

THE CROATIAN PARLIAMENT

3679

Pursuant to Article 88 of the Constitution of the Republic of Croatia, I hereby issue the

DECISION

PROMULGATING THE ACT ON PUBLIC PRIVATE PARTNERSHIPS

I hereby promulgate the Act on Public Private Partnerships adopted by the Croatian Parliament at its session of 24 October 2008.

Class: 011-01/08-01/142

Reg. No.: 71-05-03/1-08-2

Zagreb, 30 October 2008

The President of the Republic of Croatia

Stjepan Mesić, m.p.

THE ACT
ON PUBLIC PRIVATE PARTNERSHIPS

I. GENERAL PROVISIONS

SUBJECT MATTER OF THE ACT

Article 1

This Act regulates:

- a) the procedures for preparing, proposing and approving the proposals for public private partnership (hereinafter: PPP), projects and the rights and obligations of public and private partners,
- b) the establishment and competences of the Agency for Public Private Partnerships (hereinafter: the Agency).

Article 2

- (1) For the purpose of this Act, PPP means a form of long-term partnership between a public and a private partner that has the following basic characteristics:
 - a) the private partner shall take over from the public partner:
 - the obligation to design, construct and/or reconstruct public infrastructure, including construction and/or reconstruction of public information-communication systems, and/or objects of public interest, thereby also assuming one or more obligations, such as financing, management and maintenance, for the purpose of providing public services to final beneficiaries within the area of the public partner's competence or for the purpose of ensuring the public partner necessary preconditions for the provision of public services within the area of his competence, or
 - the provision of public services to final beneficiaries within the area of the public partner's competence, including the provision of services of managing information-communication systems of public interest, i.e. the provision of public services to final beneficiaries on the constructed information-communication systems,

- b) in exchange for the assumed obligations the public partner may transfer to the private partner certain real rights and/or may grant the private partner a concession and/or may pay a compensation to the private partner;
 - c) each partner assumes responsibility for risk events that are under his sphere of influence, or that the responsibility is shared, for the purpose of achieving optimal risk management for the duration of the PPP project, among other things by using managerial, technical, financial and innovative capabilities of the private partner and by promoting the exchange of skills and know-how between the public and the private partner.
- (2) The private partner, along with the performance of the obligations referred to in paragraph 1, item a) of this Article may also be permitted to perform economic activities within the implementation of the PPP project, but only if there is no other possible way to ensure the necessary level of cost-efficiency of participating in the PPP project and the return of invested funds.
- (3) The object of PPP may not exclusively be delivery of goods or a concession for the economic use of a public or some other good.

Article 3

In the implementation of this Act, the public partner shall observe the following principles: the principle of protection of public interest, the principle of competition, the principle of efficiency, the principle of equal treatment, the principle of mutual recognition, the principle of proportionality, the principle of transparency, the principle of freedom of contract, and the principle of environmental protection.

Basic terms

Article 4

For the purposes of this Act, the following terms have the following meanings:

- a) *A project* is a series of interconnected activities undertaken in a certain order for the purpose of achieving clear objectives within a specified time period and within a specified financial framework.
- b) *A PPP project* is a project carried out under one of the PPP models and approved by the Agency pursuant to the procedure described in Chapter III of this Act.
- c) *Contractual public private partnership* is a model of PPP where the mutual relationship between a public and a private partner is regulated by a PPP contract.
- d) *A PPP contract* is a basic contract concluded between a public and a private partner, or a public partner and a Special Purpose Vehicle (hereinafter: SPV) which, for the purpose of

the implementation of the PPP project, regulates the rights and obligations of the parties to the contract.

- e) *Institutionalised public private partnership* is a PPP model based on the membership relationship between a public and a private partner in a jointly owned undertaking which is the competent authority responsible for the implementation of the PPP project.
- f) *An SPV* is an undertaking which may be established by the private partner for the purpose of concluding the PPP contract and/or implementing the PPP project.
- g) *A public body* means any body that is a client within the meaning of regulations on public procurement.
- h) *A public partner* is:
 - one or more public bodies that have concluded a contract with an SPV or a private partner, or
 - one or more public bodies that are linked with the private partner through membership in the same company.
- i) *A private partner* is an economic operator selected based on the completed public procurement procedure or the procedure for the award of a concession and which concludes a PPP contract with the public partner, or which establishes an SPV for that purpose, or which establishes a membership relationship in a joint undertaking with the public partner.
- j) *The procedure for the selection of a private partner* is a public procurement procedure provided for in regulations on public procurement or the procedure for the award of a concession provided for in regulations on concessions.
- k) *An advisor* is one and/or more natural and/or legal persons with the expertise necessary for the preparation, contracting and implementation of PPP projects.

II. CONTRACTUAL PUBLIC PRIVATE PARTNERSHIP

The PPP contract

Article 5

- (1) The parties to the contract shall regulate their mutual rights and obligations in the implementation of the PPP project by the PPP contract.
- (2) The Government of the Republic of Croatia (hereinafter: the Government) shall adopt the Regulation on the contents of the PPP contract referred to in paragraph 1 of this Article at the proposal of the Agency.

Article 6

- (1) The PPP contract shall be concluded in writing and for a specified period of time, provided that this period is not shorter than five and longer than forty years, and allowing for the possibility that after the expiry of the contractual period a new contract be concluded with a private partner of one's choice in accordance with the provisions of Article 15 of this Act.
- (2) In the Ordinance referred to in Article 18 of this Act the Administrative Council of the Agency shall lay down the rules regulating the procedure for entering the concluded PPP contracts in the Register of PPP contracts (hereinafter: the Register) as well as the contents and scope of those elements of concluded PPP contracts which are accessible to the public in line with the regulations on the protection of intellectual property, personal data, data confidentiality and business secrets.

Article 7

For the purpose of implementing the Regulation on the supervision of the implementation of PPP projects referred to in Article 19, paragraph 1 of this Act, the public partner, private partner or SPV shall provide to the Agency, at its request, the copies of the following documents for the duration of the contractual relationship:

- a) contracts regulating financial relations,
- b) the act on the establishment of the SPV,
- c) contracts on the acquisition and transfer of the right to ownership, the construction lease and other real rights,
- d) contracts on the provision of services (installation, implementation, integration and maintenance of information-communication systems and other services),
- e) contracting agreement (construction, reconstruction, extension and other related works),
- f) services contracts (consulting, design, management, maintenance and other services),
- g) contracts on risk insurance (insurance policies),
- h) other contracts and legal acts, as appropriate.

Special purpose vehicle (SPV)

Article 8

- (1) An SPV may participate solely in the implementation of that PPP project for the purpose of which it has been established.
- (2) When the private partner establishes an SPV, the public partner may conclude a PPP contract with the SPV.

Article 9

An SPV shall be established in accordance with the provisions of the act regulating the establishment and operation of companies.

III. THE PROCEDURE FOR PROPOSING, APPROVAL AND IMPLEMENTATION OF PPP PROJECTS

PROPOSING AND APPROVAL OF PPP PROJECTS

Article 10

- (1) Public bodies referred to in this Act shall be the only ones authorised to propose the implementation of a PPP project as described in this Act and subordinate regulations under this Act.
- (2) At the proposal of the Agency the Government shall adopt the Regulation on the criteria of appraisal and approval of PPP projects establishing the professional criteria for the appraisal and approval of PPP projects and a list of the documents to be submitted with the project proposal.

Article 11

- (1) The public body shall submit to the Agency the project proposal and the accompanying documentation laid down in the Regulation referred to in Article 10, paragraph 2 of this Act if this project proposal contains PPP elements as defined in the Article 2, paragraph 1 of this Act.
- (2) The Agency shall evaluate the contents of the project proposal in line with the criteria laid down in the Regulation referred to in Article 10, paragraph 2 of this Act.
- (3) The Agency shall seek consent from the ministry responsible for financial matters with regard to the compliance of the project proposal with the budgetary forecasts and plans, fiscal risks and limitations stipulated in special regulations, and with regard to the financial and fiscal viability of the project proposal.
- (4) The Agency shall seek the opinion of the competent line ministry as to the compliance of the project proposal with sectorial development plans and strategies, i.e. regulations relating to its area of competence.
- (5) The competent bodies of the local and regional self-government units shall submit to the Agency at its request the opinion as to the compliance of the project proposal with the development policy plans of these local, i.e. regional self-government units.
- (6) The competent bodies referred to in paragraphs 3, 4, and 5 of this Article shall submit the requested consent, i.e. opinions to the Agency within 30 days from the day when the project proposal and the entire accompanying documentation were submitted to them.

Article 12

- (1) Within a period not exceeding 90 days from the day when the project proposal and the entire accompanying documentation were submitted and on the basis of the requested consent, i.e. opinions of the competent bodies referred to in Article 11 of this Act, including on the basis of the Agency's own assessment of the fulfilment of all criteria in accordance with the provisions of Article 11, paragraph 2 of this Act, the Agency shall adopt a decision on the approval of the implementation of the proposed project under one of the PPP models.
- (2) The project proposal shall acquire the status of a PPP project solely on the basis of a decision by the Agency.
- (3) A public body may adopt a decision on the implementation of the project under one of the PPP models solely on the basis of the previously obtained decision of the Agency referred to in paragraph 1 of this Article.
- (4) Where the public body referred to in paragraph 3 of this Article fails to initiate the procedure for the selection of the private partner within 2 years from the receipt of the decision referred to in paragraph 1 of this Article, the decision of the Agency shall cease to have effect and the procedure shall be reinitiated for the same project proposal in accordance with the provisions of Articles 11 and 12 of this Act.
- (5) The Agency shall publish the list of approved PPP projects.

Article 13

- (1) Prior to initiating the procedure for the selection of a private partner, the public body that has reached the decision referred to in Article 12, paragraph 3 of this Act shall submit to the Agency for appraisal and approval copies of tender documents and all accompanying annexes.
- (2) The Agency shall issue a decision on compliance of the documents referred to in paragraph 1 of this Article with the approved proposal of the project within a term which may not exceed 30 days of the date of receiving the complete set of documents referred to in paragraph 1 of this Article.
- (3) In the appraisal of the documents referred to in paragraph 1 of this Article, the Agency may request a consent of the ministry responsible for financial matters and an opinion of the competent line ministry as to the compliance of the documentation referred to in paragraph 1 of this Article with the approved project proposal.
- (4) The competent bodies shall submit to the Agency the requested consent, i.e. the opinion referred to in paragraph 3 of this Article within 30 days from the day when the entire documentation referred to in paragraph 1 of this Article was received.
- (5) Public bodies may initiate the procedure for the selection of a private partner only on the basis of the Agency's positive decision referred to in paragraph 2 of this Article.

- (6) Where the procedure for the selection of the private partner initiated based on the Agency's decision referred to in paragraph 2 of this Article is repeated, the tender documents referred in paragraph 1 of this Article shall be resubmitted for appraisal and approval to the Agency, pursuant to the provisions of this Article.

Article 14

- (1) Prior to reaching a decision on the selection of the private partner the competent public body shall submit to the Agency for approval the final draft of the PPP contract, including all the annexes thereto, and shall also obtain consent from the ministry responsible for financial matters to the final draft of the contract.
- (2) Within 30 days from the date of receipt of the final draft contract referred to in paragraph 1 of this Article the Agency shall reach the decision on the granting of consent to the text of the draft contract referred to in paragraph 1 of this Article.
- (3) The Agency shall issue the decision referred to in paragraph 2 of this Article on the basis of the assessment of compliance of the draft contract referred to in paragraph 1 of this Article with the tender documents and the provisions of the Regulation referred to in Article 5, paragraph 2 of this Act.
- (4) The PPP contract may be concluded solely on the basis of a decision by the Agency and the consent obtained from the ministry responsible for financial matters to the final draft contract.
- (5) Any amendments to a concluded PPP contract, whereby the rights and obligations of the parties to the contract are being modified, shall be made according to a procedure that is in line with the provisions of this Article.
- (6) Issuance of the consent by the Agency to the final draft of a PPP contract shall not mean to include the liability of the Republic of Croatia for any disputes between the public and private partner which might arise from such contract.

Article 15

- (1) The selection procedure of the private partner shall be carried out in accordance with the regulations on public procurement and provided that the provisions of Articles 5, 6, 8, 9, 13, 14 and 17 of this Act be applied accordingly.
- (2) If the implementation of the PPP project presupposes the granting of a concession, the selection procedure of the private partner shall be carried out in accordance with the regulations on the procedure for the award of a concession, provided that the provisions of Articles 8 and 9 of this Act are applied accordingly.

Article 16

A public body shall carry out the selection procedure of advisors in accordance with the regulations on public procurement.

Article 17

- 1) The criteria applied for the selection of the private partner shall be in accordance with the regulations governing the field of public procurement.
- 2) When applying the criteria referred to in paragraph 1 of this Article, the price shall mean the Net Present Value (hereinafter: the NPV) relating to total costs during the contractual period.
- 3) A discount rate shall be applied for the calculation of the PPP project's NPV.
- 4) The public body initiating the public procurement procedure for the selection of the private partner shall prescribe the discount rate in the invitation to tender, and the tenderers shall use it for calculating the NPV in that procedure.

The Register of PPP contracts

Article 18

- (1) The public partner shall submit to the Agency the concluded PPP contract with all annexes, including changes to the contract and annexes thereto in the period that the Agency shall set in the Ordinance referred to in paragraph 3 of this Article. The concluded PPP contract with all annexes thereto which are its integral part, and all changes to the contract and annexes thereto, shall be entered in the Register which is kept by the Agency.
- (2) The Register referred to in Article 1 shall be public.
- (3) The Administrative Council of the Agency shall adopt the Ordinance on the organisation and keeping of the Register of PPP contracts.
- (4) In the Ordinance referred to in paragraph 3 of this Article the Agency shall specify who will be authorised to access the Register and the scope of the right of access to the data in the Register in accordance with special regulations pertaining to the confidentiality of data and business secrets.

Monitoring of the implementation of PPP projects

Article 19

- (1) In accordance with the provisions of the Regulation on the monitoring of the implementation of PPP projects, adopted by the Government at the proposal of the Agency, the Agency shall be entitled to monitor, i.e. to have expert insight into the implementation of PPP projects.

- (2) The rights and obligations of the public and private partner in the process of supervision of the implementation of PPP projects shall be laid down in the Regulation referred to in paragraph 1 of this Article.

IV. INSTITUTIONALISED PPPS

Article 20

An institutionalised PPP is a model of PPP based on the membership relationship between a public and a private partner in a joint undertaking in charge of the implementation of a PPP project, where this relationship between the public and the private partner in the joint undertaking may be based on the founders' shares in the newly established joint undertaking, or buying out partnership interest in the existing company.

Article 21

- (1) When a public body intends to implement a PPP project as described in Article 20 of this Act, the procedure stipulated by the provisions of Articles 11, 12, 13 and 14 of this Act shall apply.
- (2) On the basis of the obtained positive opinion referred to in Article 13, paragraph 2 of this Act, the public body shall initiate the selection procedure of the private partner as specified in the provisions of Article 15 of this Act and by applying the criteria in accordance with the provisions of Article 17 of this Act.
- (3) After he completed procedure for the selection of the private partner, the public body and the selected private partner shall conclude a partnership contract aimed at establishing a joint undertaking referred to in Article 20 of this Act, for the purpose of implementing a PPP project.
- (4) The contents of the partnership contract shall be governed by the provisions of the act on civil obligations.
- (5) The joint undertaking referred to in Article 20 of this Act shall be governed by the provisions of the act on the establishment and operation of companies and the provisions of partnership contracts referred to in paragraph 3 of this Article.

Article 22

The provisions of Articles 18 and 19 of this Act shall apply accordingly as regards the implementation of the project in line with an institutionalised PPP model.

V. THE AGENCY FOR PUBLIC PRIVATE PARTNERSHIPS

Article 23

- (1) This Act establishes the Agency for Public Private Partnerships as a legal person with public authority.
- (2) The Founder of the Agency is the Republic of Croatia. The Founder's rights and duties shall be exercised by the Government on behalf of the Founder.
- (3) The Agency shall be a legal person and entered in the court register.
- (4) The seat of the Agency is in Zagreb.
- (5) The abbreviated name of the Agency is: the APPP.
- (6) The Agency may, as appropriate, establish professional, advisory and working bodies whose composition, manner of establishment, scope and competence shall be established in the Statute of the Agency.

Article 24

- (1) The Agency shall carry out the following tasks:
 - a) appraise and approve PPP project proposals, tender documents, and the final draft contract pursuant to the provisions of this Act,
 - b) publish the list of the approved PPP projects,
 - c) organise and keep the Register,
 - d) supervise the implementation of PPP projects under the provisions of this Act,
 - e) propose to authorised proponents amendments to this Act and other regulations on the PPP, and of other acts and regulations relevant for the application of the best practice in the implementation of PPP projects, and participate in their preparation,
 - f) propose draft proposals for subordinate acts and pass implementing instructions pursuant to the provisions of this Act,
 - g) adopt decisions on the performance of tasks under the competence of the Agency provided by this Act and subordinate acts adopted pursuant to this Act,
 - h) give expert opinion on certain issues from the area of PPPs and the implementation of this Act and the regulations adopted pursuant to this Act,
 - i) organise and implement training and education of the participants in the preparation and implementation of PPP projects, and in cooperation with other competent bodies organise specialist training programmes for public bodies in line with the programme and criteria that will be specified by the Government in the Regulation on the training of participants in the preparation and implementation of PPP projects,
 - j) perform the tasks of interdepartmental coordination in the preparation and implementation of PPP projects,
 - k) study the national and foreign PPP practices and promote the implementation of the

best practices,

- l) participate in the activities related to the cooperation of the Republic of Croatia with the European Union, particularly in the area of public procurement,
- m) cooperate with foreign state bodies entitled to apply PPP models and implement PPP projects, and with the international organisations and institutions for the purpose of advancing the national PPP model theory and implementation, and for the purpose of fulfilling the international obligations of the Republic of Croatia that were transferred to the competence of the Agency,
- n) cooperate with the national scientific and research institutions, social partners and non-governmental organisations and other stakeholders for the purpose of advancing the national PPP model theory and implementation,
- o) improve the infrastructure and provide for other requirements for the improvement of the collective learning capability, collective memory and collective knowledge management,
- p) perform other tasks in accordance with the provisions of this Act and the Statute of the Agency.

Article 25

- (1) Internal organisation, competences and decision-making procedure of the Agency's bodies, and other issues important for the activity and operation of the Agency, shall be regulated by the Statute of the Agency.
- (2) The Statute of the Agency shall be adopted by the Administrative Council of the Agency at the proposal of the director of the Agency and the consent of the Government.

Article 26

- (1) The resources for the carrying out of tasks from the Agency's scope of work shall be provided for in:
 - a) the budget of the Republic of Croatia,
 - b) earmarked revenues.
- (2) The financial resources referred to in paragraph 1, item a) of this Article shall be shown under a special budget heading of the State Budget of the Republic of Croatia.

Article 27

The bodies of the Agency are the Administrative Council and the director of the Agency (hereinafter: the director).

Article 28

- (1) The Agency shall be managed by the Administrative Council consisting of the President and four members.
- (2) The President of the Administrative Council shall be the Deputy Prime Minister of the Government responsible for the economy, while its members shall be the ministers responsible for the economy, finances, construction and judiciary.

- (3) The President and members of the Administrative Council shall be appointed and recalled by the Government.
- (4) The Administrative Council shall adopt the Annual Work Programme of the Agency specifying in detail the activities and tasks of the Agency for each calendar year, it shall supervise the implementation of the Agency's Annual Work Programme, decide on the financial plan, adopt the annual financial report of the Agency, and perform other tasks in accordance with the Statute of the Agency.
- (5) The Administrative Council shall adopt decisions at the sessions by a majority vote of all members of the Administrative Council.
- (6) A detailed manner of passing decisions and other issues related to the activity of the Administrative Council shall be regulated in the Statute of the Agency.

Article 29

- (1) The Agency shall be represented by the director.
- (2) The director shall organise and manage the work and operations of the Agency, (s)he shall undertake all legal actions in the name and on behalf of the Agency, (s)he shall represent the Agency in all procedures before the courts, administrative and other state bodies and legal persons with public authority, and within the limitations of his/her powers (s)he can empower another person to represent the Agency in legal transactions.
- (3) The director may not act, without a special authority granted to him/her by the Administrative Council, as the other contracting party and conclude contracts with the Agency in his/her own name and on his/her own behalf, in his/her own name and on behalf of other persons, or in the name and on behalf of other persons.
- (4) The director shall have university qualifications and at least ten years of work experience in the relevant professional field.
- (5) The Government shall appoint the director at the proposal of the Administrative Council for a period of four years and relieve him of duty thereafter allowing, however, for the possibility of his/her reappointment.
- (6) The director shall be relieved from duty before the expiry of the period (s)he was appointed to:
 - a) at his/her own request,
 - b) if (s)he is appointed to another office with his/her consent,
 - c) if (s)he permanently loses the ability to exercise the office, or
 - d) if convicted for a criminal offence by a judgment with final force and effect.
- (7) The Government shall appoint a deputy director at the proposal of the Administrative Council.
- (8) The deputy director shall carry out the activities specified in the Statute of the Agency.

Article 30

- (1) The interim director shall perform activities connected with the entry of the Agency in the court register and organise the operation of the Agency until the appointment of the director.
- (2) The mandate of interim director shall last until the appointment of the director.

Article 31

The Agency shall keep accounts and draw up financial reports under the regulations on the accounting procedures for budgetary beneficiaries.

Article 32

- (1) The Agency shall be responsible for its work to the Government.
- (2) The Agency shall submit to the Government a written report on the Agency's work at least once a year.

VI. LEGAL PROTECTION

Article 33

Legal protection in the selection procedure of the private partner shall be conducted in line with the regulations on public procurement.

Article 34

- (1) The procedures carried out by the Agency shall be governed by the provisions of the General Administrative Procedure Act, unless otherwise provided by this Act.
- (2) The Agency's legal acts shall be final and an administrative dispute may be instituted against them.

Article 35

- (1) The Commercial Court, which has a jurisdiction concerning the area of the seat of the public body, shall have an exclusive jurisdiction for settling disputes arising from the PPP contract.
- (2) The provisions of paragraph 1 of this Article shall not apply if parties agree upon arbitration to settle the disputes arising from the PPP contract.

Article 36

The resolving of disputes between the public and private partner shall be regulated by the legislation of the Republic of Croatia in accordance with the provision of Article 35, paragraph 2 of this Act, or by applicable law of the parties' choice in accordance with the provisions of Article 35, paragraph 2 of this Act.

VII. PENAL PROVISIONS

Article 37

If the Agency or another competent body establishes that the public or private partner or the SPV has violated the provisions of this Act, it shall file a charge to the competent misdemeanour court.

Article 38

- (1) The public partner, or private partner, or an SPV, shall be fined in an amount from HRK 50,000.00 to HRK 1,000,000.00 for a misdemeanour if:
- a) the public, or private partner, or the SPV fails to submit to the Agency the required documentation (Article 7),
 - b) the public body fail to submit to the Agency the project proposal which contains some of PPP elements (Article 11, paragraph 1),
 - c) a public body acts contrary to the Agency's decisions (Article 12, paragraph 1, Article 13, paragraph 2, and Article 14, paragraph 2),
 - d) if the public partner fails to submit or fails to submit within the prescribed period the signed PPP contract with all annexes and amendments thereto to the Agency (Article 18),
 - e) the public partner, or private partner, or the SPV fail to make possible to the Agency the supervision of the implementation of the PPP project (Article 19),
 - f) the public partner proceeds contrary to the provisions of Articles 21 and 22 of this Act.
- (2) The responsible person in the public or private partner or the SPV shall be fined an amount from HRK 5,000.00 to HRK 50,000.00 for misdemeanours referred to in paragraph 1 of this Article.

STATUTE OF LIMITATIONS

Article 39

- (1) The misdemeanour proceedings for misdemeanours referred to in this Act may not be instituted after the expiry of three years from the date on which the misdemeanour was committed.
- (2) Absolute statute of limitations shall take effect on the expiry of a period twice as long as the period after the date on which misdemeanour was committed as stipulated in paragraph 1 of this Article.

VIII. TRANSITIONAL AND FINAL PROVISIONS

Article 40

- (1) Until the date of entry of the Agency in the court register, all activities within the competence of the Agency shall be performed by the Sector for PPPs in the Trade and Investment Promotion Agency.
- (2) Until the appointment of the director, all activities within the competence of the interim director referred to in Article 31 of this Act shall be performed by the Sector for PPPs in the Trade and Investment Promotion Agency.
- (3) At the latest within 15 days of the date of entry into force of this Act, the Government shall appoint the Administrative Council of the Agency.
- (4) The Administrative Council of the Agency shall pass the Statute of the Agency within 60 days of the date of entry into force of this Act, at the proposal of the interim director of the Agency.
- (5) At the latest within 60 days of the entry of the Agency in the court register, the Government shall appoint the director of the Agency, at the proposal of the Administrative Council of the Agency.
- (6) Not later than 90 days from the date of entry into force of this Act, the Government shall adopt the Regulation on the contents of PPP contracts referred to in Article 5, paragraph 2, the Regulation on the criteria or appraisal and approval of PPP projects referred to in Article 10, paragraph 2, the Regulation on the monitoring of the implementation of PPP projects referred to in Article 19, paragraph 1, and the Regulation on the training of participants in the preparation and implementation of PPP projects referred to in Article 24, paragraph 2, item i) of this Act.
- (7) Not later than 90 days from the date of entry into force of this Act, the Administrative Council of the Agency shall adopt the Ordinance on the organisation and keeping of the Register of PPP contracts referred to in Article 18, paragraph 2 of this Act.

Article 41

- (1) This Act shall apply to PPP projects approved before the date of entry into force of this Act if the selection procedure of the private partner has not been initiated by the date of entry into force of this Act.
- (2) Not later than within 6 months from the date of entry into force of this Act and for the purpose of entry in the Register, public authorities shall submit to the Agency all contracts awarded prior to the date of entry into force of this Act, which the public body concluded for a period longer than 5 years, the subject-matter of which is the provision of public services, construction and/or reconstruction of public infrastructure, and all amendments to such contracts occurring after the date of entry into force of this Act.
- (3) The provisions of this Act relating to the monitoring of implementation of PPP projects shall also apply to those PPP projects the implementation of which began before the date of entry into force of this Act.

Article 42

On the date of entry of the Agency into the court register:

- a) The employees in the PPP Sector of the Trade and Investment Promotion Agency shall become employees of the Agency pursuant to the implementation of relevant provisions of the Labour Act (Official Gazette 38/95, 54/95, 65/95, 17/01, 114/03, 142/03 and 30/04), until the adoption of an act establishing the internal organisational structure, and conditions for recruitment and work of employees at the Agency,
- b) The Agency shall take possession of, acquire the ownership of and/or gain the right to use the Trade and Investment Promotion Agency's equipment and the rest of its immovable and movable property, and all other rights in the part relating to the PPP Sector shall be transferred from the Trade and Investment Promotion Agency to the Agency, in accordance with the demerger balance sheet,
- c) The Agency shall take possession of all financial resources that were, within the Trade and Investment Promotion Agency's Financial Plan, planned and approved for the PPP Sector's activities,
- d) The Agency shall take possession of the Trade and Investment Promotion Agency's archives and of all other documents relating to the PPP Sector's business operations,
- e) The Agency and the Trade and Investment Promotion Agency shall agree on a demerger balance sheet of assets, rights and obligations within a period of 30 days from entry of the Agency into the court register.

Article 43

Not later than 90 days after the date of entry into force of this Act, the Government shall ensure the Agency the fulfilment of all other necessary working conditions that have not been met following the takeover referred to in Article 42 of this Act.

Article 44

- (1) Not later than until the entry of the Agency into the court register, the Government shall adjust Regulation on the establishment of the Trade and Investment Promotion Agency (OG 102/2002, 64/2005, 64/2006 and 104/2006) with the provisions of this Act.
- (2) On the date of entry into force of the Regulation on the criteria of appraisal and approval of PPP projects referred to in Article 10, paragraph 2 of this Act, the Regulation on the granting of prior consent for the conclusion of a PPP contract under the private financial initiative model (Official Gazette G 73/08) shall cease to have effect.

Article 45

This Act shall enter into force on the eighth day after the day of its publication in the Official Gazette.

Class: 305-01/08-01/01
Zagreb, 24 October 2008

THE CROATIAN PARLIAMENT
The President of the Croatian Parliament
Luka Bebić, m. p.