribution to company's capital may not be in form of a non-transferable right or by rendering work or services.

	General partnership (sp.j.)	Professional partnership (sp.p.)	Limited partnership (sp.k.)	Limited joint-stock partnership (S.K.A.)	Limited liability company (spółka z o.o./sp. z o.o.)	Joint-stock company (S.A.)
			partnership may not constitute a limited partner's contribution, unless the value of his other contributions to the partnership is not lower than the value of the limited partner's liability .			
Participation in profits and losses	Each partner is entitled to equal share of profits and equally participates in losses, whatever the type and value of his contribution. Deed of partnership may free a partner from participation in losses.	Same as for general partnership.	Limited partner shares in profits in proportion to his actual contribution, unless the deed of partnership provides otherwise. In the event of doubt the limited partner shares in losses only up to the value of the agreed contribution.	Unlimited partner and shareholder participate in profits in proportion to their contributions to the partnership, unless the articles of association provides otherwise.	Shareholders have equal rights and obligations, unless the statute or deed of company formation provides otherwise. If the deed of company formation provides for shares with special rights, such rights should specified in the deed.	Shareholders are entitled to share in profit reported in audited financial statements and that is approved by the general meeting for distribution to shareholders. Profit is shared in proportion to the number of shares.

	General partnership (sp.j.)	Professional partnership (sp.p.)	Limited partnership (sp.k.)	Limited joint-stock partnership (S.K.A.)	Limited liability company (spółka z o.o./sp. z o.o.)	Joint-stock company (S.A.)
Dissolution of partnership or company	Partnership is dissolved by: 1) reasons provided for in the deed of partnership, 2) unanimous resolution of all partners, 3) declaration of partnership bankruptcy 4) death of a partner or declaration of a partner's bankruptcy, 5) notice of termination of the partnership by a partner or partner's creditor, 6) legally binding court verdict. In cases provided for by Art. 58 of the Commercial Companies Code, a partnership should be liquidated, unless its partners agreed a different form of termination of the partnership business.	Partnership is dissolved by: 1) reasons provided for in the deed of partnership, 2) unanimous resolution of all partners, 3) declaration of partnership bankruptcy, 4) loss by all partners of the right to pursue the profession, 5) legally binding court verdict, 6) Where only one partner remains in the partnership or where only one partner has the qualifications to pursue the profession relating to the subject of partnership's business, the partnership should be dissolved at the latest within one year of any of these events.	Death of the limited partner does not dissolve the partnership.	Partnership is dissolved by: 1) for reasons provided for in the articles of association, 2) resolution of the general meeting on the dissolution of the partnership, 3) declaration of partnership bankruptcy, 4) death, declaration of bankruptcy or withdrawal of the sole unlimited partner, unless the partnership's statute provides otherwise, 5) other reasons provided for by law. Declaration of bankruptcy of a shareholder does not constitute the reason for dissolution of the partnership.	Company is dissolved by: 1) reasons provided for in the deed of company formation, 2) notarized record of a resolution of shareholders on dissolution of the company of transfer of the seat of the company abroad, 3) declaration of bankruptcy of the company, 4) other reasons provided for by law.	Company is dissolved by: 1) for reasons provided for in the articles of association, 2) resolution of the general meeting on dissolution of the company or on transfer of the seat of the company abroad, 3) declaration of bankruptcy of the company, 4) other reasons provided for by law.

Source: Investment Support

Stages of registering a business:

1. Business Activity Register / National Court Register:

Entrepreneurs who are natural persons and partners in a partnership are obliged to be entered in the Business Activity Register.

The register is kept by the municipality authorities for the location of the entrepreneur's residence (Art. 23 (1) of the FEA Act). The registration organ is the municipality leader, town or city mayor.

Entities referred to in Art. 36 of the National Court Register Act (Journal of Laws of 2001, no. 17, item 209, as amended) are subject to an entry in the National Court Register³⁰. This register is kept in digital form by district courts (commercial courts) and it embraces the whole or part of a province.

Note that under the newly-introduced regulations that make it possible to register business activity at one single counter, an application for an entry in the Business Activity Register or in the National Court Register is at the same time an application for an entry in the National Register of Business Entities (REGON). Further, it is also an application for the tax number (NIP) or a request for updating information about the taxpayer, in accordance with the provisions on registering and identification of taxable persons and tax collectors³¹, and it is also

³⁰ 1) (revoked),

2) general partnerships.

2a) European groupings of commercial companies,

3) professional partnerships,

4) limited partnerships,

5) limited joint-stock partnerships,

6) limited liability companies,

7) joint-stock companies

7a) European companies,

8) cooperatives,

8a) European cooperatives,

9) state-owned enterprises

10) research and development entities,

11) companies defined by provisions as conducting business activity in the Republic of Poland in the area of small-scale manufacturing by foreign legal and natural persons, termed "foreign companies",

12) mutual insurance companies,

13) other corporate bodies if they perform business activity and are subject to the obligation of being entered in the register referred to Art. 1 (2)(2),

14) branch offices of foreign entrepreneurs active in the Republic of Poland,

15) main branch offices of foreign insurance companies.

³¹ Act on Registering and Identification of Taxable Persons and Tax Collectors (Journal of Laws of 2004, no. 269, item 2681, as amended).

an application for registration for national insurance purposes as well as a notification of declaration on continuation of farmers' national insurance, as defined by the regulations on farmers' national insurance.

The „one counter” principle is to streamline and speed up the registration process of a business. Now only one application filed in one place is required.

The information contained in the application for an entry in the Business Activity Register, within three days of making the entry, is sent by the registering body to the relevant tax office, statistical bureau and a local branch of the National Insurance Institution, with a copy of the business registration certificate.

In the case of an entry in the National Court Register, within three business days, the Court of Registration routinely forwards further applications for an entry by the provincial statistical office, relevant to the registered office of the entrepreneur, and to the relevant tax office. Once the Court of Registration receives the entrepreneur's NIP number, it sends an application for registering or amending the data about the remitter of insurance contributions, as defined by the provisions of the regulations on national insurance, to the relevant branch office of the National Insurance Institution) (Art. 19b (1a) and (1b) of the NCR Act).

An application for an entry in the Business Activity Register or in the National Court Register the entrepreneur may also file electronically. However, in the case of an application for an entry in the National Court Register, it necessitates that the entrepreneur makes all the applications and registrations personally, by electronic means (i.e. the application for an entry or amendment of the entry in National Register of Business Entities (REGON), the registration or amendment of information on the remitter of insurance contributions, as defined by the regulations on national insurance, and the application for the tax number (NIP) or a request for updating information about the taxpayer, in accordance with the provisions of the Act on Registering and Identification of Taxable Persons and Tax Collectors of 13 October 1995).

2. Business bank account:

The following documents are required to open an account: an extract from the Business Activity Register or the National Court Register, REGON certificate and other documents required by the bank.

3. National Labour Inspectorate, National Sanitary Inspectorate:

If the entrepreneur employs staff, he should inform the National Labour Inspectorate about the place, type and scope of activity within 30 days of commencement of employment³².

Within 14 days of start-up the entrepreneur should also inform the appropriate national sanitary inspectorate about the place, type and scope of the conducted activity and the expected number of employees.

Furthermore, the entrepreneur should submit written information about the adopted means and procedures under the regulations on industrial health and safety, relevant for his type of activity.

Both registrations are free of charge.

4. Concessions, permits and licences.

In order to be able to carry out a specific type of business (e.g. prospecting for or identification of mineral deposits, rendering of road transport services), a number of permits may be required. The Act on Freedom of Economic Activity in Chapter 4 "Concessions and Regulated Economic Activity" describes and specifies the types of economic activity which require concessions, permits or licences.

Establishment of branches and representative offices by foreign entrepreneurs in Poland

In order to carry on business activity in the Republic of Poland, foreign entrepreneurs may establish branch offices in this country (Art. 85 – 92 of the FEA Act).

The entrepreneur can commence business activity through his **branch office** after the registering of the Office in the register of entrepreneurs³³. Additionally, upon registration, under Art. 89 of the FEA Act, the entrepreneur is required to:

- a) appoint a person at the branch office authorized to represent the foreign entrepreneur or enterprise;
- b) submit a notarized specimen of the signature of the authorized person;
- c) file copies of the deed of partnership or incorporation or the articles of association with a certified translation into the Polish language – if the entrepreneur acts on the basis of those documents;

³²The National Labour Inspectorate also should be notified of the changes in the company or of its liquidation.

³³The Act on the National Court Register contains detailed provisions on the rules of entry in the register.

- d) file an extract from a business register with a certified translation into the Polish language
- if the enterprise exists or the entrepreneur conducts business activity on the basis of an entry in that register.

Filing of the documents listed in items c and d above may take place in the files of one of the branch offices, in the event where the foreign entrepreneur established more than one branch office in the Republic of Poland. However, the branch office in which those documents have been filed, should be named in the registration records of the other branch offices, together with the denomination of the court in the register of which the files and the number of that branch office are present.

A foreign entrepreneur setting up a branch office may conduct business only within the scope of business activity of the foreign entrepreneur.

Pursuant to Art. 90 of the FEA Act, a foreign entrepreneur who has established a branch office, is obliged to use in the signage of the office the original business name of the foreign enterprise together with the name of the legal form of the entrepreneur translated into the Polish language, together with the following words added: “oddział w Polsce” (“branch in Poland”). He must also keep separate books of accounts in the Polish language in accordance with the accounting regulations and report to the appropriate minister in charge of the economy all changes in the factual and legal status as set forth in the Act (e.g. commencement of liquidation proceedings of the foreign entrepreneur who set up the branch office), within 14 days of occurrence thereof.

Foreign entrepreneurs may also establish **representative offices** with their registered office in the Republic of Poland. However, the scope of activity of a representative office may only embrace activity in the sphere of advertising and promotion of the foreign entrepreneur (Art. 93 – 102 of the FEA Act).

Also, foreign persons appointed to promote the economy of the country of their domicile may set up representative offices; however, the scope of activity of such an office may only concern advertising and promotion of the economy of that country.

Establishment of a representative office requires an entry in the register of representative offices of foreign entrepreneurs kept by the appropriate minister in charge of the economy.

The entry is made on the basis of an application submitted in the Polish language and in accordance with its content. The application should include:

- name, registered office and legal form of the foreign entrepreneur;
- the subject of business activity of the foreign entrepreneur;

- full name and address in the Republic of Poland of the person in the representative office authorized to represent the foreign entrepreneur;
- address of the representative office in the Republic of Poland.

The application should include:

- a) copies of the deed of formation or incorporation or the articles of association with a certified translation into the Polish language – if the office acts on the basis of those documents;
- b) an extract from a register with a certified translation into the Polish language – if the office conducts activity on the basis of such an entry in the register;
- c) a declaration of the foreign entrepreneur about establishment of the representative office in the Republic of Poland with a certified translation into the Polish language;
- d) a document certifying the legal title of the foreign entrepreneur to the premises (real estate) where the activity will be carried out, together with a certified translation into the Polish language.

Pursuant to Art. 100 of the FEA Act, a foreign entrepreneur who has established a representative office is obliged to use in the signage of the office the original business name of the foreign enterprise together with the name of the legal form of the entrepreneur translated into the Polish language, together with the following words added: “przedstawicielstwo w Polsce” (“representative office in Poland”), to keep separate books of accounts in the Polish language in accordance with the accounting regulations and to report to the appropriate minister in charge of economy all changes in the factual and legal status as set forth in the Act, within 14 days of occurrence thereof.

6. Establishing relationships with public entities

The Polish law does not regulate consultation of basis tenets of a project by public entities with private partners. The legal framework only covers procedures for selection of the private partner, provided for by the Public Procurement Act and the Act on Concessions for Construction Works or Services.

Basic rules for selecting the private partner are as follows:

- a) Transparency;
- b) Fair competition;
- c) Non-discrimination;
- d) Equal access to the market.

These rules should also apply to the pre-tender stage, at which consultations with the market concerning assumptions of a project take place. The public entity in no way should give preferential treatment to any

entrepreneur or make available information to a selected group of recipients. Potential private partners, as a result of having participated in the market consultations, may not approach the public entity with a demand to conclude the contract.

Preparation of investment project – the main stages:

- Concept of the project
- Analyses
- Market consultations stage:
 - o “Identification” of the project
 - o Identification of potential partners of the contracting party
 - o Analysis of the stakeholders
 - o Preparation of promotional materials and business plan
 - o Promotion – mailings, road shows, forum
 - o Consultations with the market – meetings – Report – market analysis
- Preparation of the procedure for selection of the private partner

The purpose of the public entities’ consultations with the market is to:

- Define initial terms of cooperation;
- Obtain return information on the optimal method of implementing the project from the point of view of the private entities;
- Receive information on the most effective way of selecting the most suitable partner;
- Attain the synergy effect at the operational stage;
- Acquire and implement „private” know-how in order to create opportunities for generating profit at the operational stage of the project;
- Identify the barriers to the private sector, adapt theoretical assumptions to plan, implement and manage the completed project;
- Identify a better solution than the one that had been planned and studied;
- Promote the project.

Main assumptions at the project consultation stage	Tools available to public entities for conducting consultations with potential investors
- o Transparency of the process; - o Competitiveness – many bids; - o Equal access for all private partners; - o Arrange actions according to an organized system; - o Measurable effects; - o Conformity of the result of proceedings with the assumed objectives; - o Informing the public in a controlled fashion.	- o Initial consultations with investors – workshops based on the preliminary business plan; - o Meetings with investors; - o An investment forum devoted to the project; - o Road shows for all the projects under consideration; - o Study tours; - o Trade fairs, conferences; - o Questionnaires with solutions.

Source: Investment Support

Promotion by public entities usually takes place at trade fairs and conferences (including international ones), and they also organize their own meetings with investors, where they present outlines of the projects.

7. Procedure for selection of a private partner

The PPP Act has introduced two routes for selecting a private partner:

- a) If the remuneration of the private partner is to be in the form of the right to receive gains from the subject of the public-private partnership or, above all, that right is to be combined with payment of an amount of money, the private partner will be selected on the basis of the provisions of the Act on Concessions for Construction Works or Services, taking into considerations the provisions of the PPP Act.
- b) In cases other than the above, the private partner is to be selected pursuant to the provisions of the PP Act and the PPP Act.

In the first case, the public entity under the provisions of the Act on Concessions for Construction Works or Services conducts proceedings in which it is obliged to assure equal and non-discriminatory treatment of all interested parties, act in a transparent fashion and in accordance with the rules of fair competition. Such proceedings take the form of negotiations and their detailed description is found in Chapter 2 of the Act.

In the second case, it appears that the most appropriate procedure for selecting the private partner could be through competitive dialogue, which is set out in the Public Procurement Act (Art. 60a – 60e). However, it should be remembered that in the event that financial analyses would show that the remuneration of the private partner will derive primarily from sources other than the funds of the public entity, the proper selection procedure would be the procedure provided for in the Act on Concessions for Construction Works or Services.

The competitive dialogue procedure is in its nature flexible and adapted to the implementation of complex undertakings (also those undertakings, that are provided for by the Public-Private Partnership Act), and will not require any modifications when applied by the public entity.

In order to be able to apply the competitive dialogue procedure, the two premises must be satisfied jointly:

- 1) when it is impossible to award the contract through the unlimited or limited tender procedure, as due to the particularly complex nature of the contract, the subject matter of the contract cannot be described in accordance with the requirements of the PP Act, or it is not possible to objectively determine the legal or financial parameters for contract performance;
- 2) the price is not the only selection criterion for the best bid.

The public entity conducts the dialogue until the moment it is able to determine the solution or solutions that best meet its needs; this is done after the entity has compared, if necessary, the solutions proposed by the contractors.

The consecutive stages of the process of awarding the contract under the competitive dialogue procedure and on the basis on the Public Procurement Act and the proceedings for conclusion of the concession under the Act on Concessions for Constructions Works, are presented in the table below. For comparison purposes, the rules of the negotiations with announcement have also been presented.

The stages of the process of awarding the contract under selected procedures

Pos.	Individual steps	Negotiations with announcement	Competitive dialogue	Proceedings to conclude the concession contract
1.	Commencement of proceedings	Public announcement in a publicly accessible place in the registered office and on the internet page, - the ordering party submits the announcement to the Office for Official Publications of the European Communities (it is necessary to keep in mind Art. 40 (6): the announcement may not be placed or published before the day of submission to the OPOCE).	Commencement of proceedings by public announcement of the contract in a publicly accessible place in the registered office and on the internet page (Art. 60 of the PP Act); - the ordering party submits the announcement to the Office for Official Publications of the European Communities.	Commencement of proceedings by publication of the announcement in the Public Procurement Bulletin (as regards concessions for services), in the Official Journal of European Union (related to concession for construction works). - publication of the announcement in a generally accessible public place in the registered office and on the internet page. (Art. 10 of the Act on Concessions for Construction Works or Services)

Pos.	Individual steps	Negotiations with announcement	Competitive dialogue	Proceedings to conclude the concession contract
2.	Time limit for applications	The time limit for applications to participate in negotiations may not be less than: - 30 days from the date of submitting the announcement to OPOCE by electronic means, - 37 days from the date of submitting the announcement of contract to the Office for Official Publications of the European Communities by other means.	The time limit for applications to participate in negotiations may not be less than: - 30 days from the date of submitting the announcement of contract in the Official Journal of European Union by electronic means; - 37 days from the date of submitting the announcement of contract to the Official Journal of the European Union by other means.	The time limit for submission of applications for conclusion of the concession contract may not be less than: - 21 days from the date of announcement in the Public Procurement Bulletin or sending it to the Office for Official Publications of the European Communities, if the value of the subject of the concession is lower than the amount defined in provisions issued on the basis of Art. 11 (8) of the PP Act, which determines the obligation to submit to the Office for Official Publications of the European Communities the announcement of the contract for construction works. - 45 days from the date of announcement in the Public Procurement Bulletin or of sending it to the Office for Official Publications of the European Communities, if the value of the subject of the concession is equal to or greater than the equivalent of the amount referred to above (Art. 12 (2) of the Concession Act).
3.	Results of appraisal if participation conditions have been met	The ordering party shall inform the contractors applying immediately about results of the appraisal if the conditions have been met.	The ordering party shall inform contractors applying for admission to proceedings immediately about results of the appraisal if the participation conditions have been met and of the awarded grades for compliance.	The ordering party shall inform applying contractors about refusal to accept their applications, if the interested party failed to submit a declaration referred to in Art. 13 (1) and (2) of the Act on Concessions for Construction Works or Services³⁴.

³⁴ In the proceedings to conclude the concession contract no obligation exists to inform the bidders of the results of the appraisal, as to whether they complied with the conditions of participation in the proceedings. The legislator obligated the ordering party to inform only those entities whose applications are not accepted, due to failure to file declarations referred to in Art. 13 of the Act on Concessions for Construction Works or Services.

Pos.	Individual steps	Negotiations with announcement	Competitive dialogue	Proceedings to conclude the concession contract
4.	Invitation to negotiations	- The ordering party shall invite not less than 5 contractors (according to the value of the contract) meeting the participation conditions. - The ordering party shall set the date for submitting preliminary bids with the necessary time allowed for preparation and submission of the bid, the term may not be less than 10 days from the date of invitation to submit preliminary bids. - The ordering party shall invite to negotiations all contractors who have submitted preliminary bids which have not been rejected, indicating the date and place of announcement of the contract.	The ordering party shall invite all contractors who have met the conditions for participation in the proceedings, in the number as stated in the announcement, if the value of the contract is equal to or greater than the amount set forth in the regulations issued pursuant to Art. 11 (8) of the PP Act, however, not less than 5.	The ordering party shall invite all candidates who have submitted applications in accordance with Art. 13 of the Act on Concessions for Construction Works or Services.
5.	Conduct of negotiations	- The ordering party shall conduct negotiations to specify more precisely and supplement the description of the subject of the contract or terms of the public procurement contract. - Conducted negotiations are confidential, neither party without approval of the other party may disclose technical or commercial information related to the negotiations.	- The conducted dialogue may apply to all aspects of the contract. - Neither party without approval of the other party may disclose technical or commercial information related to the dialogue.	Conducted negotiations may apply to all aspects of the concession, including technical, financial and legal matters.
6.	Completion of negotiations	The ordering party shall inform all candidates of completion of negotiations. The record of the conducted negotiations is not confidential.	The ordering party shall conduct the dialogue until it shall be able to determine, after comparison of all the solutions proposed by the contractors, if necessary, the solution or solutions best meeting the party's needs. The ordering party immediately informs the participants of completion of the dialogue.	The ordering party shall inform all candidates of completion of negotiations. The record of the conducted negotiations is not confidential.

Pos.	Individual steps	Negotiations with announcement	Competitive dialogue	Proceedings to conclude the concession contract
7.	Modification of requirements	Before inviting bids the ordering party may specify in more detail or supplement the bidding specification, insofar as it was the subject of negotiations. The above-mentioned modifications may not lead to a substantial change of the subject of the contract or of the original terms of the contract.	Before inviting bids, the ordering party may amend the requirements which are subject of the dialogue	Before inviting bids, the ordering party may amend the requirements specified in the concession announcement.
8.	Invitation to bid	The ordering party shall set the date for submitting bids, with the necessary time allowed for preparation and submission of the bid, the term may not be less than 10 days from the date of invitation to submit bids ³⁵ .	The ordering party shall set the date for submitting bids with the necessary time allowed for preparation and submission of the bid, the term may not be less than 10 days from the date of invitation to submit bids.	The ordering party shall set the date for submitting bids with the necessary time allowed for preparation and submission of the bid, the term may not be less than: - 45 days in a case where the public entity sends the announcement for publication in the Official Journal of European Union by electronic means in accordance with the form and procedure set out on the internet page referred to in section 3 of the annex VIII to Directive 2004/18/WE, - 52 days as regards sending the announcement in a different manner than above (e.g. in writing or by fax). (Art. 59 in connection with Art. 38 (5) of Directive 2004/18/WE) ³⁶ .

³⁵ In case where the ordering party made modifications referred to in item 7 together with the invitation to bid, the ordering party shall supply the bidding specification or place it on the internet page, if the specification is to be made available in that form – Art. 60 (4) of the PP Act.

³⁶ The legislator did not impose directly the required time limits for submitting bids by contractors pursuing conclusion of the concession contract, it only requires the public entity to set such time limits, as to allow the necessary time for preparation and submission of the bids (Art. 15 (3) of the Act on Concessions). However, keeping in mind Art. 59 of the Directive 2004/18/WE of the European Parliament and Council of 31 March 2004 on coordination of the procedures for the award of public works contracts, public supply contracts and public service contracts (Official Journal L 134 of 30.4.2004, p. 114), the term for submitting bids for the concession contract for construction works may be from 45 to 52 days, whereby determination of this time limit is determined by the method of giving information about the concession to the Office of Official Publications of the European Union.

Pos.	Individual steps	Negotiations with announcement	Competitive dialogue	Proceedings to conclude the concession contract
9.	Explaining, specifying and completing the bids	After submission of the bids the ordering party may request explanations concerning the content of the bids. Explanations concerning the content may not lead to changes in the submitted bid, even if they would be advantageous to the ordering party.	After submission of the bids the ordering party has the possibility to ask the contractors to specify in more detail or to complete their bids or to present additional information. Changes may not be significant or lead to amendment of the conditions contained in the bidding specification (Art. 87 (1a) of the PP Act).	After submission of the bids the ordering party may ask the contractors to specify in more detail or to complete their bids or to present additional information. Explaining, specifying in more detail, completing the bid or additional information may not lead to the amendment of the bid or of the terms contained in the description of the terms of the concession, referred to in Art. 15 (2) of the Act, which might lead to infringement of the rules of fair competition or which could be discriminatory in nature (Art. 16 of the Act on Concession for Construction Works or Services).
10.	Selection of the best bid	The ordering party shall select the best bid on the basis of the assessment criteria set forth in the bidding specification. After selection of the best bid the ordering party immediately informs the contractors thereof (Art. 92 of the PP Act) and places that information of the web page and in a publicly accessible place in its registered office.	The ordering party shall select the best bid on the basis of the assessment criteria set forth in the bidding specification. After selection of the best bid the ordering party immediately informs the contractors thereof (Art. 92 of the PP Act) and places that information of the web page and in a publicly accessible place in its registered office.	The ordering party shall select the best bid from bids which satisfy the requirements set forth in the description of the terms of the concession, on the basis of the bid assessment criteria specified therein ³⁷ . The ordering party informs the bidders of the selection of the best offer and gives reasons for it. The successful bidder is obliged within the term specified by the ordering party to submit the documents specified in the description of the terms of the concession that confirm compliance with the terms of participation in the proceedings.

³⁷ The ordering party may conduct proceedings to conclude the concession contract also where only one bid is received.

Pos.	Individual steps	Negotiations with announcement	Competitive dialogue	Proceedings to conclude the concession contract
11.	Conclusion of the contract	The ordering party shall conclude the public procurement contract within a term not less than 7 days from the date of giving information about selecting the bid, not later than before the end of the validity of the bid, subject to the provisions of Art. 94 (1a) of the PP Act.	The ordering party shall conclude the public procurement contract within a term not less than 7 days from the date of giving information of selecting the bid, not later than before the end of the validity of the bid, subject to the provisions of Art. 94 (1a) of the PP Act.	The ordering party shall conclude the contract with the successful bidder not earlier than: - 10 days from the date of sending to the bidders information on selection of the best bid by fax or by electronic means, - 15 days from sending it by other means, subject to provisions of Art. 21 (2) of the Act on Concessions for Construction Works or Services.
12.	Record of the proceedings	The ordering party shall keep a record of the proceedings in the course of them. The record is not confidential. The ordering party shall keep the record with appendices for 4 years from the date of completion of the proceedings to award the contract, in a manner guaranteeing their integrity.	The ordering party shall keep a record of the proceedings in the course of them. The record is not confidential. The ordering party shall keep the record with appendices for 4 years from the date of completion of the proceedings to award the contract, in a manner guaranteeing their integrity.	The ordering part shall keep a record of the proceedings. The record is not confidential.

Source: Investment Support

Remedies under the Public Procurement Act and the Act on Concession for Construction Works or Services

Description	Remedies under the Public Procurement Act			Remedies under the Act on Concessions for Construction Works
	Protest	Appeal	Complaint	Complaint
Legitimacy	A protest may filed against acts of the ordering party concerning the content of the contract announcement, tender announcement, bidding specification, rules of bidding, actions taken by the ordering party during the proceedings or the bidding and in the event of the ordering party failing to take actions required under the Act.	Verdict on the protest is subject to appeal.	Verdict of the Chamber is subject to complaint.	The acts undertaken by the grantor of the concession are subject to complaint.

Description	Remedies under the Public Procurement Act			Remedies under the Act on Concessions for Construction Works
	Protest	Appeal	Complaint	Complaint
Entity eligible to lodge a complaint	The contractors and bidders, as well as other persons, if their legal interest in obtaining the contract incurred or may incur damage as a result of infringement by the ordering party of the provisions of the Act.	Contractors and bidders, as well as other persons, if their legal interest in obtaining the contract incurred or may incur damage as a result of infringement by the ordering party of the provisions of the Act.	The parties in the appeal proceedings, as well as the President of the Office of Public Procurement.	An interested entity whose legal interest in concluding the contract incurred or may incur damage.
Body responsible for appeals procedures	The ordering party.	The President of the Public Procurement Office.	The Regional Court having territorial jurisdiction over the registered office or residence of the ordering party.	Provincial Administrative Court (Wojewódzki Sąd Administracyjny, WSA) having jurisdiction over the registered office of the grantor of the concession
Term for filing for remedy	The protest shall be filed within: - 10 days from the day on which it was learned, or with due diligence it could have been learned, of the circumstances giving grounds for filing the protest; - 7 days, if the value of the contract is less than the amounts set forth in the regulations issued on the basis of Art. 11 (8) of the Act. A protest concerning the content of the announcement, and if the proceedings are held by procedure under unlimited tender, and also in relation to the bidding terms essential to the terms of the contract shall be filed within: - 7 days of the date	The appeal shall be filed with the President of the Office within: - 10 days of the date of service of the verdict on the protest or after expiry of the term to pass verdict on the protest; - 5 days, if the value of the contract is less than the amounts set forth in the regulation issued on the basis of Art. 11 (8) of the Act, together with that forwarding a copy of the appeal to the ordering party. Mailing an appeal at an establishment of a public postal operator is equivalent to filing it with the President of the Office.	The complaint shall be filed with the Regional Court through the agency of the President of the Office within 7 days of the serving of the verdict of the Chamber, and a copy thereof shall be sent to the party opposing the complaint.	The complaint shall be filed with the Provincial Administrative Court through the agency of the grantor of the concession within 10 days from the date on which the complainant learned of the action taken by the grantor of the concession in the case.

Description	Remedies under the Public Procurement Act			Remedies under the Act on Concessions for Construction Works
	Protest	Appeal	Complaint	Complaint
	of placement of the announcement in the Public Procurement Bulletin or placement of the bidding specification on the internet page - if the value of the contract is less than the amount set forth in the regulations issued on the basis of Art. 11 (8), - 14 days after publication of the announcement in the Official Journal of European Union or placement of the bidding specification on the internet page - if the value of the contract is equal to or greater than the amounts set forth in the regulations issued on the basis of Art. 8 of the Act. If the proceedings are held by procedure different than unlimited tender, a protest relating to the bidding terms essential to the terms of the contract shall be filed within: - 7 days of the date of service of the bidding specification; however, not later than 3 days before expiry of the term to submit bids - if the value of the contract is less than the amounts set forth in the regulations issued on the basis of Art. 11 (8),			

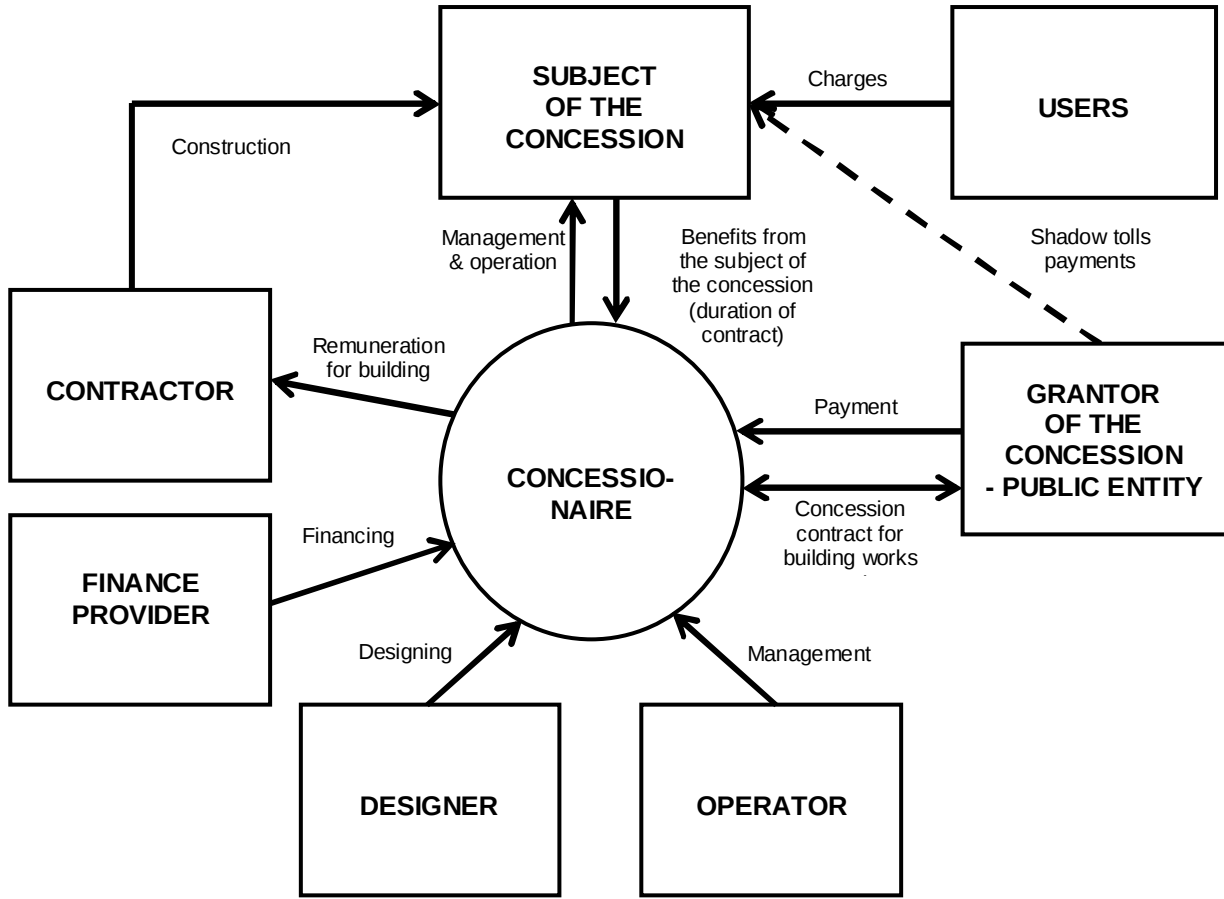
Description	Remedies under the Public Procurement Act			Remedies under the Act on Concessions for Construction Works
	Protest	Appeal	Complaint	Complaint
	- 10 days from the date of service of the bidding specification, if the value of the contract is equal to or greater than the amounts set forth in the regulations issued on the basis of Art. 11 (8)			
Result of filing for remedy	In the event of filing of a protest concerning the content of the announcement or bidding specification the ordering party may prolong the term for submitting bids. The ordering party may not conclude the contract until the final verdict on the protest	—	—	Filing the complaint against selection of the best bid halts the right to conclude the contract with the bidder whose offer was considered as the best, until the time of announcement of the verdict in the case by the Provincial Administrative Court.
Time limits to give verdict	The ordering party shall settle at the same time all protests referred to in Art. 183 (1) of the PP Act within 10 days of the last time limit for filing a protest. The ordering party shall settle a protest other than listed in Art. 183 (1) within 10 days of filing. Passing no verdict on the protest within above time limits is deemed as dismissal thereof.	An appeal shall be heard by the Chamber composed of three persons within 15 days of its filing with the President of the Office.	The Regional Court shall hear the case without delay; however, not later than 1 month from the date of filing it with the court.	The Court shall hear the complaint without delay; however, not later than within 30 days from receipt of the file with the reply to the complaint.

Description	Remedies under the Public Procurement Act			Remedies under the Act on Concessions for Construction Works
	Protest	Appeal	Complaint	Complaint
Final ruling	The protest shall be finally settled: - if it is not subject to appeal - together with settlement by the ordering party of the protest or after expiry of the term to give the verdict on it. - if no appeal has been filed – after expiry of the term for appeal; - in event of an appeal – on the day of the decision being given which ends the appeal procedure or the verdict of the Chamber. In the event of acceptance of the appeal the ordering party shall repeat the appealed action or perform the action that was unlawfully abandoned: - immediately – if the ordering party accepted all the filed claims, - after final settlement of the protest – if at least one of the filed claims has not been complied with.	Rejection, dismissal or compliance. Decision of the Chamber on dismissal or acceptance of the appeal shall be by verdict (ruling of the Chamber, once its enforceability is stated by the court, it has the force of a court judgment). In other cases the Chamber passes decisions. The Chamber shall consider the appeal if it finds that the provisions of the Act had been infringed, which impacted, or could significantly impact, the result of the proceedings. Complying with the appeal, the Chamber may: - order the ordering party to perform or repeat the actions; - order the invalidation of the actions of the ordering party.	Rejection, dismissal or compliance. The court shall dismiss the complaint with a judgement, if it finds the complaint groundless. In the event of compliance with the complaint, the court shall amend the appealed ruling and pass a judgment on the point at issue in the case, and in the remaining matters it shall pass a ruling If the appeal is dismissed or there are grounds to discontinue the proceedings, the court shall revoke the judgement or amend the ruling and dismiss the appeal or discontinue the proceeding.	On the motion of the grantor of the concession, the Provincial Administrative Court may in a closed session by way of a ruling give its consent to the conclusion of the concession contract. The above ruling is not subject to an interlocutory appeal. The court may accept the interlocutory appeal and then: - it shall revoke the actions taken by the grantor of the concession, if it finds that the provisions of the Act had been infringed; - in the event of conclusion of the concession contract it may refrain from revocation of the actions undertaken by the grantor of the concession in justified cases in which revocation of actions could cause disproportionate consequences against the public interest (in such case the complainant suffering a loss as a result of infringement of the provisions of the Act is entitled to compensation).
Statement of reasons	—	The Chamber shall on its own initiative prepare a statement of reasons for the judgement and the ruling terminating the appeal proceeding.	—	—

Source: Investment Support

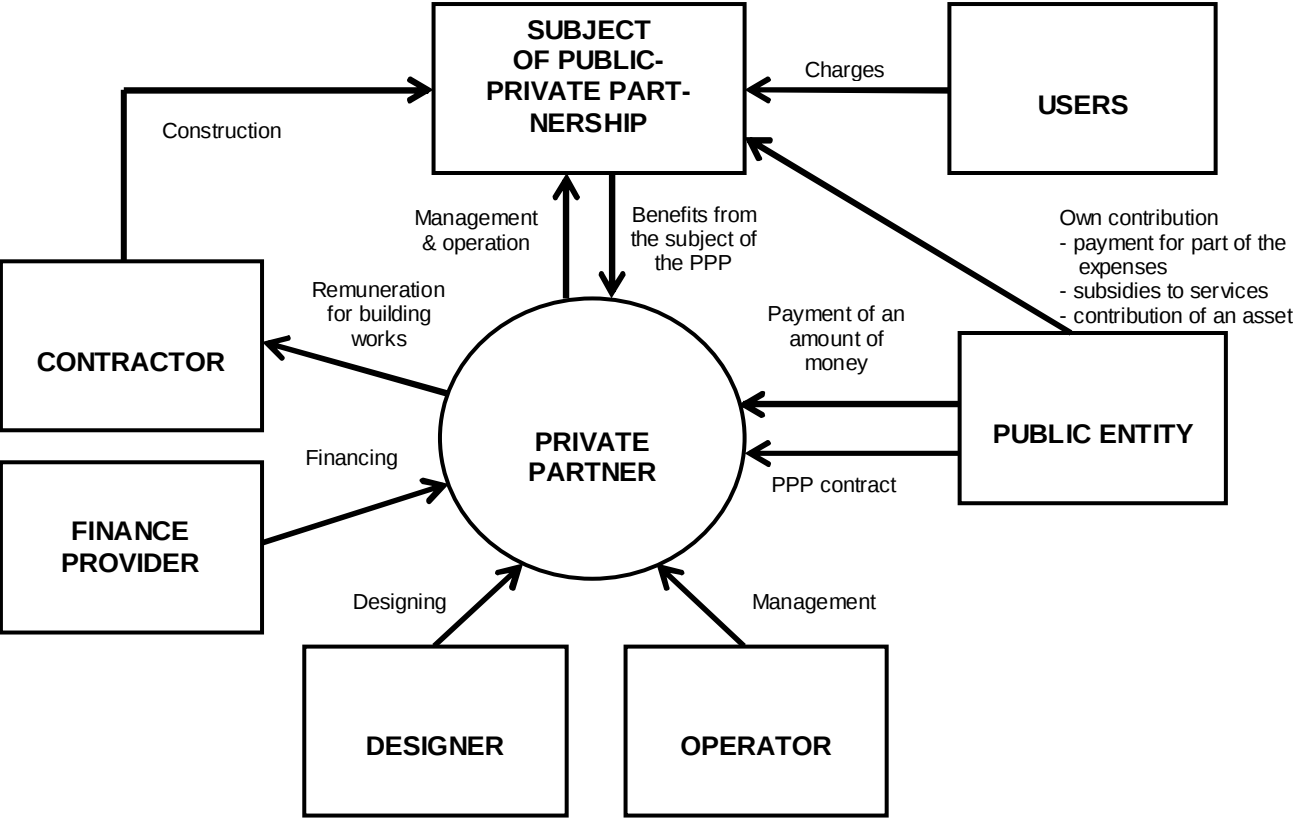
8. Legal and organizational models of implementing PPP investment projects

CONCESSION DIAGRAM



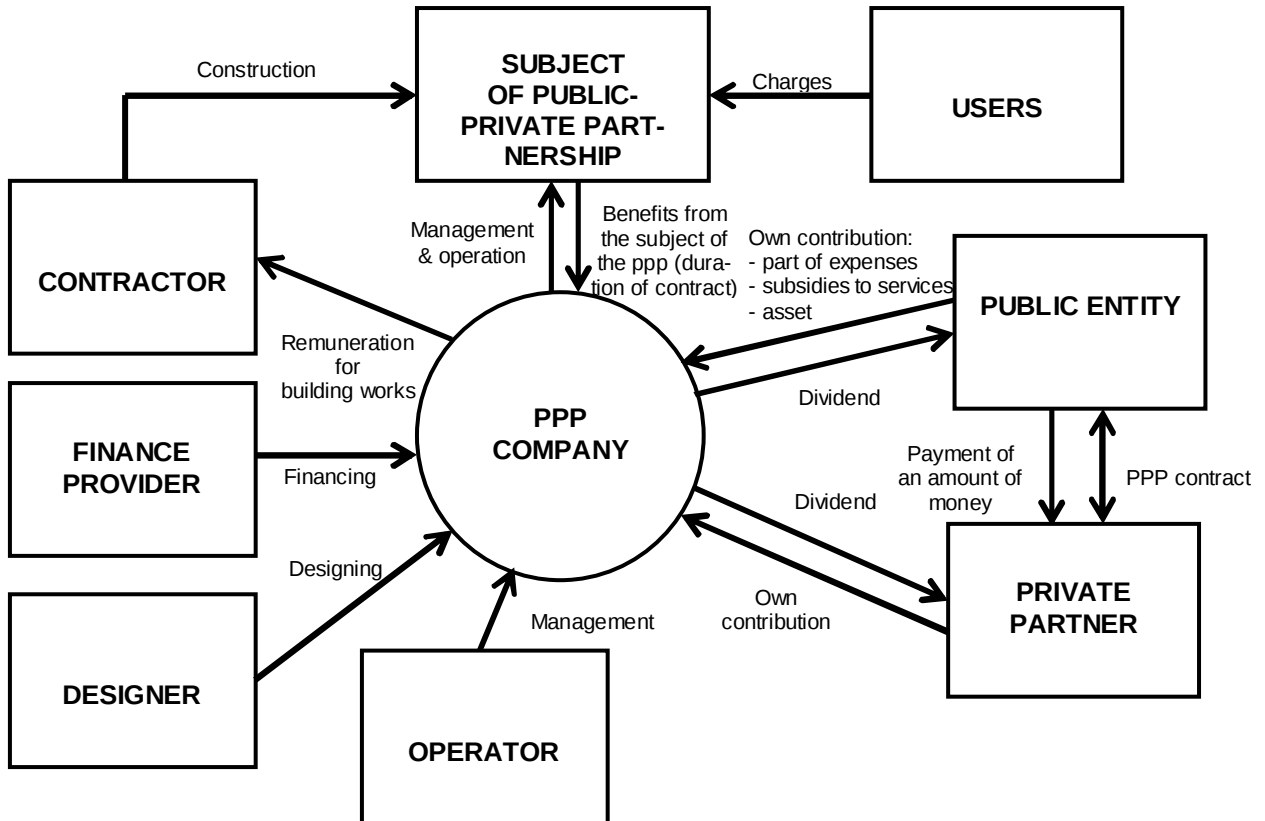
Source: Investment Support

PPP DIAGRAM (without PPP company)



Source: Investment Support

PPP DIAGRAM (with PPP company)



Source: Investment Support

9. Selected provisions of the public-private partnership contract in comparison with the public procurement contract

	Public procurement contract	Public-private partnership contract
Legislation	The public procurement law and the Civil Code.	The Act on Public-Private Partnership and the Civil Code.
Preliminary provisions	The contract is to be in written form.	The contract is to be in written form.
Subject of the contract	The subject of the contract is the execution of construction works, supply of goods or services.	The subject of the PPP is an undertaking to be jointly carried out by the parties to the contract.
Contract execution time limit	The contract is for a specified period ³⁸ .	The contract is for a specified period.
Tasks and scope of responsibility	The contract is a commission for construction works or supply of goods or services.	The contract is based on division of tasks and risks.
Rights and obligations of the parties	Prescribed in the Bidding Specification, if need be negotiated by the parties in part.	Assigned between the parties depending on the split of tasks and risks.
Remuneration and payment terms	Contractor's remuneration – payment of a specified amount of money.	Freedom in setting remuneration of the private partner. Private partner's remuneration depends on the actual use or accessibility of the subject of the PPP.
Performance security	The ordering party may require a performance security from the contractor. The security is to cover claims on default or improper performance of the contract. If the contractor acts as the guarantor, the guarantee also covers claims under the warranty of quality.	Amount and type of security (e.g. bank guarantees) are negotiated by each party.
Rescinding the contract	In the event of a significant change of circumstances in which performance of the contract would be contrary to the public interest and which could not have been foreseen at the time of conclusion of the contract, the ordering party may rescind the contract within 30 days of learning of such circumstances. If the above case occurs, the contractor may demand remuneration only for performance of part of the contract.	Terms are negotiated by the parties.

³⁸The ordering party may conclude a contract for supply of periodic or continuous services for a period longer than four years, if execution of the contract over a longer period would bring cost savings in execution of the contract in relation to the four-year period or where it is justified by payment capability of the ordering party or by the scope of the planned outlays and the period necessary to redeem them.

	Public procurement contract	Public-private partnership contract
Other	It is not permitted to amend the terms of the concluded contract in relation to the content of the bid on the basis of which the contractor was selected, unless the ordering party provided for such an amendment in the announcement of the contract or in the bidding specification and it specified the conditions for making such amendment.	Provisions relating to setting up the special purpose vehicle. The public entity is entitled to carry out on-going supervision of the private partner's execution of the undertaking.

Source: Investment Support

APPENDIX

Projects entered in the Good PPP Practices competition and planned for completion with a private partner

No.	INTERESTED ENTITY	PROJECT TITLE	DESCRIPTION	STATUS
1	Municipality of Zblewo	Construction of a sports & show hall in Zblewo and construction of a gymnasium in Bytonia	The project comprises construction of two sports and recreation facilities: a sports and show hall in Zblewo and a gymnasium in Bytonia.	Part of documentation has been completed (architectural part). Currently the execution formula is being worked out. Announcement of tender for selection of a partner who will re-design, build and finance the project is planned this year. Implementation of the project planned in PPP form.
2	Municipal Authorities of Toruń	Water Park in Toruń	The project involves the creation of the first public recreation and leisure complex in Toruń and its environs, including a water park with auxiliary services and a hotel.	At initial stage (design work), implementation planned in PPP form, this year primarily promotional activities and search for an investor.
3	County of Lidzbark Warmiński	Warmia Baths	Warmia Baths is a warm brine water pool complex, with beauty & spa facilities, a hotel, catering and conference complex and recreation facilities. Located in Lidzbark Warmiński, along the national road no. 51 leading to the Kaliningrad region border crossing point at Bezledy. .	Analysis stage completed, project to be implemented in PPP form, preparations for selection of a private partner.
4	City of Łódź – Municipal Authorities of Łódź	Revitalization of the city centre within Piotrkowska, Tuwima, Kilińskie-go and Piłsudskiego Streets	A project to comprehensively revitalize the central area of Łódź of 45 ha. The project plans include modernization of residential housing and post-industrial buildings, creation of new public spaces, building parking places, structural landscaping and creation of municipal greenery features, increasing aesthetics and functionality of tenements and courtyards.	The project is split into two phases – phase 1 – 30 ha: currently being implemented, private partners have been selected; phase 2 – 60 ha: planned for implementation in PPP, local zoning plan is being developed.

No.	INTERESTED ENTITY	PROJECT TITLE	DESCRIPTION	STATUS
5	Municipality of Cracow	Show & Sports Hall in Cracow (Czyżyny)	The project encompasses the designing and building of a multi-function show & sports hall, equipped to meet the requirements of the relevant international and domestic sports associations and federations for staging international events. Further, the purpose of the hall is to hold exhibitions, trade fairs, stage events, concerts, film shows, public sports and recreation events.	The project is prepared for implementation in PPP; it is at the stage of analysis and preparation stage, as regards the tender.
6	City of Łódź – Municipal Authorities of Łódź	Tenement housing revitalization programme	Implementation of the Programme assumed the participation of a private partner in revitalization of listed tenement houses, whereby the investor would build new houses for the current residents of the old tenements. Following that, property ownership would be transferred to the City in exchange for the tenements.	The analysis stage completed, the project to be implemented in the PPP framework.
7	Municipality of Bytom	Integrated link between the Upper Silesia Conurbation and the International Airport in Katowice-Pyrzowice	The project involves the construction of a rail and tram line and an interchange centre in order to facilitate inter-city communication in Silesia and a quick link between towns of the Upper Silesia conurbation with the airport in Pyrzowice near Katowice. The undertaking envisages the use of the rail bus, adapted to travel on tram and rail tracks.	The undertaking is divided into two phases of execution: The first phase consists of preparation of design documentation (tender has been settled). The second phase consists of construction of the rail link and railway terminal. The private partner to be employed at the stage of construction the railway terminal.
8	Municipality of Toruń	Construction of a show & sports hall in Toruń	Construction of a show & sports hall in between Bema, Balonowa, Chełmińska, Grunwaldzka and Św. Józefa Streets in Toruń. The completed programme of functions and uses of the show & sports hall to allow a wide range of uses of the facility for sports, recreational, cultural and educational purposes, not only locally, but on a regional scale as well.	The Programme of uses and functions has been updated (the facility has been extended to accommodate a running track). The project to be co-financed with funds from the Kujawsko-Pomorskie Province. The Municipal Authorities of Toruń are awaiting the decision of the Ministry of Sports and Tourism on whether funds will be allocated. Tender for construction of the facility is scheduled for April 2009 and start of construction in 2010. The Municipal Authorities are seeking an investor to participate in the financing of the project (PPP, coession).

No.	INTERESTED ENTITY	PROJECT TITLE	DESCRIPTION	STATUS
9	Town Authorities of Biała Podlaska	Creation of an Integrated Transport Centre (intercity and municipal bus companies and state railways) in Biała Podlaska	Construction of a bus terminal in the direct vicinity of the railway station to allow speedy passenger interchange between services. As part of the project a modern city railway terminal is planned, which will serve passengers using municipal and inter-city buses. Access roads with car parks and attendant infrastructure are planned. The facility will combine functions of a terminal with services and retail outlets.	The project to be executed in PPP form in the future.
10	City of Łódź – Municipal Authorities of Łódź	Construction of the Łódź City Stadium with infrastructure	The project involves construction of the City Stadium to hold soccer matches meeting the UEFA standards, with a full-size heated football pitch and roofed stands and an internal parking, road and pedestrian system.	Procedure for selection of a private investor underway.
11	Municipality of Kępno	Construction of a swimming pool in Kępno	The planned project consists of the designing, building, financing and operating of a swimming pool in Kępno.	The programme of functions and uses is being prepared, for the time being the project has been suspended for lack of financing. Implementation planned in PPP form.
12	Town Authorities of Zabrze	Construction of a public transport Interchange Centre in the municipality of Zabrze	The project involves the construction of a communications junction. As part of the project it is planned to refurbish the railway station, change location of the international coach terminal, refurbish the local and inter-city bus terminal, build taxi ranks, a car park for buses and park & ride car parks. Part of the station will be functionally and spatially linked with a shopping arcade.	Part of the design documentation has been prepared (related to, among other things, spatial concepts and traffic analysis) The project to be implemented in PPP form, the formula for this is being prepared according to the new legal arrangements.

No.	INTERESTED ENTITY	PROJECT TITLE	DESCRIPTION	STATUS
13	Municipality of Ruda Śląska	Solving the parking problem in the central zone of the town of Ruda Śląska by constructing a multi-level car park	Construction of a multi-level car park next to the Town Hall in Ruda Śląska. Depending on the number of storeys, a minimum of 40 to 60-80 parking spaces to be built.	Currently technical documentation is currently being prepared. A decision on the implementation formula has not yet been taken yet. The PPP option is being considered.
14	Municipal Authorities of Gdańsk	A project of construction of multi-level underground car parks in the centre of Gdańsk	Three areas in the historical centre of Gdańsk have been shortlisted as possible locations for multi-level underground car parks. These will alleviate the shortage of parking space estimated at 3000 places as well as the problem of illegal parking.	Concession has been announced, tender for selection of the concessionaire is underway (according to the old regulations, i.e. the Public Procurement Act) – bids have been submitted, negotiations now to follow.
15	Municipality of Bisztynek	Revitalisation of historical buildings in the centre of Bisztynek	The project involves restoration of the core of the city centre destroyed during World War II by re-creating from scratch the buildings surrounding the town market square, public infrastructure buildings (town hall, hotel, retail and commercial zones, residential buildings).	The project has been temporarily suspended, no documentation available, it is envisaged to be implemented in PPP form.
16	The Capital City of Warsaw	Construction of a suburban speed tramway to Piaseczno	Construction of a tramway to Piaseczno.	The project to be implemented in PPP form, it has been officially listed as one of the PPP projects of the Capital City of Warsaw.
17	Town Authorities of Szczecinek	Extension and operation of the Sports & Recreation Centre in Szczecinek	Extension and modernization of the existing indoor swimming pool and construction from scratch of additional infrastructure with service and hotel facilities and operation of the Centre.	Initial discussions were held with potential investors, the project is envisaged to be implemented in PPP form.

No.	INTERESTED ENTITY	PROJECT TITLE	DESCRIPTION	STATUS
18	The Town Authorities of Rybnik	„Active Rybnik” – a concept for the development of recreation grounds in the town of Rybnik	Development of the „Ruda” sports & recreation grounds (municipal swimming pool grounds) by adding an indoor swimming pool, ice rink, tennis courts, sports fields, a hotel of the Academy of Physical Education, and retail and service facility and development of the “Kamień” sports & recreation grounds (municipal sports & recreation centre), by re-arranging and modernizing the current functions.	EU funding has been secured for the promotion of the project. Implementation of the project planned in PPP form. To date full documentation has been completed for one sports field with lighting and stands and EU supplementary funding for this field has been secured.
19	Town Authorities of Piotrków Trybunalski	Revitalization of Podzamcze – a historical quarter of the Town	Complete alteration of the town space in the area of Podzamcze, including construction of council flats.	The project has been divided into stages, the first stage – sale of a section of the grounds to private entities, tendering to start in April 2009, the surface of the market square and adjoining streets has been renewed with public funds. Potential revitalization of the buildings in the market square in PPP.
20	Municipality of Zawiercie	Construction of JURA-PARK Recreation Complex	Construction of a 10-hectare Jurassic theme park with a hotel, catering, road and car park facilities, etc.	Zoning plan under development, currently the project is suspended, planned in PPP form.
21	Municipality of Zawiercie	Revitalization the historical TAZ Housing Estate	Gradual alteration from residential functions to commercial functions. Development of empty plots. Opening of a college in the Secondary School No. 2 building with technical, service and entertainment facilities.	Architectural competition completed, project suspended, planned in PPP form.

No.	INTERESTED ENTITY	PROJECT TITLE	DESCRIPTION	STATUS
22	Municipality of Dobre Miasto	Recreation and Active Tourism Centre at the Limajno Lake	Development of the Limajno Lake for tourist and recreational purposes: creation of water recreation zone, sports & recreation centre with accommodation facilities.	The project has been suspended, as the Nature 2000 Programme for this area is under consideration. Implementation planned in PPP form.
23	County Authorities of Złotoryja	Rehabilitation and Treatment Centre at the County Hospital in Złotoryja	Construction of a rehabilitation ward, directly linked to the adjacent hospital, and of a treatment and rehabilitation and recreation pool, construction of the pool together with staff, service and technical facilities.	Project documentation is complete, preparations for extension of the investment site by adding a parcel of land to be used for commercial purposes, implementation of the project is envisaged in PPP form.
24	Municipality of Lesznowola	Education and Sports Centre in Mysiadło	The project involves construction of a sports hall with stands, a multi-function hall and a gymnasium. The new facility is to have an educational function and it will be a place where sporting events and concerts will be held. It will also house the local sports club as well as a theatre and arts, science and dancing clubs. It will also make it possible to organize meetings of local inhabitants, conferences and film shows.	Building permit application has been filed. Feasibility study is being prepared. The project's implementation is planned with participation of a private partner.
25	Municipality of Gdańsk	Seaside Recreation and Leisure Centre in Gdańsk	Construction of the Recreation and Leisure Centre, including execution and operation of the water park and attendant facilities that include a hotel. The project's location is the Seaside Belt.	The project is at the stage where a partner for the company is being selected. A tender for selection of an investor has been announced (to be settled on 29 May), which constitutes the first stage in selecting the partner. For the second stage, i.e. negotiations, up to 3 partners will be accepted.

Source: Investment Support

INVESTMENT SUPPORT

Investment Support is a Polish consulting firm that supports local authorities and private companies in the preparation and execution of public-private investment projects. We specialize in public-private investment projects, development and revitalization projects as well as in undertakings in the health care sector.

Investment Support has gained unique experience in preparing public-private investment projects on the Polish market. Representatives of the company have provided their advice in nearly 40 undertakings of this kind. The most important public-private projects we have been involved in are: *the Sports and Show Hall in Łódź, the Multifunction Sports and Show Hall at the boundary of Gdańsk and Sopot, the “Radomiak” Stadium in Radom, the Municipal Stadium in Łódź, the “Czyżyny” Show and Sports Hall in Cracow, construction and operation of the sports and recreation water park and attendant facilities in Szczecin, the Municipal Recreation, Sports and Swimming Pool Complex in Katowice, Water Park in Wągrowiec and construction of a multi-level car park in Ruda Śląska.* Investment Support has also organised Investment Forums devoted to public-private Project in nearly twenty of the largest Polish cities.

Our strength lies in the quality of our analysis, which identifies the strong points of a project, and the weak points that may arise at the execution stage of an undertaking. **We provide comprehensive support throughout the investment project:** consultations with potential investors, preparation of tendering procedures and support of the participants in negotiations. We also prepare business intelligence reports on public-private investment projects in various sectors.

Investment Support is the initiator and organizer of the Good PPP Practices Competition for the best public-private project, the purpose of which is to prepare model solutions for public-private undertakings in various sectors. The Competition is directed at public entities. The winners obtain support in further implementation of their projects. For more information on this Competition: www.dobrepraktykippp.eu

Contact:

Investment Support

ul. Szpitalna 6 apt. 6-7, 00-020 Warsaw, Poland
Tel. (+48 22) 627 47 15, fax (+48 22) 827 59 30
e-mail: info@inves.pl
www.inves.pl



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- quick access to information regarding economic and legal investment environment
- assistance in finding a convenient investment location
- help in obtaining investment incentives
- guidance through all the necessary administrative and legal procedures
- advice in each phase of the investment process

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Polish Information and Foreign Investment Agency

ul. Bagatela 12, 00-585 Warsaw, Poland

Tel. (+48 22) 334 98 00, fax. (+48 22) 334 99 99

e-mail: post@paiz.gov.pl

www.paiz.gov.pl



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Investment Support

ul. Szpitalna 6 apt. 6-7, 00-020 Warsaw, Poland
Tel. (+48 22) 627 47 15, fax (+48 22) 827 59 30
e-mail: info@inves.pl
www.inves.pl

Polish Information and Foreign Investment Agency

ul. Bagatela 12, 00-585 Warsaw, Poland
Tel. (+48 22) 334 98 00, fax (+48 22) 334 99 99
e-mail: post@paiz.gov.pl
www.paiz.gov.pl

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www.paiz.gov.pl

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