

# **Public-Private Partnerships Polish Draft Law**

Ministry of Economy and Labour  
Poland



## REASONS FOR DECISION:

### Investment needs in Poland

Transportation  
Estimated needs amount to EUR 10 bln

Environment  
Estimated needs amount to EUR 35 bln

### Benefits from PPP

← Additional capital for public investments

→ Increase of quality and efficiency of public services

Value for money

Increase in absorption of EU Funds



# MAIN AIM OF PPP LAW IN POLAND


**Main aim of law is to educate and eliminate mental barriers**

- Encourage public authorities to enter in PPP
- Increase private sector's tendency to invest in PPP



**In that purpose following laws have been prepared:**

- PPP law regulating basic matters of PPP - “Mother Law”
- Introductory law amending particular laws



**Create better  
conditions  
for PPP  
for local and  
national  
authorities**



- Creation of clear procedures
- Procurement procedures
- Introduction of tax neutrality
- Long-term liabilities matters




# CREATION OF CLEAR PROCEDURES

- Determine clear definition of PPP, partners, and scope of cooperation
- Prepare clear process preceding the undertaking
- PPP contract - as an implementing tool



## PPP DEFINITION

- contract-based cooperation between public entity and private partner, aimed at performance of a public task
- within the scope of this cooperation private partner shall bear in full or in part the outlay to implement the undertaking, or shall provide for such outlay to be borne by third parties



PPP is to be considered as a form of implementing public undertaking when it results in benefits for the public interest that overweight the benefits resulting from other methods of carrying out such undertaking

The benefits shall mean in particular:

- savings on expenses
- higher standard of services to be provided
- reduction of inconvenience for the environment

# PARTNERS AND SCOPE OF COOPERATION

## Public partner

- Government administration
- Territorial Administration Units
- Certain units of public finance sector

## Private partner

- Entrepreneur
- NGO's

## Scope of cooperation

- Infrastructural investments in the field of public undertakings
- Delivery of public services or performance of public utility tasks
- Economic and social development
- Cultural, scientific, educational ventures



# PPP PREPARATORY PROCESS

Working out of long-term programme of performing public tasks in given field



Consultations with the groups of interest



Acceptance of the programme



Preparation of feasibility and profitability study for a particular venture

- risks involved in the implementation and their division
- economic, financial and legal aspects
- social benefits and threats dependent on the form of implementation
- anticipated profit of private partner



If an engagement of public funds is expected, the acceptance of Minister of Finance or respectively legislative body of territorial unit is required.



## Contribution of the public entity to the undertaking

Contribution of the public entity shall mean in particular:

### ❑ Own contribution

- covering part of expenses of the implementation
- enterprise, immovable or movable property licences or other intangible assets

### ❑ Remuneration of private partner

- form: payment, right to draw profits, collect other benefits
- determined on the basis of costs to be incurred by private partner and his planned profit, with regard to ensuring the public interest

Own contribution is provided with designation for specific purposes as set out in the PPP contract.



# PROCUREMENT PROCESS

**Public Procurement Law shall apply to the selection of the private partner and PPP contracts unless Act on PPP provides for different rules.**

- Selection of private partner is carried out in accordance with one out of three principal procedures: open tender, limited tender and negotiations
- Public entity selects private partner that tendered the best offer - best balance of remuneration and other criteria concerning the subject of the contract
- In case of complex procurements public entity may undertake to cover a part of tender preparation costs, equally for all bidders
- Abolishment of the obligatory consent of President of Public Procurement Office in case of exercising periodic and continuous performance, for a period exceeding 3 years



# PPP CONTRACT

## Contract shall specify :

- purpose and the subject of cooperation
- distribution of tasks and risks between public entity and private partner
- total value of funds designated as well as the project financing rules for each party involved
- subcontractors selection rules
- rules of determining and transferring remuneration for private partner
- powers of public entity within the field of supervision and control over the private partner's performance and implementation of the undertaking
- term of the contract, conditions and procedures of introducing amendments, conditions of extension or early termination
- methods of solving disputes



- In order to exercise the PPP contract
  - the company of special purpose
    - may be set up,
    - however:
- private partner is not released from the responsibility for failure to comply with the standards of services supplied
  - consent of all share-holders is required when:
    - a. disposal or encumbrance of asset
    - b. amendment of the deed or the articles of the company



# INTRODUCTION OF TAX NEUTRALITY

## Neutral tax solutions:

- public entity's own contribution transfer to private partner shall not result in imposition of the income tax
- private partner's asset transfer to the public entity shall not result in imposition of the income tax
- in case real property is transferred to provide the performance of the contract Commune Council may exempt real property from the real estate tax



# REGULATION OF LONG-TERM LIABILITIES MATTERS

- ❑ Creation of PPP contracts register and monitoring of contracts increasing deficit and public debt
- ❑ The possible total ppp-liabilities' amount of government administration for given year is determined in budget law



# PROMOTION AND MONITORING OF PPP

## Obligations on Minister of Economy and Labour:

- gathering, developing and promoting best practice
- preparation of manuals, information materials and trainings
- carrying out reviews, analyses and assessments of PPP performance
- creation and management of PPP contracts register

Special unit (budgetary enterprise) to be established by Minister of Economy.

# FIRST EXPECTED PROJECTS

## Expected projects

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graph TD; A[Expected projects] --> B[Road projects on national level prepared by the Ministry of Infrastructure Initiative of the Ministry of Infrastructure]; A --> C[Regional projects, within the broader scope, prepared independently by local authorities Initiative of local authorities];
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Road projects on national level prepared by the Ministry of Infrastructure  
Initiative of the Ministry of Infrastructure

Regional projects, within the broader scope, prepared independently by local authorities  
Initiative of local authorities

**THANK YOU**

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