CONCESSIONS

Concessions are governed by the Law on Public-Private Partnership (PPP) and various other items of special legislation. The provisions of the Law on PPP are always subsidiarily applicable whenever special or exclusive rights to provide economic or other public services or other activities in the public interest are awarded through concession contracts with a public partner (government, municipality or other public entity), except where concessions are also specifically regulated by special laws governing certain areas (e.g., concessions on natural resources and other public goods, education, health and other social services, utilities).

Law on Public-Private Partnership (PPP)

The aim of the Law on PPP is to help close the infrastructure gap and reduce public expenditure, to encourage private initiative and benefit from the involvement of the private sector – especially in the designing, building, financing, operating and maintenance of infrastructure projects (utilities). Unlike a so-called equity partnership the provisions of the Law govern contractual partnerships. Contractual partnerships are divided into public procurement partnerships and concessional partnerships.

A concessional partnership covers:

− private investment in projects of public interest; and

− the public co-financing of private projects in the form of so-called ‘building’ or service concessions; e.g., under BOT (Build-Operate-Transfer) and similar schemes (BTO, BOO, BOOT, DBFOT, DBF, BOR, BRT/BLT etc.)

General principles

The applicable general principles for these procedures are the principles of transparency, competition, efficiency, protection of intellectual property rights, co-operation and non-discrimination (foreign partners enjoy national treatment), including the principle of continuity in the execution of PPP after a concession has been granted.

Eligible private partners

A concession may be awarded to foreign investors – legal and natural persons – whether they are operating across borders or through a company (including a Special Purpose Company/Vehicle - SPC/V) or a branch office registered in Slovenia.

Private partners may also apply for a concession through consortiums or an unincorporated grouping (under applicable laws) such as a contractual joint-venture (JV) involving foreign and/or local partners that must be jointly and severally liable (the engagement of experienced local partners and consulting firms in these complex project procedures is strongly advised).
Procedures and general principles

Preliminary procedure

Within three months of the adoption of the yearly budget or development plan public partners shall, as a rule once a year, publicly invite potential promoters to submit their applications revealing an expressed interest in PPP projects, yet such promoters are free to apply even without an invitation. Within the legally prescribed preliminary procedure for a particular project a special ‘PPP test’ (i.e., feasibility study that answers whether for particular projects the economic, financial, technical, legal and environmental conditions for a PPP have been met or not) shall be made (this test is always required for all projects exceeding EUR 5.28 million), whereas the decision shall be adopted within four months.

Concession Act

In the next step, the authorised organ of a public partner recognising a public interest in a PPP adopts an administrative Act on PPP, in the event of concessions also called a Concession Act (compulsory whenever special or exclusive rights for carrying out the concession activity are granted) that customarily defines the essential elements of PPP relations.

Tender

Concessions are then awarded through a public tender for which the rules on economic public services/public procurement also apply, including the rules on an open tender procedure, a restricted (two-phase) procedure and for this kind of deals most probably the quite frequently used competitive dialogue with eligible and competitive private partners. Public partners publish a notice of tender on the web, in specialised magazines and in the Official Gazette of the RS/Official Journal of the EU.

The tender documentation is mainly available in the Slovenian language (in border areas also in the Italian or Hungarian languages), while the procedures, bids or at least some parts of the documentation may sometimes be allowed in a particular foreign language as well.

Selection procedure

After the public opening of the bids (except in the case of official or military secrecy) special professional commissions check their compliance with the tender conditions, assess and rank the bids, while the final decision in the selection procedure on whether to award the concession and to sign a Concession Agreement with the most successful bidder or their project company lies with the authorised organ of the public partner (concession provider).

Against the decisions in these procedures there is in principle no right of appeal or other judicial protection before the courts, but at least a demand to the independent State Auditing Commission for auditing is always guaranteed.

Different incentives, financial and other subsidies are at least as a rule available for projects in PPP, including certain risk takings and guarantees of the public partners (esp. for non-commercial risks), but must follow the rules on state aid.
**Concession Agreement**

In compliance with the particular *Concession Act* and applying the provisions of the *Law on Economic Public Services* by analogy, a public partner can enter into a long-term and often quite complex *Concession Agreement* with the concessionaire.

**Settlement of disputes**

The governing law in any disputes between the concessionaire and its customers is always Slovenian law. The compulsory redemption of concessions, forceful buy-out or deprivation are possible according to the law in case of a public interest set out in the *Concession Act* and expropriation provisions may also be stipulated in the *Concession Agreement*. In addition to Slovenian laws, *Concession Agreements* with foreigners are subordinated to multilateral and bilateral *Investment Protection Agreements (IPA)*. The jurisdiction is Slovenia, but investment disputes can also be settled through a chosen arbitration procedure or, e.g., through the World Bank’s *International Centre for the Settlement of Investment Disputes (ICSID)*.

**Concessions on natural resources and public goods**

The private ownership of natural resources is prohibited but the legislation does not discriminate against foreign investors when it comes to obtaining a concession for the exploitation of renewable or non-renewable natural resources or public goods.

On the basis of a particular *Concession Act*, government, local authorities or other public partners (concession providers) may grant concessions regarding natural resources to the most successful applicant, namely the tenderer (concessionaire) with proven capacities and capabilities in relation to their management, exploitation or utilisation (priority in public tenders is given to owners of land on which the natural resources are located).

In principle, a concession is granted after the appropriate payment of royalties/concession fees. In demographically endangered areas concessions may be granted free-of-charge, while deferred payments may have to be properly guaranteed.

A concession shall be granted on the condition that the requirements of the *Law on Environmental Protection* are fulfilled. Moreover, *Concession Agreements* always follow the environmental guidelines that are more or less determined case-by-case in *Concession Acts* for the management, exploitation and use of natural resources and contain concessionaires’ liabilities regarding protection of the environment.

Concessions on public goods and concessions for public services (e.g., supply of drinkable water and water cleaning, communal waste disposal, maintenance of municipal roads, graveyards, public transportation etc.) are granted to eligible legal or natural persons if the criteria set by special laws and/or government or local authorities for engaging in such activities are satisfied. Concession rights may only be transferred on the basis of and to the extent provided by the *Concession Agreement*, otherwise the prior approval of the concession provider is necessary.