



02/2009

## PUBLIC-PRIVATE PARTNERSHIP – NEW REGULATIONS ALREADY IN FORCE

We wish to inform you that new acts on public-private partnership and concessions for construction works or services were published in the Journal of Laws (Journal of Laws no. 19) on 5 February 2009. The regulations are aimed to facilitate implementation of public investments by cooperation of entities of the public and private sectors. Joint investments may in particular apply to construction and maintenance of public infrastructure (roads, water supply and sanitary drainage networks, sports and recreational facilities), local transport and waste management.

### 1. The Act of 19 December 2009 on Public-Private Partnership (PPP)

Further to Legal Alert no. 12/2008, which contained the analysis of the PPP Act, we hereby present the most significant changes to this form of cooperation between public and private entities compared to the previous PPP Act:

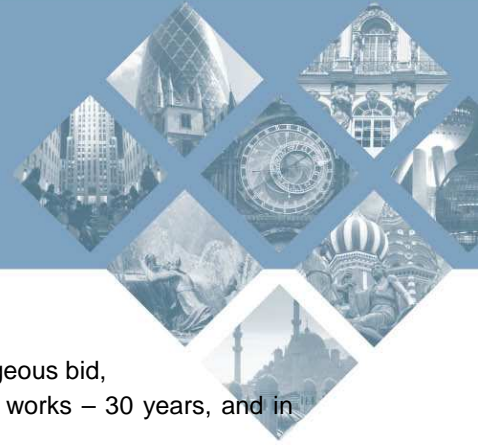
- Extended range of public entities entitled to use PPP (*inter alia* local government units, communal unions, capital companies in which local governments are majority shareholders),
- Extended range of ventures to be implemented through this form of cooperation,
- PPP is effected through cooperation based on a contract, or takes the form of a capital company,
- The choice of the private partner is based on the Act on Concessions for Construction Works or Services, and where the remuneration of the private partner does not take the form of the right to derive benefits from the venture, the Public Procurement Act applies (only an economic operator can act as a private partner),
- Simplification of the procedure for preparation of the public-private partnership, including removal of the obligation to make analyses and limitation of cases where the consent of the minister in charge of public finance must be obtained;
- Introducing the possibility to use additional criteria for bid assessment;
- Simplification of PPP agreement by reducing the number of its required components;
- Providing the private partner with the right of buying preference in respect of the real property constituting the public partner's contribution.

The Public Private Partnership Act took effect on 27 February 2009.

### 2. The Act on Concessions for Construction Works and Services of 9 January 2009

The Act specifically provides for the process of granting concessions for construction works or services, which to date was subject to the Public Procurement Act. It introduces, amongst others:

- The possibility to award concessions for construction works and services,
- The concession providers include public finance sector units, and practically any organizational form in which such units are engaged,
- Regulations concerning the course of procedure for concession contract conclusion,



- Possibility of flexible selection of criteria for choosing the most advantageous bid,
- Maximum time limits for concession contracts: in case of construction works – 30 years, and in case of services – 15 years,
- Limitation of payments made to the private entity, which should not enable it to recover all the costs incurred,
- The Public Procurement Act and Civil Code apply to the extent not directly provided for in the Act,

The Concession Act took effect on 20 February 2009.

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*We hope the above information proves useful. Please be informed that the information is not a legal opinion or advice. Additionally, we would like to inform you that KSP delivers training in the area of public private partnerships and procedures for granting concessions for construction works or services, targeted, amongst others, to: representatives of local governments and economic operators. We also offer consulting services and participate directly in preparation of public private partnership projects.*

*If you wish to get more specific information or legal advice, or if you would like to attend the above-mentioned training, please contact us.*

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