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UNIVERSITY OF SARAJEVO
AND
FACULTY OF ECONOMICS
UNIVERSITY OF LJUBLJANA**

MASTER THESIS

**AN ANALYSIS OF PUBLIC-PRIVATE PARTNERSHIPS IN BOSNIA AND
HERZEGOVINA**

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**MENTOR: dr. VEDAD SILAJDŽIĆ
STUDENT: HARIS HABIBIJA**

STATEMENT

I, Haris Habibija, hereby certify to be the author of this Master's thesis written under the mentorship of Professor Dr. Vedad Silajdžić in compliance with the Act of Author's and Related Rights-vide Para 1 of Article 21. I herewith agree this thesis to be published on the website pages of the Faculty of Economics, University of Sarajevo and Faculty of Economics, University of Ljubljana.

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INTRODUCTION

Over the last decade or so, private-sector financing through public–private partnerships (hereinafter: PPPs) has become increasingly popular as a way of procuring and maintaining public-sector infrastructure, in sectors such as transportation (roads, bridges, tunnels, railways, ports, airports), social infrastructure (hospitals, schools, prisons, social housing), public utilities (water supply, waste water treatment, waste disposal), government offices and other accommodation, and other specialised services (such as communications networks or defence equipment).

Yescombe (2007, p. 2) states that the term ‘public–private partnership’ appears to have originated in the United States of America (hereinafter: USA), initially relating to joint public- and private-sector funding for educational programmes, and then in the 1950s to refer to similar funding for utilities but came into wider use in the 1960s to refer to public–private joint ventures for urban renewal. It is also used in the USA to refer to publicly-funded provision of social services by non public-sector bodies, often from the voluntary (not-for-profit) sector, as well as public funding of private sector research and development in fields such as technology.

There is no simple agreed definition of the term public-private partnerships (hereinafter: PPP), which covers several models of operation, including design, build, finance and operate (hereinafter: DBFO), build, own, operate and transfer (hereinafter: BOOT), build, operate and transfer (hereinafter: BOT), the Private Finance Initiative (hereinafter: PFI), concessions, sale and lease back arrangements, franchises and joint ventures between the public and private sectors, to name but a few variants (Akintoye & Beck, 2009, p. 27).

Geddes (2005, p. 1) outlined few definitions of PPPs. Commission on Public Private Partnership (United Kingdom; hereinafter: UK) put forward the following working definition of a PPP in their report “Building better partnerships” published in June 2001: “A risk sharing relationship based upon a shared aspiration between the public sector and one or more partners from the private and/or voluntary sectors to deliver a publicly agreed outcome and/or public service.”

Geddes (2005, p. 2) also states a similar definition that was put forward by a working group set up by the Northern Ireland Executive to review PPPs in 2003: “A public private partnership is generally a medium to long term relationship between the public and private sectors (including the voluntary and community sector), involving the sharing of risks and rewards and the utilisation of multi-sectoral skills, expertise and finance to deliver desired policy outcomes that are in the public interest.”

According to Grasman (2009, pp. 302-307), PPP may be defined as contractual agreements formed between a public agency and private sector entity, allow for greater private sector participation in the deployment of infrastructure, and have historically been limited to separate planning, design or construction contracts. Expanding the private sector role allows the public agencies to tap private sector technical, management and financial expertise in order to improve program performance, innovative technology applications, specialized expertise, or access to private capital. Most notably, PPPs provide the opportunity for more efficient project management, proficient risk mitigation, and enhanced technological innovation (Grasman, 2009).

Akintoye, Beck and Hardcastle (2003, p. 3) refer to Keating (1998) who said that the concept of PPP in USA and Europe has existed for centuries, but has become more prominent in recent decades in local economic development. Partnerships come in all sizes and types which makes it difficult to group them in a consistent fashion. The most important PPPs since the 1990s have been in the sectors of education, health and transportation. There is considerable range of partnerships, from those dominated by the private sector to those dominated by the public sector. Some types of partnerships are more prevalent in some nations than others (Akintoye et al., 2003).

Today many governments view PPPs as a win - win option for meeting their investment needs. These views are based on a number of rationales. Firstly, it is often thought that PPPs provide budgetary room without prejudice to the sustainability of the government's financial position. Secondly, there is a presumption that the fiscal space created via PPPs will boost medium-term growth and thereby generate fiscal revenue in the future. Thirdly, it is often assumed that PPPs will reduce government risk exposure by transferring those risks to the private sector, which is better able to bear or manage them. Lastly, there is an expectation that the involvement of the private sector in the financing of infrastructure and services will increase accountability and transparency, reduce corruption and create incentives for the prudent management of public expenditure.

According to Robinson, Garillo, Anumba and Patel (2010, p. 5) under a PPP approach, public sector expertise are complemented by the strengths of the private sector such as technical knowledge, greater awareness of commercial and performance management principles, ability to mobilize additional investment, innovation, better risk management practices, and knowledge of operating good business models with high level of efficiency. PPP facilitate the exchange of skills between the public and private sector and improve the efficiency of resource allocation and the quality of public services. PPP programmes are therefore seen as an effective mechanism in delivering a long-term, sustainable approach to improve public services through investment, appropriate allocation of risks and rewards.

It is widely recognised that an effective PPP policy and a strategic framework are required where the public sector is able to identify specific development needs, and engage the private sector to address them using their knowledge, innovation, technology, finance, technical and management skills.

International Monetary Fund (hereinafter: IMF) study (2006) provides the evidence to support the importance of institutional quality in attracting PPPs; a larger number of PPP projects are found in countries with less corruption and effective rule of law. Moreover, PPPs are found to be more prevalent in countries with previous PPP experiences.

In International Bank for Reconstruction and Development (hereinafter: IBRD) preparation guide (2009), it is said that one of the main obstacles to the effective delivery of PPP projects is having the right information on the right project for the right partners at the right time. Akintoye (2009, p. 83) outlined that the main rationale to use PPPs is the perceived efficiency of the private sector and inefficiency of the public sector.

The question how to organize a PPP cannot be answered in general: for every market, and in most cases even for every project, the answer has to be tailor-made. Bult-Spiering and Dewulf (2006, p. 3) state that confusion about the PPP concept is striking in the political and social discussion on these governance questions. Often, PPP is used as a synonym for privatization. Nevertheless, there are significant differences between PPP and privatization.

According to Schwartz, Corbacho and Funke (2008, p. 4) there are three main reasons for using PPPs:

- private sector is likely to be more efficient than the public sector because of its superior management capabilities
- PPPs are likely to be more successful than outright privatization because of the public-good nature of many infrastructure services
- the recourse to private financing enables governments to carry out infrastructure projects without having to finance the total amount of investment at once.

Public-private partnerships, or P3s, typically are arranged so that investor groups and private contractors help fund, build and, often, maintain a project on behalf of a municipality. Toll roads, tunnels and bridges are among projects that municipalities have turned over to private-sector contractors, which build and operate them in exchange for toll revenue. Schools, hospitals and other public facilities also are being built under the partnerships, then leased back to the unit of government that ordered the projects. PPPs are also used to modernize military forces because of reduced budgets in US and UK (Pint, Bondanella, Cave, Hart & Keyser, 2001) or in prison

system (Schneider, 1999, pp. 192-208), or in telecommunications (Falch & Henten, 2008, pp. 33-45).

Akintoye and Beck (2009, p. 123) state that given the changing economic, social and political environment, coupled with globalisation and budgetary constraints, PPP has become unavoidable and indeed is considered desirable by many countries. For many developing countries that are facing major challenges in the provision of infrastructure, PPP has become about the only show in town in order to control public sector borrowing. The need for PPP in developing countries has been intensified by the public sector realisation of the vital role of modern infrastructure in economic growth and poverty alleviation, which cannot be supported by the existing level of public sector income. In essence, PPPs have been recognised as an important avenue for funding major public sector infrastructure projects. PPPs are joint ventures in which business and government cooperate, each applying its strengths to develop a project more quickly and more efficiently than government could accomplish on its own. The private sector may be responsible for designing, financing, constructing, owning and/or operating the entire project. The private sector may want to be assured that the PPP structure is designed to provide competitive rates of return commensurate with a financial rate of return similar to alternative projects of comparable risk (Akintoye & Beck, 2009).

In Bosnia and Herzegovina (hereinafter: BiH) foreign aid is declining, budgets are facing hard constraints, infrastructure is outdated, dilapidating rapidly, inadequate to support economic growth and to serve the citizens. PPP is possible in all areas of meeting public needs, particularly in energy, mining and industry, transport and communications, water management, agriculture and forestry, communal services, health, education, social sector, culture, protection of cultural and historical monuments, sports, tourism and environmental protection (issues).

In a less than a decade, the rapid increase in partnership initiatives has meant that there are a number of public authorities and private utilities testing new ways of working together for mutual gain. Yet the outcomes are not yet fully known (Plummer, 2002, p. 1).

In order to become a member of European Union (hereinafter: EU), one of the conditions is the construction in infrastructure in all segments, the construction of public and social institutions, improving public services and achieving standards of European Union. There is no doubt that the implementation of these plans requires certain financial resources. Public-private partnership represents a convenient form for such investments.

It seems that studying of a public-private partnership in developing countries has received significantly less attention. I presume the reason lies in different level of economy and legal framework in developed and developing countries.

The purpose of this paper work is to show that without the introducing and implementing of PPP our state will deal with the problem of satisfying certain public services much more difficult. Also, adequate policies regarding PPP can directly affect economic growth and development of the country, as much as the membership in EU. To promote investment and attract private capital, we need to organize this field in accordance to EU legislation and best practice.

Following the purpose of the paper work, we derive the hypothesis:

H1: PPPs will bring benefits to our government

H2: A sustainable public-private partnership model is an important part of our framework for economic growth and infrastructure development that will improve state in our society.

The main objective of this paper work is to describe this kind of partnership as one of the important ways in which the growing needs of the community for services can be solved. The focus is on BiH, as developing country, further gains in importance.

The objectives of the study are as given below:

- to explain why PPP is important for developed and developing countries
- to understand the challenges public and private sector face in PPPs
- to assess in what way the PPPs can improve the state in our society
- to show the benefits that both the public and private sector in BIH will have to show when a government choose PPPs as delivery instrument for providing services, it is the best choice for successful implementation and value for money
- to show that government can improve efficiency and achieve social, economic and environmental objectives simultaneously by using PPPs.

In this study, we will use one of the most commonly used method in economic science - the method of analysis. We will also use combination of deductive and inductive method. As a tool in proving the hypothesis we will use a comparative analysis of domestic and international theory and practice of PPP, and practice of PPP in BiH.

The research methodology will be based on few aspects of research strategy. Primarily, it would be the secondary datas that will be collected from secondary sources like reports of important organizations (World Bank, IMF).

To obtain informations and gather knowledge that will contribute on the subject, we will use internet search, official journals and publications of academic institutions. Datas collected from the sources will be analyzed, and on the basis of these datas we will give an opinion on PPP in BiH.

An important segment of this work will be case studies from other countries and which can be implemented in BiH. Cases from the UK, Portugal, Poland, Croatia, countries in Asia and Africa can be an example where PPPs is successfully introduced or implemented. Comparison of these examples can create a clear picture in which direction our country should go. A significant contribution to this study will give the datas collected from public institutions and companies.

In first chapter, some important issues will be discussed. It will be about the beginnings of PPPs, it's characteristics and categories, arguments for using or not using PPPs, and risk transfer and evaluation. Second chapters will be about experiences in the world, including EU, USA and countries in our region. In third chapter it will be discussed about perspectives and obstacles for using PPPs in BiH.

1 CONTEXT AND THE NATURE OF PPPs

1.1 Historical background

Forrer, Kee, Newcomer and Boyer (2010, pp.475-484, 347) contented that public-private partnerships have existed worldwide at least since the time of the Roman Empire (e.g., the use of private tax and toll road collectors, construction of ports, irrigations canals, markets, public baths) and in the USA since its founding. During the Revolutionary War, the Continental Congress authorized the use of privateers to harass the British navy. Later, much of the West was developed through a variety of PPPs, including the cross-continental railway. The production of transportation infrastructure often has been undertaken with PPPs, from the development of private toll roads and canals during the nation's early history up to the recent Dulles Greenway - a privately financed, built, and operated toll road in northern Virginia (Forrer et al., 2010).

Wang (2009, pp. 779-782) stated that the earliest PPPs included private shipping in the late sixteenth century, mercenary armies around the eighteenth century, and privateering in the age of colonial expansion. The reason behind the earliest PPPs was a combination of ambition and greed: government was ambitious but incapable, the private sector was greedy and resourceful, and they met for mutual benefits.

Akintoye and Beck (2009, p. 303) refer to Winch (2002) which stated that infrastructure concessions were first granted in France in the mid-seventeenth century. At this time the Perrier

brothers founded a company that was granted licence to supply piped water in the Paris area for 15 years. The agreement did not survive the political changes that took place in conjunction with the French Revolution, as the city council cancelled the franchise (Akintoye & Beck, 2009).

According to Hall (2008) concession contracts were often used in the 19th century to develop water, gas, and electricity systems which involved high capital expenditure. The principle was that the private company agreed to invest its own money, in return for which the state guaranteed a monopoly to the company on supplying that service in the area covered, and so the company could expect to get a return on its capital by charging users. The same principle was used for toll roads, bridges, railways, etc. Concessions were unable to deliver the required scale of investment for universal services at affordable rates, and so were generally replaced by public ownership.

In UK and the USA in the eighteenth and nineteenth centuries, over 2500 companies were chartered and incorporated to develop private turnpikes. They in turn came under competitive pressures from the next private infrastructure development - the railways (Grimsey & Lewis, 2004, p. 15).

Hence (2003, pp. 5,9-11) added that in concept and in reality, public/private partnerships have come a long way in the last quarter-century. They have evolved from the large-scale urban renewal projects of the 1960s and 1970s to the well-intended but often economically unsound ventures of the 1980s to today's model of partnership. They are true joint ventures in which both sides leverage their distinct strengths and drive for returns that are measurable and sustainable.

The 1990s have witnessed the emergence of PPPs as a key tool of public policy across the world (Hurst & Reeves, 2004, pp. 379-388). It was the UK that popularized the concept, formalized the procedures - and made some blunders - in the early 1990s with the launch of the right-wing Conservative government's private finance initiative (PFI). PFIs are now the most successful version of PPP around the world (Stern & Harding, 2002, pp. 126-131).

Taylor (2007, pp. 28-30) mentioned that PPPs began in the U.K. in 1992, in response to demands for infrastructure renewal, public sector reform, and better delivery of public services. The earliest PPP projects were similar to those of today in the following respect: they combined the efficiencies of the private sector with the government's responsibility to meet the service needs of the public, (as opposed to complete privatization, in which there is no public involvement going forward). Since 1992, PPPs have been steadily gaining acceptance and popularity in Europe, Canada and Australia (Taylor, 2007). PFI, up to this time, was primarily used to finance transport projects notably the Channel Tunnel joining the UK to mainland Europe. Now the driving force for PFI is HM Treasury in the heart of the government. (Broadbent & Laughlin, 2003).

In the 1950s and 1960s, PPPs in the USA were set out by the federal government as a tool for stimulating private investment in inner-city infrastructure and regional economic development. PPPs are considered to be NPM mechanisms and a means of establishing new forms of governance working across organizational boundaries. They became an explicit instrument during President Carter's administration (Bult-Spiering & Dewulf, 2006, p. 7).

Siemiatycki (2010, pp. 43-58) claims that as PPPs gain in popularity around the world, their merits have been intensely scrutinized and debated in dozens of scholarly articles from disciplinary perspectives that include public administration, political science, engineering, finance, business, and project management, as well as in government and industry reports and media stories (Siemiatycki, 2010).

The UK and many other developed countries in Europe, USA, Canada, Australia, New Zealand and many developing and middle-income countries from Asia, Latin America and the Caribbean, Eastern Europe, Africa and the Middle East have now recognised the importance of the private sector in the delivery of traditional public services. There are a number of reasons for this. First, there are significant constraints in public sector investment affecting the quantity, quality and renewal of infrastructure stocks necessary to improve the delivery of public services and to enhance economic development. Second, there is evidence of poor performance in the execution and delivery of traditional public projects such as over-design, inadequate project and risk management resulting in time and cost overruns. The consequences are higher maintenance and operational costs associated with poor design and build quality. However, it is widely recognised that an effective PPP policy and a strategic framework are required where the public sector is able to identify specific development needs, and engage the private sector to address them using their knowledge, innovation, technology, finance, technical and management skills (Robinson et al., 2010, p. 2).

1.2 Concept and characteristics of PPPs

Grossman (2010, pp. 38-42) believes that public-private partnership management is an expertise that brings together business, government, planning, and community development knowledge and skills to solve public problems. Partnerships are a result of a policy to collaborate - to be multilateral rather than unilateral.

According to Grasman (2009, pp. 302-307) PPP is loosely based on PFI, which is an arrangement for the public sector to contract services in order to take advantage of private sector expertise and managerial skills with the incentive of private financial risk. PFI could be considered to be more restrictive than PPP in the sense that it primarily addresses financial and legal processes, however, the aims of the two are similar, and are often used synonymously (Grasman, 2009). Connolly, Reeves and Wall (2009, pp. 1-19) state that PFI, arguably the most well-known form

of PPP, refers to a strictly defined legal contract for involving private companies in the construction and provision of major public sector infrastructure assets and associated services. The PFI was launched by the UK Conservative government in 1992 and subsequently embraced by New Labour.

Ruane (2001, pp. 1-6) added that PFI is one of the types of 'public-private partnerships' much wanted by the government. PFI is in fact a misnomer since it constitutes a mechanism by which not only private finance, but also private sector managerial, commercial and creative skills; can be brought to bear in the task of modernising and strengthening public sector services. Such engagement by the private sector, it is claimed, offers the prospect of better value for money (Ruane, 2001). PFI, in its purest form, is a DBFO system. It usually involves the provision, by a private sector consortium, of property based services for a period of a minimum 30, and, more usually, 60 years, to a public sector "purchaser". In exchange for these services over this 30/60 year time horizon the public sector pays a monthly, in effect, lease cost to the private sector supplier (Broadbent & Laughlin, 2003, pp. 332).

It's often a good idea to begin a discussion about PPPs by first listing a few things they are not, including the following (Taylor, 2007, pp. 28-30):

- PPPs are not just about financing public construction projects;
- They are not about politicians delivering off balance-sheet or tax-free infrastructure;
- PPPs are not just about building infrastructure;
- PPPs are not about handing over the reins of public assets to the private sector; and
- PPPs are not about making unaffordable projects affordable, or about giving ill-conceived projects an image makeover.

According to Robinson et al. (2010, p. 5) partnerships are characterised by certain fundamental features:

- First, a partnership involves two or more actors or organisations, from the public and private sector which could also include the third sector, the so-called non-profit organisations.
- Second, partnerships require some competitive element to select the best partner(s) and a degree of cooperation after selection (sometimes referred to as co-opetition).
- A third feature of partnerships is the existence of what is often referred to as an 'enduring and stable relationship' among the actors. This is achieved through cooperation, contractual obligations and commitment, once partners are selected through a competitive process.
- Fourthly, to fulfil their obligations, there are shared responsibilities defined by the contractual agreements for the resources and expertise required to achieve the project outcomes through specific delivery processes and activities. For example, planners,

financiers, architects, engineers, surveyors, contractors and facilities management firms work together through various subcontracts to design, construct and manage a completed facility.

- Another key feature is that the private sector is usually encouraged and given a high degree of freedom to provide innovative solutions that will represent value for the public sector based on the client's project or output specification.
- Finally, there is a risk–reward structure depending on the private sector inputs, requirements of the public sector and the service delivered by the private sector. The private sector party receives a fee or payment from the public sector usually based on predefined performance criteria and payment mechanism structured to reflect the risk allocation and incentives to avoid poor performance or quality shading. The payment may be entirely from service tariffs, or user charges or a public sector department's budget or a combination of both depending on the type of PPP.

What are the characteristics which might entitle us to say that any arrangement is part of PPP family? The following would seem to be the most important elements (Grimsey & Lewis, 2004, p. 13):

- Participants. A PPP fairly obviously involves two (or more) parties, and at least one of them has to be a public body. Each, however, needs to be a principal, capable of negotiating and contracting on its own behalf.
- Relationship. Partnerships need to be enduring and relational.
- Resourcing. Each of participants must bring something of value to the partnership. PPPs seek to draw on the best available skills, knowledge and resources, whether they are in the public or the private sector, and deliver value for money in the provision of public infrastructure services.
- Sharing. PPPs involve a sharing of responsibility and risk for outcomes in a collaborative framework.
- Continuity. Underpinning the partnership will be a framework contract, which sets out the rules of the game and provides the partners with some certainty.

Having identified some of the general distinguishing features of what we mean by a partnership, we now need to be more explicit about what kinds of partnerships we have in mind and their characteristics. These are (Grimsey & Lewis, 2004, p. 14):

- Type. While some partnerships are created for the purpose of policy formulation, priority setting and coordinating organizations from the various sectors, our primary concern is with asset-based services and long term service provision contracts related to social and economic infrastructure.
- Focus on services. The emphasis is on services received by government procurement of economic or social infrastructure. Government pays for services provided by the private

party, which are delivered through privately owned or rented infrastructure as part of service package.

- Whole-of-life cycle costing. With a PPP contract there is the opportunity for a complete integration – under one party – of upfront design and construction costs with ongoing service delivery, operational, maintenance and refurbishment costs.
- Innovation. A PPP approach focuses on output specifications, and provides enhanced opportunities and incentives for bidders to fashion innovative solutions to meet those requirements.
- Risk allocation. Risk retained by government in owning and operating infrastructure typically carries substantial, often unvalued, cost. Transferring some of the risk to a private party, which can manage it at less cost, can substantially lower the overall cost to government.

Teicher and Alam (2004) contented that PPPs are not “privatisations”, but are a business relationship and a risk sharing relationship base upon agreed performance criteria to achieve specified public policy outcomes and this partnership model should be based of trust and accountability so that it can add value to services and increase public satisfaction.

Gerrard (2001, pp. 48-51) believes that PPPs are generally not "privatizations" in the sense that the latter term is most commonly used. A privatized business is one that was formerly owned by the public sector and is now owned by the private sector. It may operate in highly competitive markets-as, for example, an airline does-or it may hold a monopoly position and so require active regulation once it is transferred to the private sector-as a utility company does. In either case, the public sector is disengaged from the business. By contrast, a PPP is a business relationship between the public and private sectors that is not patterned on either of these models. In the case of a PFI project, the business is defined by a long-term contract in which public services to be delivered by the PPP-the outputs-are specified in great detail. In its form as an equity joint venture between the public and private sectors, a PPP is a business with certain public sector obligations set out in its constitutional documents or within contracts with the public sector (Gerrard, 2001).

However there are important differences between privatisation and PPPs, some of which make it difficult for a PPP to achieve the same results as a privatisation (Yescombe, 2007, p. 16):

- the public authority remains directly politically accountable for a PPP-provided service, but not for a privatised service;
- the citizen will usually not be especially conscious that a PPP-based service is being provided by a private-sector company rather than the public sector, whereas this is obvious for privatised services;

- in a PPP ownership of physical assets normally remains with (or reverts to) the public sector, whereas in a privatisation they become permanently private-sector owned;
- a PPP usually involves the provision of a monopoly service, whereas a privatisation usually means the introduction of competition to provide the service;
- in a PPP the scope and cost of services is fixed by a specific contract between the private and public sectors, whereas in a privatisation they are controlled, if at all, by some form of licensing or regulation which allows for regular cost changes, or are simply left to the forces of market competition.

Confusion about the PPP concept is striking in the political and social discussion on these governance questions. Often, PPP is used as a synonym for privatization. Nevertheless, there are significant differences between PPP and privatization. In PPPs, public and private parties (actors) share costs, revenues and responsibilities. Privatization represents the transfer of tasks and responsibilities to the private sector, with both costs and revenues being in private hands. The confusion impedes a rational discussion about PPPs since all the disadvantages of privatization are imputed to PPPs (Bult-Spiering & Dewulf, 2006, p. 3).

Wolf Theiss (2007) claims that in practice, the distinction between concession and public procurement is difficult to determine. The main criteria used to distinguish these two forms of PPPs is the fact of which party bears the economic risk of the facility operations, not which party pays for the provided services. If the economic risk is borne by the operator, then the relationship is based on concession; if the risk is borne mainly or entirely by the public contracting authority, then the relationship is defined as public procurement, despite any other description or statutory definition (Wolf Theiss, 2007).

The essential role of the public sector in all PPPs – whether PFI project, joint venture, or other partnership structure – is to define the scope of business; specify priorities, targets, and outputs; and set the performance regime by which the management of the PPP is given incentives to deliver and, in the case of PFI projects, also to pay for the services. The essential role and responsibility of the private sector in all PPPs is to deliver the business objectives of the PPP on terms offering value for money to the public sector (Gerrard, 2001, pp. 48-51).

Clarke and Healy (2003, pp. 20-30) believe that in theory PPPs should be implemented when they create more benefits than costs for both private and public partners and produce a greater net benefit to taxpayers and society when compared to the traditional procurement method. This net benefit is reflected through the "value-for-money" concept. Value for money can be defined as the optimum combination of cost, quality, efficiency and effectiveness. The factors that determine whether a project delivers value for money will vary by type of project and by sector. Value-for-money assessment comprises two key elements: monetary comparison and non-monetary comparison. Monetary comparison represents a comparison of the cost of the preferred PPP

tender, with the cost of traditional public sector procurement expressed in terms of discounted cash flows over the life of the contract. Non-monetary comparison involves all the factors that are difficult to quantify in monetary terms, but their value to government and the wider public is significant. Examples include speed of project delivery, quality of service and security of supply. The principal evidence that value for money has been achieved is normally provided through the use of a Public sector Comparator (Clarke & Healy, 2003).

Kingston (2002, p. 12) argues that in the traditional non-PPP scenario, if the public sector wants, for example, to treat sewage, it first engages consultants who will design the plant. Taking the design from the consultants, the public sector then seeks tenders from building contractors to build the plant. When the plant is built, the public sector operates it. In this traditional arrangement, the public interest may be placed at risk for a number of reasons. Payments to consultants are calculated on the basis of the final capital value of the project, so there is no incentive to reach the most economical design. Under a PPP, by contrast, the private sector has responsibility for operation of the infrastructure. The private sector has a serious incentive to use the latest technology to win the tender and build a plant which is economical both in terms of capital cost and running costs. Design problems or unnecessarily high costs of maintenance remain problems for the entrepreneur; the public sector gets the job done at a price resulting from a competitive tendering process. Clearly, the private sector will include a price for taking on those risks, but in the context of a competitive tender process, if too high a price is sought the contract will be won by a competitor. By using a PPP, the public sector is forced to look at the services which it actually wants to receive and not the physical asset. The public sector doesn't want to own a hospital building: it wants patients treated professionally and promptly (Kingston, 2002).

Not every public project is suitable or appropriate for a PPP. The bottom line has always been the delivery of better services to the public with greater efficiency and savings (value for money; hereinafter: VFM). Therefore, a thorough analysis on multiple levels is essential including the answers to the following questions (Taylor, 2007, pp. 28-30):

- What is the level of public interest and need?
- What political and legal realities (and/or limitations) exist?
- Is there a more optimal vehicle for delivering the proposed services?

The key participants in a PPP include the following (Taylor, 2007, pp. 28-30):

- the public sector client-Government - the PPP process, which is born out of public need, is formally begun at the governmental level through an Expression of Interest (hereinafter: EOI);
- the project company - this private sector partner responds to an EOI;

- regulatory and advisory bodies - most PPPs come under the jurisdiction of a variety of assorted public sector bodies representing wide-ranging public interests at all levels;
- financial partners - these include equity providers, debt financiers and various forms of government aid (municipal bonds and taxes, for example);
- customers/end-users - the public, although obviously not a partner in a technical or contractual sense, is the most important player in a PPP. There simply would be no project without solid public demand for its services. Customers are those members of the public who actually make payments, on a per-use basis, during the operational phase of the asset's life (such as commuters on a toll road). End-users have a more indirect relationship to the service provided (taxpayers, for example).

There are various stakeholders involved in PPP/PFI projects with a range of views and interests. This includes public sector actors such as politicians, civil servants in government departments, public sector advisory and regulatory agencies, private sector participants such as investors and lenders, design and construction firms, users and special interest groups such as trade unions (Robinson et al., 2010, p. 18).

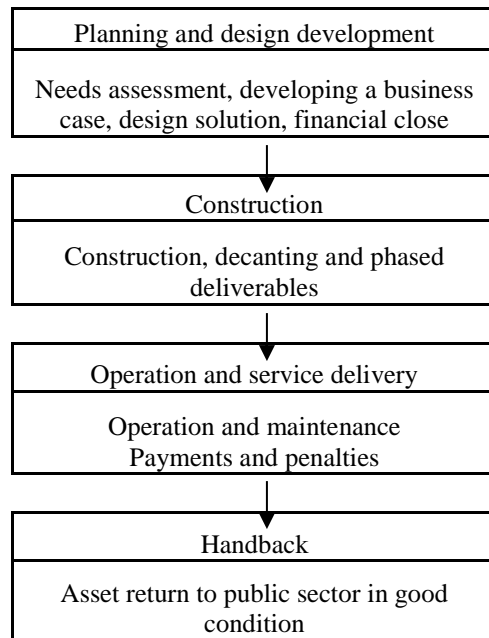
Grant (1996, pp. 17-20) claims that at the most strategic level, partnerships allow governments to implement change without losing sight of the true business of government: to develop social policy, maintain and communicate a vision for the future, and manage the delivery of services. For businesses, working with the public sector represents an opportunity to apply capabilities in new ways to new markets and to develop strong, long-term relationships with new clients. Taxpayers as well as the investment community are putting pressure on governments to find innovative new ways to deliver services and reduce spending (Grant, 1996).

According to Richter (1993, pp. 18), the public sector, no matter how it structures the program, remains responsible for safeguarding the public's interests. This entails ensuring that the public receives safe, reliable service at a reasonable cost, with minimum disruption to ongoing services. The private sector's motivations are very different. The private sector offers a service delivery program that will ensure a reasonable profit. Its desire to maximize profits is coupled with its desire to meet the generalized goals and objectives of the public sector. If the public and private sectors view their roles as a partnership, there is a greater likelihood the program will meet their expectations (Richter, 1993).

O'Leary (2010, pp. 1-5) mentioned that in integrating the private sector with government, the endeavor is to create a mutually beneficial, win-win situation where both the public and private stakeholders make the most out of their respective contributions. In order to ensure long-term success, mitigating risk and optimizing capital investments is paramount.

PFI/PPP projects are characterised by three distinct phases of planning and design development, construction and service delivery and operation as shown in Figure 1 (Robinson et al., 2010, p. 42).

Figure 1 Key PPP/PFI phases



Source: H. Robinson, P. Garillo, J.C. Anumba and M. Patel., *Governance and Knowledge Management for PPP*, 2010, p. 43.

Through PPPs, private and public entities have combined their expertise and experience to finance public projects using all available sources, reconciling often conflicting requirements to weave together enough present and future money to both accomplish the goals of the public sector and provide a profit incentive to private sector participants (Davis, 2008, pp. 9-12).

1.3 Categories of PPPs

While PPP is used predominantly in public sector infrastructure developments in developing economies, it is used in the developed economies to deliver various government public services, goods and facilities. In addition, the extent of dominance of either the public sector or private sector in PPP in developed economies is often dependent on the ideological positioning of the country. For example, the PPP arrangements in social/political driven economies or unitary forms of governance like France and Sweden are often characterised by public sector dominance, whereas countries like Canada, the USA and Hong Kong with profit-driven, private economy and associated loose governance tend to have private sector dominance. The UK falls in between these two extremes. PPP is being used to deliver different types of projects, and in different sectors: education (schools, education facilities, leisure), healthcare (hospitals and equipments),

transport (car parks, airports, rail, tram, roads, bridges), custodial infrastructure (prisons, court house), public buildings (non-housing accommodation), housing, utilities (water, waste water etc.), defence and IT facilities (Akintoye & Beck, 2009, p. 127).

PPPs can take many different forms, the most usual being BOT/BOO arrangements, joint ventures, leasing, contracting out or management contracts, and various forms of public-private cooperation. Some examples are (Grimsey & Lewis, 2004, p. 10):

- BOT (Build Operate Transfer). These are contracts where the private sector takes primary responsibility for funding (financing), designing, building and operating the project. Control and formal ownership of the project is then transferred back to the public sector. Examples are third Dartford Crossing of the river Thames in the UK, Sydney Harbour Tunnel.
- BOO (Build Own Operate). In these arrangements, the control and the ownership of the projects remain in private hands. With a BOO project, the private sector entity finances, builds, owns and operates an infrastructure facility effectively in perpetuity. An example comes from the water treatment plants serving parts of South Australia.
- Leasing. Here part of the risk is transferred to the private sector. Lease contracts cover design and building, or operation, but do not embrace project financing.
- Joint ventures take place when the public and private sectors jointly finance, own and operate a facility. As examples there are urban regeneration schemes in the USA in which local government authorities purchase and clear blighted areas for private developers or themselves to invest in new construction, such as a new city hall or a government office as a part of downtown redevelopments.
- Operations or management contracts. In these, the private sector is only partially involved, for example it provides a service or manages the operation. Examples are the management of state-owned agro-businesses in Senegal, Cote d'Ivoire and Cameroon, water and electricity in Guinea-Bissau, and mining operations in Latin America and Africa.
- Cooperative arrangements that occur between governments and private entities are more informal than many of the equity partnerships and concession-type franchise arrangements for social housing projects. In Korea and many other countries, independent power producers and self-generators can sell power into the national grid. In Costa Rica, the government creates and maintains national parks, while private organisations develop the eco-tourist programmes and finance some of the tourist promotion campaigns.

Akintoye and Beck (2009, p. 440) contented that the BOT concept has generated a number of related acronyms that reflect variations of governmental interest/preference and industrial characteristics in procurement approaches: BBO (buy, build, operate), BLT (build, lease, transfer), BOO (build, own, operate), BOOM (build, own, operate, maintain), BOOT (build, own,

operate, transfer), BT (build, transfer), BTO (build, transfer, operate), DBFO (design, build, finance, operate), DBOM (design, build, operate, maintain), DOT (develop, operate, transfer), LDO (lease, develop, operate), MOT (modernise, operate, transfer), ROO (rehabilitate, own, operate), ROT (rehabilitate, operate, transfer) and TOT (transfer, own, transfer).

Basic characteristics of some types of PPPs are:

- **Finance Only (FO)** - The private sector, mainly banks, directly fund construction of public infrastructure. All costs are transferred to the public sector, which bears all the risks of construction and operation.
- **Design-Bid-Build (DBB)** - The public partner determines the requirements of the project, ensuring its funding and design. By procurement process the private bidder is selected, who is responsible for construction. The public partner provides a service, maintaining the object and is the owner of the constructed facility.
- **Design-Build-Maintain (DBM)** - The private sector, according to the requirements of specifications of public sector, design, build and maintain infrastructure, usually with a pre-agreed fixed price, thus the risk and cost of quality and maintenance of the constructed are transferred to the private sector.
- **Operate-Maintain (OM)** - The private sector, based on agreed terms, provide a service using public property, where the property remains in the hands of the public sector. OM models are called outsourcing contracts.
- **Operation License (OL)** - The private sector receives a license from the public sector to provide public service, usually of limited duration.
- **Design-Build-Operate (DBO)** - The private sector, according to the requirements and specifications of the public sector, design and build public property, usually at a fixed price, and financing and costs are beared by the public sector. Upon completion of construction, the private partner takes a long-term lease of the object and using it to provide service.
- **Build-Operate-Transfer (BOT)** - The private sector build the public good and using it to provide service. The private partner as a provider of services (under the control of the public sector) take charges for the service from public sector and / or end users. Upon the expiration of the lease, public good is owned by the public partner.
- **Design-Build-Finance-Operate (DBFO)** - The private sector designs, develop, build and finance the implementation of the public good and takes it in the long-term lease. It manages the provision of services and use the public good for the contracted number of years.
- **Build-Own-Operate-Transfer (BOOT)** - The private sector build the public good, it retains the ownership and possession for the agreed duration of the arrangement and using it to provide service. The private partner as a service provider charge fees for the service provided to the public sector and / or end users. On expiry of the agreed period, ownership of public property is transferred without compensation to the public partner.
- **Lease-Develop-Operate (LDO)** - The private partner lease public good, technologically and functionally develop it and improve, and manages its use.

- **Build-Lease-Operate-Transfer (BLOT)** - The private partner builds a public good and takes it in the lease. Ownership remains on the public sector, and private sector provide service by using leased public facility. By expiration of deadline, the ownership of public property is returned to the public partner.
- **Buy-Own-Operate-Transfer (BUYOOT)** - The private sector buys public good, use it for the contracted number of years and provides the service. By expiration of deadline, the property is transferred without charge to the public sector.
- **Design-Build-Finance-Own-Operate-Transfer (DBFOOT)** - The private sector design, develop, build and finance the implementation of public projects, manages the provision of services and use the public good, which is his property, for the agreed number of years. On expiry of the agreed period, ownership is transferred without compensation to the public partner.
- **Build-Own-Operate (BOO)** - The private sector build and manage public property in its possession, without liability to transfer the assets to public sector. Control over the services of private sector is usually carried out and regulated by public authorities.
- **Buy-Build-Operate (BBO)** - The private sector buy public good, improve and manage the good, providing services to public sector or end-users. By expiration of deadline, the private sector retains its ownership rights over the public good.

According to Wang (2009, pp. 779-782), the authors argue for two major forms of PPPs: contracts and partnerships. Generally speaking, contracts have limited coproduction, where government is the client specifying the problem, solution, and product; the private party is the contractor providing the required product. This form of coproduction is often found in PFI projects, where the surplus value derives from the lower costs of coordinating project components through a whole range of public-private contracts. The second form of coproduction, partnerships, involves a far more intensive interaction (or synergy), which requires strategic collaboration and intertwined action between the public and private parties from the very beginning of a project.

Akintoye and Beck (2009, p. 124) refer to the World Bank (2005) paper work that takes a holistic view which describes as PPP all investment (public and private) in projects with private participation in provision of public sector infrastructure. Specifically it has identified four categories of PPP:

- **Management and lease contracts** - these are contracts where a private entity takes over the management of a state-owned enterprise for a fixed period while ownership and investment decisions remain with the state. In a management contract the government pays a private operator to manage the facility and assumes the operational risk, whilst in lease contracts government leases to the private operator who takes on the operational risks.
- **Concessions** - a private entity takes over the management of a state-owned enterprise for a given period during which it also assumes significant investment risk. This includes:

rehabilitate, operate and transfer; rehabilitate, lease or rent, and transfer; and build, rehabilitate, operate and transfer projects.

- **Greenfield projects** - this has four categories: build, lease and own (BLO); build, own, transfer (BOT), or build, own, operate, transfer (BOOT); build, own and operate (BOO); and merchant project, where a private entity or a public-private joint venture builds and operates a new facility for the period specified in the project contract.
- **Divestitures** - full (100%) or partial government transfers of the equity where a private entity buys an equity stake in a state-owned enterprise through an asset sale, public offering, or mass privatisation programme.

Yescombe (2007, p. 4) states it should be mentioned that there are a number of alternative names for PPPs:

- Private Participation in Infrastructure (PPI), a term which seems to have been coined by the World Bank, and perhaps expresses more clearly the subject of this book; however it is little used outside the development-financing sector, except for the South Korean PPI programme;
- Private-Sector Participation (PSP), also used in the development-banking sector (however neither PPI or PSP are limited to the definition of PPPs above);
- P3, used in North America;
- Privately-Financed Projects (PFP), used in Australia;
- P-P Partnership (to avoid confusion with PPP meaning 'purchasing power parity', a method of comparing currency exchange rates to reflect the real costs of goods and services in different countries);
- Private Finance Initiative (PFI), a term originating in Britain, and now also used in Japan and Malaysia.

1.4 PPPs – for and against

For decades, academic institutions have accumulated a large body of literature, both theoretical and empirical, in favor of PPPs. Advantages were presumed to include cost reduction, access to private resources, risk sharing, quality improvement, and help with sensitive issues (Wang, 2009). PPPs are an idea whose time seems to be coming globally.

A number of the articles point out several issues that are crucial to systematic assessment of PPPs but are still missing from existing empirical studies (Wang, 2009, pp. 779-782):

- lack of comprehensive data on PPPs projects;
- lack of information on comparative public projects for benchmarking PPP projects;
- lack of economic or financial evaluation prior to partnerships;
- lack of knowledge about how to efficiently and effectively transfer risk;

- lack of consideration for public interest and consumer protection.

Besides the areas listed here, another issue that deserves more academic attention is how people measure the effectiveness of PPPs. An effective partnership often means different things to different people. For example, a private contractor may deliver cheaper public services by cutting employee wages. What should be the effectiveness criteria for this partnership: cost, the welfare of workers, or both? It is important for scholars and practitioners to better understand what government is really looking for in a partnership before designing an assessment study (Wang, 2009).

Where public sector capital budgets are constrained, there are obvious advantages in adopting a PPP to deliver public services that might otherwise be unaffordable to a government. At the heart of all PPPs is the deployment of private sector capital. Within a PPP framework, this can result in greatly improved value for money for the government in terms of the risks transferred to the private sector (in cases where the latter is better able to assess the risks) and powerful private sector incentives for the long-term delivery of reliable public services. These benefits are sufficient to ensure that PPPs often become the favored means of procurement, even where public sector capital constraints do not apply (Gerrard, 2001, pp. 48-51).

Trailer, Rechner and Hill (2004, pp. 308-315) explored deeper and argued that multiple, conflicting goals inherently exist among the three major constituencies involved in public-private partnerships: the public organization has the goal of job creation and increasing services to the public; the private organization's goal is to maximize the value of the firm; and the consumer's goal is to maximize consumer surplus. This problem is serious from the perspective of organization theory and business strategy since structuring the arrangement that maximizes the value of the firm has negative feedback effects on the goals of the other constituents (Trailer et al., 2004).

The public-sector reform movement known as New Public Management provides the theoretical background for PPPs, but in reality the main driver for growth is that PPPs avoid limitations on public-sector budgets. The main elements of the debate revolve around (Yescombe, 2007, p. 15):

- whether PPPs provide additionality of investment in public infrastructure;
- the higher financing costs implicit in PPPs;
- whether risk transfer and value for money from PPPs can be offset against higher financing costs
- economies of scale;
- the benefits of whole-life costing and maintenance;
- the value added through the use of private-sector skills;
- PPPs as a catalyst for public-sector reform;

- complexity; and
- the effect of PPPs on public-sector flexibility.

1.4.1 Arguments for PPPs

Akintoye and Beck (2009) refer to several studies that explain why many governments today view PPPs as a win–win option for meeting their investment needs. These views are based on a number of rationales. Firstly, it is often thought that PPPs provide budgetary room without prejudice to the sustainability of the government’s financial position (Heller, 2005). Secondly, there is a presumption that the fiscal space created via PPPs will boost medium-term growth and thereby generate fiscal revenue in the future (The World Bank, 2005). Thirdly, it is often assumed that PPPs will reduce government risk exposure by transferring those risks to the private sector, which is better able to bear or manage them (The World Bank, 2005). Lastly, there is an expectation that the involvement of the private sector in the financing of infrastructure and services will increase accountability and transparency, reduce corruption and create incentives for the prudent management of public expenditure (The International Monetary Fund, 2005).

Akintoye, Beck and Hardcastle (2003, pp. 7-9) classified benefits of PPPs:

- enhance government's capacity to develop integrated solutions
- facilitate creative and innovative approaches
- reduce the cost to implement the project
- reduce the time to implement the project
- transfer certain risk to the private project partner
- attract larger, potentially more sophisticated, bidders to the project
- access skills, experience and technology.

PFI yields certain benefits to the public or private sector or both (Akintoye & Beck, 2009, p. 10):

- Deregulation - Projects which had previously been delivered under the control of public bodies (e.g. prisons, hospitals, etc.) are now available to private sector organisations.
- Time savings - It has been reported that the construction period under PFI is shorter with 80% of construction completions under PFI reported to be either within or on time, which is better than most other forms of procurement.
- Cost savings - The whole-life price of a scheme procured by PFI is generally cheaper than for procurement by traditional means and this is a requirement for any UK PFI scheme. Before a PFI project is approved, the public sector client must prepare a PSC to show the advantage(s) of PFI.
- Reduction of public sector risk.
- Leeway on government spending - PFI projects have a reduced financial burden on the public purse at least initially, as government does not have to pay all costs up front.

- Further opportunity to make profit - For equity investors, PFI is perceived as a relatively low-risk investment as it is backed by government covenant, provides a stable long-term yield and many of the risks are sub-contracted.
- Opportunity to develop assets and/or infrastructure - Most PFI schemes involve the provision of new infrastructure. Where current stock is retained, it is often upgraded and maintained on a regular basis.
- Enlargement of markets - Private sector participants utilise their skills and knowledge in a number of areas, e.g. finance, law, risk, insurance, facilities management. In this regard, PFI offers further trading opportunities to the private sector.
- Innovative solutions.
- Accounting for maintenance costs - To a client, PFI relieves them of the responsibility for maintaining facilities. If something goes wrong with a building the SPV must fix it within a specified time or be charged on the basis of a predefined penalty.
- Curtailing cost escalations - Project services are provided at a predictable cost set out in the contract agreement. Inflation should not affect what the client will pay.
- Improved service delivery - This is achieved by allowing both sectors to do what they do best. For example, the private sector will provide high-quality food to hospital patients while the NHS is free to concentrate on treating those patients.
- Optimal use of assets - Private sector partners are motivated to make optimal use of the facilities to maximise return on their investment. This can result in higher levels of service and reduced occupancy costs for the government

Wang (2009, pp. 779-782) argues that PFI has introduced innovations and improved designs for many projects. More than 85% of PFI projects were delivered on time or early, compared to only 30% for previous non-PFI projects; only 21% of PFI projects experienced cost increases compared to more than 70% for non-PFI projects. His study also points out that government documents and research papers take such a positive view on PFI partially because previous public projects were quite bad. Also, he discusses major negative experiences with PFI relating to the lengthy contracting process, which leads to high transaction costs that are not reflected in some assessments (Wang, 2009).

Highway public-private partnerships created to date have resulted in advantages from the perspective of state and local governments, such as the construction of new infrastructure without using public funding and obtaining funds by extracting value from existing facilities for reinvestment in transportation and other public programs. But there is also the risk of tolls being set that exceed the costs of the facility, including a reasonable rate of return, should a private concessionaire gain market power because of the lack of viable travel alternatives (GAO, 2008).

PPPs have proven so successful in the U.K. that in some areas, regulations are in place requiring PPPs as the framework for delivering specific public services (schools and hospitals, for

example) unless an alternate vehicle can be proven to provide better overall value (Taylor, 2007, pp. 28-30).

Connolly et al. (2009, pp. 1-19) believe that although PPP enthusiasts have never claimed that it would directly increase the money available for capital projects, two major advantages were envisaged. First, budget savings would be achieved by managing spending more effectively, which in turn would lead to more projects being undertaken. However, a significant obstacle to this is the relatively higher cost of private sector borrowing. Second, despite the required private sector return, projects have a better chance of proceeding as there is less of an immediate impact on public spending since payments are spread over the life of the contract. A key argument advanced by proponents of PPPs is that they involve transferring risks to those parties best equipped to cope with them, thereby shifting the risk of delivery to the contractor. The Commission on Public Private Partnerships (2001) concluded that PPPs showed considerable cost savings of approximately 15 per cent for road and prisons projects, while others, such as school and hospital schemes, illustrated more marginal savings of approximately 2 to 4 per cent (Connolly et al., 2009).

One rationale is that PPPs help get around resource constraints: in an era when high state spending tends to be frowned on by economists, politicians and voters alike, partnerships enable public services to be improved without penal tax increases. In Europe governments may have another motive to take the PPP route – the requirement for fiscal rectitude was enshrined in the single-currency provisions of the Maastricht Treaty signed a decade ago. There are value-for-money arguments too (Stern & Harding, 2002, pp. 126-131).

Sarmiento (2010, pp. 93-119) has rightly pinpointed that well-structured public-private partnerships can introduce clear lines of accountability, transparency of outcomes and performance. In fact, one of the benefits of public-private partnerships is the ability to resolve the large cost overruns and delays in traditional public procurement. Economic theory suggests that the performance differences may lie in the characteristics of public-private partnerships that differentiate them from conventional procurement. The literature has identified three reasons for this: ownership, bundling and risk transfer (Sarmiento, 2010).

Akintoye and Beck (2009, p. 83) refer to Hodge (2004) who believes that private sector participation brings improved efficiency and it seems to be vindicated by experience in the UK where some studies indicate that government departments that implemented PPPs registered between 10% and 20% in cost savings. According to the UK's National Audit Office, 76% of PFI deals are constructed on time, while in the case of projects completed under conventional procurement it is only 30%. In terms of projects constructed to budget the figures are respectively 78% and 27% (Akintoye & Beck, 2009).

The transfer of risk to the private sector can also make a public-private partnership more cost efficient than traditional procurement. An effective transfer of risk from the public to the private sector can lead to a more explicit treatment of risk, since it is the acceptance of risk that gives the private entity the motivation to price and produce efficiently. Private finance (debt and equity) is central to this process, although its role has been overlooked thus far in the theoretical public-private partnerships literature. That is the only way, which is not possible in the public sector, to use risk management techniques. In the public sector, risk is transferred to taxpayers or end users, and therefore, the cost of capital is lower than in the private sector (Sarmento, 2010, pp. 93-119).

The main reason for using public-private partnerships is that they have proved a way to resolve the large costs overruns and delays in traditional public procurement, the "optimism bias". (Gaffey, 2010, pp. 351-372). Gaffey (2010) refers to Parker and Hartley's (2003) study who claim that public-private partnership contracts for UK defence services have resulted in cost savings between 5% and 40% compared with conventional public procurement

The private sector is often considered to provide greater levels of efficiency when running infrastructure projects than can the public sector. This increased efficiency results from many factors, including (Delmon, 2009, p. 10):

- improved financial engineering/leverage reducing weighted average cost of capital (WACC);
- focus on cost-effectiveness, in particular rationalizing the cost of labour and materials;
- commercial approaches to problem-solving;
- incentives to improve efficiency and performance and encourage innovation;
- creation of arms length relationships between government and service providers, enabling better, less politically oriented, enforcement of obligations;
- better governance to improve transparency, competition and accountability, and thereby improve value for money;
- bring hidden costs into the open, for example the high transaction costs often associated with PPP project development must also be incurred in public projects but are simply absorbed into other public budgets without being accounted for;
- reduced opportunities for patronage;
- improved transparency and competition to reduce opportunities for corrupt practices; and
- insulation from political considerations.

Delmon (2009, p. 11) refers to Standard & Poor's (2005) survey which showed that 88% of PPP projects were delivered on time and at cost while only 30% of traditionally publicly procured (non-PPP) projects achieved the same result.

The most accurate comparison to date of the cost of procurement may be that done by the UK government when reviewing the cost-effectiveness of PFI projects. The UK experience indicates that procurement on a PFI basis has, by and large, resulted in savings for the public sector. In two of the early PFI prison projects, the time required for the project to progress from the date of the design brief to opening of the prison was 40 and 41 months respectively. A prison constructed under normal public procurement methods required an average of 75 months to achieve this same level of progress (Delmon, 2009).

According to Delmon (2009, p. 17), the financial benefits available from PPPs include economic and financial development (of the relevant region or the country as a whole) and the mobilization of new or additional sources of finance. PPP can encourage economic and financial development through the provision of new opportunities for local and foreign private investment and service provision. These new opportunities also provide new skills to local companies who can use those skills in other parts of the economy or in other countries.

Generally, PPP development is achieved by (Delmon, 2009, p. 17):

- promoting private sector development, encouraging growth and employment opportunities;
- broadening ownership through local equity and financial market opportunities;
- improving foreign direct investment; and
- diversifying local and foreign private sector opportunities.

According to Akintoye and Beck (2009, p. 29), within the UK, by December 2006, there were nearly 800 signed deals with a capital value of £55billion. Between 1995 and 2034, total commitments are believed to be £204billion. There has as yet been little in the way of financial evidence as to how the turn to private finance is working out in practice. More recently, the UK government has justified PFI on the basis that it delivers assets to time and budget. Other benefits are now believed to include (Akintoye & Beck, 2009):

- introducing private sector expertise, innovation and efficiency;
- incentivising the private sector via the performance-related payments;
- ensuring that maintenance is carried out;
- lower whole-life costs because of the integration of construction, operation and maintenance;
- greater discipline at decision making about what the public sector is procuring, the outputs it expects, performance criteria, risk allocation and management;
- a robust project's specification as a result of the independent due diligence carried out by the financiers of the project.

Akintoye and Beck (2009, p. 20) refer to PUK (2006) report into operational PFI/PPP projects. The report, which commented on the largest survey of PFI projects ever undertaken, contains a comprehensive review of the performance of PFI projects during their operational phase. The findings show that public sector managers and users are happy with the outcomes of their PFI/PPP projects. Some of the findings are:

- 96% of projects in their survey are performing at least satisfactorily, with 66% of projects performing at the stated level of either good or very good standard;
- 89% of projects achieving contract service levels of either always or almost always;
- 80% of all users of PFI projects are always or almost always satisfied with the service being provided
- around 80% of public sector managers agreeing that the payment mechanism supports the effective contract management of the project.

1.4.2 Arguments against PPPs

Wang (2009, pp. 779-782) claims that British PFIs are unsuccessful in education, health, criminal justice, and information technology, and only successful in road projects. In school projects, PFI does not guarantee better-quality buildings despite their higher cost. A study of 13 PFI hospitals found that in four projects, the actual payments to the private sector turned out to be considerably higher than the original estimates, and six hospitals' trusts had very substantial deficits - much higher than the national average. PFI prisons have been very controversial because of poor planning, lack of scrutiny of costs, a flawed savings assessment, operational performance failures, and the private party's opportunistic behaviors in refinancing. More recent research on PFI prisons indicates that these prisons provide low-quality services and pay lower wages to employees than public prisons. Finally, PFI has been conspicuously unsuccessful in information technology projects. In a widely publicized case concerning the passport agency, because of the service delay caused by system malfunction, travelers had to go in person to collect their passports and many people missed their travel dates. The government had to hire extra staff, which led to an increase in passport fees. In this analysis, road projects are the only successful PFI application, which is probably the consequence of very high payments to the private sector from government or road revenues (Wang, 2009).

Despite its numerous benefits, PFI has its downsides (Akintoye & Beck, 2009, p. 12):

- High transaction costs - The cost of bidding for PFI projects is quite high. Bidding costs for PFI schemes are estimated to be in millions. In addition, governments can borrow money more cheaply than private firms, so to a public sector establishment the cost of financing PFI schemes is higher.
- Demanding negotiations - When developing the contracts, the negotiations associated with PFI schemes are highly complex and very time consuming.

- Bland products - There is the potential for innovative designs and construction methods to be inhibited as contractors may be wary of overruns.
- Unusual alliances - In the early days, the formation of project consortia was sometimes difficult as constituent members had differing objectives. An extension of this is the selling of stakes after the construction phase. By doing so, some companies have made profits and walked away from the risks.
- Quantification of risks - High cost is ascribed to risk transfer. As no PFI scheme has yet run out its life, it is argued that no one knows precisely the frequency of occurrence of risks and their associated impact.
- Unusually high profits - Shareholders in PFI schemes can expect very high returns per year; these returns can be perceived as unnecessarily high as this burden is passed on to the taxpayer.
- Justification of PFI.
- Inadequate prior knowledge of PFI - Most client organisations use PFI once so they have substantially fewer staff who fully understand the intricacies of PFI. In contrast, some private sector organisations have been involved with several PFI projects and therefore have significantly more experience.

In the Republic of Ireland the first bundle of PPP schools was 8 to 13 per cent more expensive than under traditional procurement. Such experiences are not limited to the education sector, with, for example, projects in the UK health sector being widely criticised. Despite this, the use of PPPs shows no sign of abating with deals amounting to £11 billion expected to be in place by 2010 in the UK. There is evidence that, in the long term, the cost of PPP capital will be higher than the cost of a loan raised by the issue of a public sector bond or low-cost public sector government loan. These higher costs will have to be met from the public purse (Connolly et al., 2009, pp. 1-19).

Some academic economists state that PPPs are a recipe for poorer services, higher costs and a loss of public sector control and accountability over vital services (Stern & Harding, 2002, pp. 126-131).

Gaffey (2010, pp. 351-372) demonstrated that while PPPs have the potential to provide innumerable benefits to the public, their use also presents some risks. One concern is that the public interest will be subsumed by the private entity's desire to maximize profits. For instance, a private firm's desire to increase revenue may cause the company to charge higher user fees or to increase user fees at a faster rate than would occur under a government service program. Another widely held fear is that private groups would seek to provide infrastructure or services in higher income areas that would yield greater revenue streams, neglecting disadvantaged, lower-income groups. The use of private financing is also not without some risk. First, while the construction of

a project by the private sector may be more efficient, the use of private funds may increase the cost of a project compared to an otherwise identical project funded by a governmental body. In contrast to the use of tax revenue to fund projects, the use of private funding generally requires that interest be paid to the investors on their loans, thus increasing the overall cost of the project. Even when governments must borrow money to fund infrastructure projects, they are often able to acquire the necessary funding at significantly lower rates than private investors. In the absence of outside factors, the use of privately financed PPPs thus results in higher overall costs for a project than for an identical publicly funded equivalent. The lease of existing infrastructure also poses risks to the public if the Government sells the rights to the infrastructure at less than their full value. Given the long duration of many infrastructure leases, some of which can be over ninety-nine years, miscalculations regarding potential profits, operating costs, and user demand can result in massive losses of potential public income. When the profits reaped by a private entity significantly exceed the investments it made into the project, the lease arrangement deprives the public of potential income that could be used to fund other needed programs. While many of the risks regarding PPPs are borne by the public, private investors also face significant risks when participating in a PPP project. Despite the fact that proposals and bids for projects are based on the best available projections of future needs, no public agency or private corporation can foresee all of the technological or social changes that can occur over lengthy contract periods. Unexpected developments - such as a revolutionary technical advancement that renders automobiles obsolete - would place immense burdens on private investors who would then be unable to recoup their investment. Although this is an extreme example, even slight changes in the use of facilities can drastically affect profit levels, causing private entities to undertake significant risks when entering into PPP projects (Gaffey, 2010).

1.5 Risk evaluation and transfer

Robinson et al. (2010, p. 46) state that costing of the output specification and the value of risk transfer is important in determining the bid cost from the private sector perspective and to assess whether it represents value for money from the public sector perspective. All projects are associated with some element of uncertainty and risks. Uncertainty generally reflects an unknown factor that could have a negative or positive effect on a project. A risk is generally known as probabilistic risk as the likelihood on projects can be assessed. The traditional view of risks is negative, often associated with harm, loss or other adverse consequences that would worsen the outcome of a project (downside variability). However, some risks could have a positive effect and will improve the outcome of a project - upside variability (Robinson et al., 2010).

Risk in a PPP relates to uncertain outcomes which have a direct effect either on the provision of the services (e.g. because the facility is not built on time), or the financial viability of the project (e.g. loss of revenue or increased costs). In either case the result is a loss or cost which has to be

borne by someone, and one of the main elements of PPP structuring is to determine where this loss or cost will lie (Yescombe, 2007, p. 242).

Effective project management and risk mitigation can be realized by properly allocating activities and risks to both the public and private sector. Project management risks related to schedule and budget are generally transferred to the private sector. However, risks should be allocated to the sector that is best able to absorb the risks. For example, the public sector may have the ability to pool risks from multiple projects that a single private firm would not have the ability to do. By doing so, not only are the risks likely to be better mitigated, but the associated costs and project delays may be decreased as well (Grasman, 2009, pp. 302-307). The public sector will aim to pass on as much risk as is possible, while still achieving value for money. The key objective from the private providers should be to only accept those risks that can be efficiently managed, priced and for which financing can be secured. Arrangements should therefore also be attractive to private institutional investors and need to be packaged differently (Brown, 2000, p. 1).

According to Akintoye et al. (2003, p. 38), we can list the risks as following:

- Site acquisition (possibility of obtaining the wrong land, or the right land at the wrong price);
- Feasibility studies (failure to identify key downsides with the intended project);
- Acquiring planning approval (unusual delays could arise, or permission may be denied for ill-defined schemes);
- Design (the technical solution may be unworkable or inefficient);
- Construction (there could be cost and/or time overruns, as well as poorly constructed solutions);
- Commissioning (may be delayed due to several unmet targets);
- Operating risks (including maintenance; malfunctions and delays are key issues here);
- Demand (revenue) risk and its change may render facilities underutilized;
- Occupation and usage risk over time could overstretch the capability limits of resources;
- Obsolescence/technology risk could render a scheme unfruitful;
- Residual value risk (achieving a high standard of facilities/services at the end of the concession period can be difficult);
- Economic risks (including fall in revenue; financiers pulling out, etc);
- Legislative/regulation risks (e.g. future planning regulations, health and safety features, etc. may affect the project adversely);
- Taxation risks (change in taxes/laws);
- Bid process/complicated negotiations, being lengthy and costly;
- Political (governmental support of international projects may not be forthcoming);
- Corruption;
- Consortium structure (partners could be mismatched);

- Local partners (could pose interface problems or could use different systems/procedures);
- Project management ability (may be inadequate for the present task);
- Existing infrastructure;
- Raw materials (supply, availability, etc.);
- Financing (foreign exchange);
- Force majeure (circumstances beyond one's control);
- Market competition (could erode the potential gains of a project);
- Revenue tariffs (may be lower than projections);
- Project performance (may be lower than projections);
- Foreign exchange;
- Inflation;
- Financing risks.

According to Yescombe (2007, p. 245), project risks can be divided into a few broad categories:

- general political or economic risks;
- risks related to the project site;
- risks related to construction;
- risks related to completion of the Facility;
- revenue during construction;
- operation-phase risks; and
- risks on termination of the PPP Contract.

Bajrambašić (2003, p. 148) mentioned three ways of reducing the risk: diversification, allocation to other participants and risk mitigation.

Akintoye et al. (2003, p. 114) listed risk mitigation practices:

- risk transfer;
- risk retention;
- risk reduction;
- risk elimination.

To reduce risk, it is very important to evaluate potential bidders. Bidders can be shortlisted using a pre-qualification questionnaire (PQQ) based on a number of technical and financial criteria to identify contractors or teams with the experience and financial standing to successfully deliver PPP projects. The example of PQQ shown in Appendix 1, and it is to enable a thorough evaluation and to choose potential bidders who have the capacity, capability and financial resources to undertake the project.

Yescombe (2007, p. 18) states that despite difficulty of quantification, risk transfer remains a key element of the VFM argument in favour of PPPs - namely, that the risks which are transferred can be better managed by the private sector, and thus the cost of doing this will be lower than if the risks are retained by the public sector. There is no doubt that PPPs encourage the public sector to identify project risks and think about risk transfer in a way which has not been usual in conventional public-sector procurement.

According to Yescombe (2007, p. 243), risk transfer is important for the Public Authority, as it is at the heart of the VFM case for a PPP procurement. But it will not offer the best VFM for a Public Authority to try to transfer risks which are so difficult for the Project Company, its lenders or subcontractors to limit or control, that if they do take them on they must charge heavily for doing so. The principle is that risks should be transferred to those best able to control them at the lowest cost. This also implies that whoever assumes the risk must have the freedom to handle it as they think best. Nonetheless, in order to take a PPP project out of the public budget, excessive risks cannot be retained by the Public Authority either, so a balance has to be struck (Yescombe, 2007).

In Table 1 example of a risk-allocation scheme and is presented. However, this table should not be considered generic table that could be used in every BOT project. It reflects the opinion of experts and the current practice according to BOT law in Turkey (Akintoye and Beck, 2009, p. 373).

Table 1. An example of a risk-allocation table

Risks	Risk allocation		
	Government	Contractor	Shared
Technology		x	
Financial		x	
Legislative			x
Design error		x	
Delay in approvals	x		
Construction		x	
Operation and maintenance		x	
Force majeure			x
Quality		x	
Delay in land acquisition			x
Health and safety		x	
Environmental		x	
Inflation		x	
Exchange rate		x	
Ground condition		x	

Source: A. Akintoye and M. Beck, *Policy, finance and management for public-private partnership*, 2009, p. 373,

Table 19.4

2 PUBLIC-PRIVATE PARTNERHISP WORLDWIDE

Many countries, from those with left leaning governments such as Sweden and Denmark to those with more market-focused governments such the USA and Australia, have turned to public-private partnerships.

Recently there has been enthusiasm for using public-private partnerships to improve the delivery of health and welfare services for a wider range of health problems, especially in developing countries (Barr, 2007, pp. 19-25).

The Chinese government used PPP model to develop infrastructure for Beijing Olympic Games in 2008. About two-third of the 32 sport venues including the main stadium - China National Stadium and 5 subway routes in Beijing are being developed with PPP vehicle. It is estimated that by 2008, the investments in infrastructures in Beijing alone will account for US\$ 36 billion, most of which will be through PPPs. The first sludge treatment project using BOT model in China with the world's largest capacity has been built and operated in Guangzhou since 2002 and will be transferred to the Guangzhou Government after 20-year of concessionary period (Sachs, Tiong & Wang, 2007, pp. 126-148).

Argentina also had positive experiences in water and sewerage services using PPP model (Levy, 1998, pp. 24-25):

- revenue up by 50 %;
- drinking water production capacity up 25%;
- network repair times less than twenty-four hours in 90% of cases;
- water charges down by almost 15% compared with the rate charged when the contract took effect;
- 800.000 more people connected to the drinking water mains and 400000 more to sewerage system.

The UK, perhaps the most experienced nation with regards to the implementation of PPPs, provides one of the most notable examples of the widespread and successful implementation of PPPs. Between 1992 and 2008 the UK instituted over 700 PFI projects, and plans to implement over 200 more projects worth over US\$ 400 billion over the next five years (Gaffey, 2010, pp. 351-372).

Table 2 shows that most private sector participation in the delivery of public sector infrastructure, in terms of number and value of projects, has been in the Latin America and Caribbean (hereinafter: LAC) region (36% and 44.4% respectively). The figures show that the Middle East and North Africa (MENA), South Asia (SA) and sub-Sahara Africa (SSA) countries, although representing 50% of the developing countries, have not benefited significantly from PPP, compared with the remaining three regions that have continuously used PPP to deliver public

sector infrastructure. The two regions, LAC and East Asia and Pacific (EAP), are responsible for 62.1% of the total number of PPI projects and 67.8% of the total PPI investment of the developing economies.

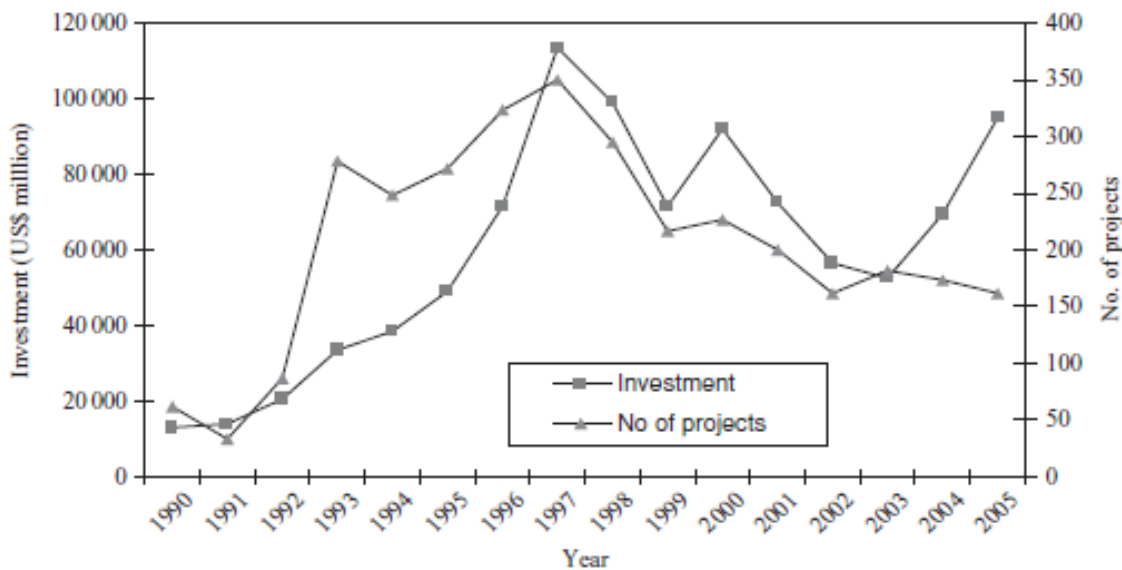
Figure 2 shows an overall trend in private investment in infrastructure since 1990 with the associated number of projects (Akintoye & Beck, 2009).

Table 2. Private participation in infrastructure investment: regional analysis (1990–2004).

Region	Number of projects		Investment	
	Total	%	US\$m	%
East Asia and Pacific	764	26.1	197282	23.4
Europe and Central Asia	550	18.8	136911	16.2
Latin America and Caribbean	1051	36	374622	44.4
Middle East and North Africa	87	3	42041	5
South Asia	224	7.7	52844	6.3
Sub-Saharan Africa	246	8.4	39291	4.7
Total	2922	100.0	842991	100.0

Source: A. Akintoye and M. Beck, *Policy, finance and management for public-private partnership*, 2009, p. 130, Table 7.1

Figure 2. Trends in private participation in infrastructure (1990–2005).



Source: A. Akintoye and M. Beck, *Policy, finance and management for public-private partnership*, 2009, p. 131.

Figure 2 have shown how private participation in infrastructure in developing countries peaked in 1997; this was followed by a steady drop, reaching less than US\$ 50 billion in 2003. Reasons for the decline include the Asian crisis of 1997. Another reason is the failure of PPP to deliver acclaimed promises which is said to have led to a decline in its use in many Latin American countries. Figure 2 shows that PPP investment is now picking up following the trough in 2003, while at the same time project size is becoming bigger.

The PPI in the ten countries represents about 56% of the total PPI investment in the 139 developing countries listed in the World Bank database of developing countries that had private participation in infrastructure. Overall the analyses show PPI investment is dominated by a small group of developing countries with relatively fast-growing markets; for example, three Latin American countries (Brazil, Argentina and Mexico) accounted for more than a third of total PPP investment in developing countries (Akintoye & Beck, 2009, p. 136).

According to a report by US Federal Highway Administration (2005), between 1985 and 2004 there were approximately 1120 major PPP projects funded and completed worldwide at a total cost of US\$ 450 billion. PPPs are now major initiatives supplying public works in the UK and have become increasingly popular in Asia. In 1999 Japan passed the PFI Law supporting the use of PPPs. Other Asian countries have adopted PPPs including Hong Kong, Taiwan, Thailand, China, Singapore, Korea and the Philippines. In 2000 Taiwan enacted The Act for Promotion of Private Participation in Infrastructure Projects and began to aggressively promote the use of PPPs. Up to April 2005 there have been 280 PPP projects funded in Taiwan, with US\$ 25 billion invested by private parties. Started in January 2007, the Taiwan High Speed Railway, a US\$ 18.4 billion project, is the largest PPP project in Taiwan and one of the largest PPP projects in the world. At 508m in height, the Taipei 101 building is currently the tallest building in the world and was also funded by a PPP (Akintoye & Beck, 2009, p. 267).

Rondinelli (2003) has presented some positive and statistically significant datas. In South America, the governments of Chile and Guatemala offered territorial concessions in large cities to companies that procure, purify, distribute, meter, and charge for water. In both countries, tariffs were approved by the national government, which also monitored water quality. In Peru, the government contracted out to private companies many of the activities involved in water supply, such as meter reading, computer services and billing and collection. Governments have contracted with international firms to privatize state-owned hotels in Africa and Asia, agro-industries in Senegal, Cote d'Ivoire and Cameroon, and mining operations in Latin America and Africa. In Bahia, Brazil, the state government has contracted with private firms to manage new public hospitals that the government constructed and financed. In Latin America and Africa state-owned industries are leased to private companies for long-term operation. The government has leased electricity and water supply enterprises in Cote d'Ivoire; steel mills and refineries in Togo; and hotels and farm holdings in Jamaica. Companies leasing facilities assume responsibility for

operation, maintenance and replacement of non-fixed capital assets. In 2002, the municipality of Ajman in the United Arab Emirates formed a 50-50 joint venture – the Ajman Sewerage Company--with a consortium of Black & Veatch, Thames Water, and other companies, to invest \$100 million in a wastewater network that will deliver services to 300,000 people in the emirate. The government granted the joint venture a 27-year concession in which the company will recover its costs by levying tariffs for service to be paid by customers. China has used joint ventures between foreign investors and state enterprises to obtain foreign technology and capital, learn foreign management and marketing techniques, increase foreign exchange-generating capacity, and promote joint research and development projects. In 2001, the Netherlands developed a BOT with a consortium led by Siemens Corporation to design, build, finance and maintain the superstructure of a high-speed rail system that will run from Amsterdam into Belgium. BOT or Build-Operate-Own (BOO) arrangements have also been used extensively in Malaysia and Turkey to build telecommunications systems, highways, utilities, and water supply systems, and operate them under a concession from the government. Debt financing is usually highly leveraged and the private consortium takes a small equity position. It also seeks loans from international financing agencies and commercial banks using future revenues from the projects to repay them. In Australia, the federal and state governments have used BOOs to expand public hospitals (Rondinelli, 2003).

Forrer et al. (2010, pp. 475-484, 347) mentioned that most PPPs last longer than election cycles, or even the average tenure of many public managers. PPPs in the UK generally have 30-year concession periods, and some PPPs in the USA have approached a century. In such cases, accountability depends heavily on anticipating the ex post issues and relationships. It also depends on procedures and decision rules embedded in the agreement. However, assessing the success of PPPs does not have to wait until the termination of the agreement. The quality of services can be compared to past performance, to performance by others, and to performance standards established in the PPP. In the UK, periodic audits of PPP performance are a key responsibility of the National Audit Office (Forrer et al., 2010).

2.1 Public-private partnerships in EU

2.1.1 Legal framework in EU

The rules, laws and policies of the EU have a significant effect on the use of PPPs. They can be divided into three main headings:

- EU rules on government borrowing, which creates incentives for PPPs;
- European Commission policies of promoting and encouraging PPPs;
- procurement laws, which affect how PPPs have to be created.

The EU fiscal rules were introduced in 1996 as part of the Maastricht treaty, and forms part of what is known as the Stability and Growth Pact. The Maastricht treaty stated that “Member states shall avoid excessive government deficits”, and that not having an excessive deficit was one of four convergence criteria for admission to European Monetary Union, and, later, adoption of the Euro. The “reference values” used for determining the maximum acceptable limits were defined as:

- 3% for the ratio of the planned or actual government deficit to GDP and
- 60% for the ratio of government debt to GDP.

Because of the importance of PPP, EU has adopted 4 directives:

- Works Directive (93/27/EEC);
- Supplies Directive (93/36/EEC);
- Services Directive (92/50/EEC);
- Utilities Directive (93/38/EEC).

In 2003 and 2004, two important documents were adopted:

- Guidelines for Successful Public-Private Partnerships,
- Green Paper on Public-Private Partnerships and Community Law on Public Contracts and Concessions

The Green Paper is meant to analyse the phenomenon of PPPs with regard to Community law on public procurement and concessions. Under Community law, there is no specific system governing PPPs. PPPs that qualify as "public contracts" under the Directives coordinating procedures for the award of public contracts must comply with the detailed provisions of those Directives. PPPs qualifying as "works concessions" are covered only by a few scattered provisions of secondary legislation and PPPs qualifying as "service concessions" are not covered by the "public contracts" Directives at all. The Commission "distinguishes two major formats of public private partnerships: the contractual format, also described as the concession model, and the institutional format which is often described as the joint-venture model (Palermo, 2009, pp. 633-665).

Nevertheless, all contracts in which a public body awards work involving an economic activity to a third party, whether covered by secondary legislation or not, must be examined in the light of the rules and principles of the Treaty of Rome 1957. This applies particularly for Articles 43 to 49 on the freedom of establishment and the freedom to supply services. These principles include, in particular, the principles of transparency, equal treatment, proportionality and mutual recognition. The Green Paper therefore describes the ways in which the rules and the principles deriving from Community law on public contracts and concessions are applied when a private partner is being selected in the context of different types of PPP, for the duration of the contract.

A set of questions intended to find out more about how these rules and principles work in practice are posed to enable the Commission to determine whether they are sufficiently clear and suitable for the requirements and characteristics of PPPs (Bult-Spiering & Dewulf, 2006, p. 62).

There is also a further meaning of PPP, which the European Commission has called an institutional PPP. This is a joint venture company, providing a public service, which is partly owned by a public authority and partly owned by a private company or private investors. EU countries began using PPPs following the Maastricht treaty which limited public borrowing. The EU itself has encouraged the development of PPP units in all countries to facilitate the creation of PPPs (Hall, 2008).

PPPs are characterised by (Green Paper on PPPs and Community Law on Public Contracts and Concessions, 2004):

- the duration of the relationship between the partners;
- the method of funding the project;
- the role of the partners in the definition of objectives, design, completion, implementation, and funding;
- the distribution of risks.

The Green Paper distinguishes two types of PPP:

- PPPs of a purely contractual nature - In this case, the partnership is based solely on contractual links and may fall within the scope of European Directives on public procurement;
- PPPs of an institutional nature.

The Green Paper therefore seeks to examine whether the Treaty establishing the European Community (EC Treaty) and its secondary legislation is suitable and sufficient to cope with the particular challenges posed by PPPs. This analysis looks at both the selection of the private partner and the implementation of the partnership.

The Green Paper launches a public consultation on the best way to ensure the development of PPPs under conditions of effective competition and legal clarity. It asks a total of 22 questions which deal in particular with the following topics:

- the framework of the procedures for selecting the private partner;
- the establishment of private initiative PPPs;
- the contractual framework and any changes made in the course of a PPP;
- sub-contracting;
- the importance of effective competition in the case of institutionalised PPPs (Green Paper on PPPs and Community Law on Public Contracts and Concessions, 2004).

2.1.2 Experiences in EU

More than one thousand PPP contracts have been signed in the EU over the past 15 years, representing a capital value of almost 200 billion euro. Fixed capital formation through PPP projects has become big enough to have macroeconomic and systemic significance in a number of countries, including Portugal and Spain in addition to the UK (Brude, Goldsmith & Valila, 2009).

Robinson et al (2010, p. 38) refer to Blanc-Brude (2007) who mentioned that six countries – UK, Spain, France, Germany, Italy and Portugal – account for about 95% of PPP projects (by number) in Europe. The UK is the market leader in Europe accounting for about three-quarters by the number of projects and 58% of the total capital value of European PPP projects. Transport projects also dominate the PPP market in Europe reflected in about 60% of the number of PPP projects and 84% by value (Robinson et al, 2010).

In Ireland there are over 100 projects earmarked for investment using the PPP model and there are PPP projects at various stages of procurement in sectors such as roads, public transport, education and health. Public investment is, however, constrained by the limits on public spending imposed by membership of the single European currency. This has made the PPP model attractive to the Irish Government, particularly where PPPs involve private finance (Hurst & Reeves, 2004, pp. 379-388).

Levy (1998, pp. 24-25) explored deeper and argued that one of the most successful areas for French companies has been in the field of water supply. Compagnie Generale des Eaux and Lyonnaise des Eaux handle around 80% of the private water and sewerage business in France, with the rest operated by SAUR and CISE (part of the Bouygues Group). The experience gained by private operators in their home market of France is an advantage for the export trade. This is born out by the success these groups have had in both developed countries (UK, Australia, Germany) and in emerging markets (Argentina, Southeast Asia, China, Cote d'Ivoire, Morocco etc.) They have generally been able to adapt their offer and know-how to different national systems (Levy, 1998).

Hungary is currently involved in almost 100 completed or ongoing public-private partnership projects, involving 54 school buildings or university campuses, 34 sports facilities, four motorways, two prisons, and the largest cultural centre in the capital, Budapest. Together, these involve long-term spending commitments of US\$ 16.5 billion in the form of annual fees for the next 20-30 years.

Wolf Theiss (2007) presented that the new Slovenian Public-Private Partnership Act entered into force on March 7 2007. The new Act systematically regulates the system in which government

services and private business ventures are funded and operated through a partnership between government and one or more private sector companies. The Act implements Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts and next to "construction works concessions" regulates also "service concession", which is entirely excluded from European Community secondary legislation. Pursuant to the Act, the operator of a PPP is chosen on the basis of a public tender, in which a special, innovative award procedure called competitive dialogue may be used when awarding particularly complex contracts. The Act obligates all contracting parties to examine the feasibility of public-private partnership for projects above € 5.278.000. In this case, the public sector is obligated to perform a test to determine the interest of the private sector in cooperating with the execution of the project (Wolf Theiss, 2007).

The value of all PPPs in Europe (excluding the UK) has risen sharply since 2004, and that is shown in Table 3.

Table 3. PPPs in Europe

Value of signed contracts, €m, 2001-2006	Period of time					Number of signed deals	Projects being procured Jan 2007 €m
	2001-04	2005	2006	2007	Total		
Spain	1000	1154	1664	309	4127	38	2931
Italy	890	2179	439	55	3563	20	29799
Ireland	720	121	623	1489	2953	18	0
France	0	1788	735	329	2852	26	3964
Greece	0	798	1600	3885	2398	7	6270
Germany	440	830	177	465	1912	34	9495
Belgium	1300	480	0	300	1780	5	3635
Netherlands	1302	0	431	0	1733	6	1211
Poland	1520	0	0	0	1520	2	1317
Austria	49	0	850	0	899	6	20
Finland	0	700	0	0	700	1	0
Bulgaria	0	366	288	366	654	6	2202
Cyprus	0	500	0	0	500	1	0
Portugal	278	0	32	140	450	6	1515
Other countries	488	2	528	15	1018	17	5221
Total (exc.UK)	7987	8918	7367	7353	31625	193	67580
UK	21849	6237	14111	10698	42196	501	

Source: D. Hall, *PPPs in the EU – a critical appraisal.*, 2008.

In European countries as a whole, transport infrastructure accounts for 82% by value of all completed, current and projected PPPs; 4% was defence; 4% healthcare; 3% sports and leisure; 2% education; 2% waste and water.

Akintoye and Beck (2009, p. 29) refer to HM Treasury (2006) reports which present that within the UK, by December 2006, there were nearly 800 signed deals with a capital value of £55 billion. Between 1995 and 2034, total commitments are believed to be £204 billion.

In the UK, over half of all the PFI/PPP projects are in health, education and local government - much higher than in other European countries. Over a 20 year period in the UK, 23.2% by value of PFI/PPP projects have been in the health sector, and 15.5% in education, 11.7% in accommodation/housing, 4.2% in waste and water, and 1.5% in other local government services. The proportion in transport has dropped sharply, due to the failure and cancellation of the £5.5 billion London Underground PPP. This single failure represents nearly 10% of all PFI/PPP projects ever signed in the UK.

Table 4. PPPs/PFI in UK

Signed projects, £m	Period of time					Cumulative 1987-2006	% share 1987- 2006
	2003	2004	2005	2006	2007		
Sector							
Transport	442	457	403	292	497	16605	28.4
Health	707	2681	992	3020	1911	13848	23.2
Education	373	575	1146	2434	2415	9268	15.5
Accommodation	332	718	443	1455	616	6416	10.7
Defence	775	121	600	1800	1000	6021	10.1
Telecoms & IT	60	25	540	0	490	2672	4.5
Waste mgt. & water	343	300	0	575	314	2537	4.2
Local government	361	295	98	0	0	910	1.5
Other projects	68	74	38	31	75	1118	1.9
Total	3461	5245	4261	9607	7318	59745	100.0

Source: D. Hall, *PPPs in the EU – a critical appraisal.*, 2008.

A number of multinational companies have developed as multinational specialists in building and operating public infrastructure and services. These include companies with sectoral specialisms, e.g. in water and waste Suez, Veolia, and FCC; construction companies e.g. Hochtief and Bouygues; and a large number of banks and other financial institutions.

2.2 Public-private partnerships in USA

The use of PPPs to implement infrastructure projects is not a new development in the USA. Early examples of PPPs include the Lancaster Turnpike, the first long-distance stone and gravel road in the country, which was built by the Philadelphia and Lancaster Turnpike Company from 1792–

1795; the Erie Canal, which opened in 1823; and the Transcontinental Railroad, completed in 1869. The use of PPPs accelerated in the US in the latter half of the twentieth century, spurred by examples such as Union Station in Washington, DC. In 1981, the US Congress enacted the Union Station Redevelopment Act, which authorised the US Department of Transportation to enter into a PPP to renovate the then-shuttered historic train station and return it to financial self-sufficiency. The station reopened in 1988 as a redeveloped inter-modal transportation facility and retail centre. Today, it is the most visited destination in Washington, with over 25 million visitors a year. Throughout the 1980s, 1990s and into the 2000s, PPPs became more frequently employed to provide transportation, water/wastewater, power, and academic and recreational facilities (Akintoye & Beck, 2009, p. 198).

Chambers and Downey (2007, p. 1) explored that from America's earliest transportation efforts, PPPs have played a vital role in building America's transportation network, particularly within the context of goods movement. In fact, the development of USA nation's transportation infrastructure historically has been a joint venture between the public and the private sectors. In the 1800s, private investment and public subsidies built the transcontinental railroads. In the early 1900s, private monies built and operated many ports and port facilities. Today, marine terminals across the country have been developed and still operate on a PPP-based model. That is, based on a defined public interest, capital is raised through public (municipal bonds, for example) or private sources to finance infrastructure, which is then often leased to private terminal operators (Chambers & Downey, 2007).

Trailer et al. (2004, pp. 308-315) state that until recently, partnerships have been avoided in the USA based on the argument that cooperation between producers of demand-side substitutes results naturally in price fixing. Cooperation between firms, which allows the partners to appropriate consumer surplus, is not socially desirable, is labeled "conspiracy," and is a criminal offense in the USA (U.S. Code, 2004). The traditional argument against collusion, in terms of social welfare, has been based on the negative effects of minimizing consumer surplus, and corresponding reductions in efficient resource allocation within the market (Trailer et al., 2004).

In the USA, PPPs have also gained growing attention. Twentythree states in the USA have enacted special legislation to enable PPPs on state transportation projects, while the National Surface Transportation Policy and Revenue Study Commission reported in 2007 that "public-private partnerships should play an important role in financing and managing our surface transportation system" (Siemiatycki, 2010, pp. 43-58).

Bult-Spiering and Dewulf (2006, p. 64) refer to Pietroforte and Miller (2002) who claim that historical evolution of public procurement policies in the USA shows a wide variety of procurement strategies, in which different delivery methods are combined. Methods range from design-build-operate (DBO) and DBFO to separate procurement of these services as in design-

bid-build (DBB) and design-build (DB). The National Council for Public–Private Partnerships (NCPPP) distinguishes a broad range of PPP contracts that apply in the USA, as does the General Accounting Office (1999). All the following are considered to be PPPs: BOT, build-transfer-operate (BTO), build-own-operate (BOO), buy-build-operate (BBO), operations and maintenance, operations, maintenance and management, DB, design-build-maintain (DBM), DBO, developer finance, enhanced use leasing (EUL), lease-develop-operate (LDO) or build-develop-operate (BDO), lease-purchase, sale-leaseback, tax-exempt lease, and turnkey contracts. However, in this book we use a narrower definition of PPPs and distinguish between concession and joint venture PPPs. DBFM, DBFO and BOT are considered to be concession-type contracts (Bult-Spiering & Dewulf, 2006, p. 65).

Unlike many countries (e.g., the UK, Ireland, the Czech Republic etc.), the USA has no single federal agency with oversight of PPP policy and issues. Authority to undertake PPPs is typically granted to agencies by the Congress on an agency-specific basis, or even function-specific or project-specific basis. There is no standard approach to federal PPPs for infrastructure analogous to, for example, the UK’s PFI. Thus, entering into a PPP to provide and operate a wastewater treatment plant on a USA defence installation would fall under different statutes than to provide a similar facility at a national park or forest. On the positive side, this fragmented environment makes the USA a virtual PPP laboratory in which a number of varied approaches to PPP structure and finance have been attempted, with varying degrees of success, providing valuable lessons learned. Less positively, this fragmentation makes the USA a more complex investment environment. In addition, although hundreds of PPPs are created in the USA each year, the lack of a central agency to track and report these transactions makes it more difficult to demonstrate the full extent of PPP activity (Akintoye & Beck, 2009, p. 200).

Highway public-private partnerships in the USA that GAO reviewed sought to protect the public interest largely through concession agreement terms prescribing performance and other standards (GAO, 2008).

Transportation is the largest area of PPP activity in the USA in terms of dollars (the number of water/ wastewater projects is larger, but the average transaction size is smaller). Transportation PPPs are supported as a tool for infrastructure development by the Department of Transportation (DOT) and several of its constituent agencies, in particular the Federal Highway Administration (FHWA), which have attempted to stimulate the use of PPPs. At the state and local levels there has been a high level of activity, with the Commonwealth of Virginia’s Public-Private Transportation Act of 1995 frequently cited as a model for other jurisdictions (Akintoye & Beck, 2009, p. 200).

The increasing reliance on PPPs may be attributed to several factors, but the most compelling has been a rapid growth in the demand for service, which has exceeded the public sector’s financial

capacity. For example, in the USA today there are over 4 million miles of public roads and highways, which experience roughly 2.9 trillion vehicle miles per year of use. In 1956, there were 65.153.810 motor vehicles registered in the USA, with the average vehicle driven 9623 miles per year (US Department of Commerce, 1958). In 2005, there were 241 193 944 motor vehicles registered, an increase of 370%, while the average vehicle was driven 12 190 miles, an increase of 27%, for a total increase in road utilisation of 470% (US Department of Transportation, 2006). Over the same period, public expenditures on roads and highways increased by only 20% in real terms, to US\$ 150 billion in annual expenditures. In the absence of public sector capacity to fund the need for infrastructure, private sector financing and expertise can greatly assist federal, state and local governments in meeting the public's needs. Today, public road ownership in the USA, in miles, is 78% local government, 19% state government and 3% federal, although the federal government's role in construction of new roads and highways is more extensive (Akintoye & Beck, 2009, p. 200).

Traditionally, public projects in the USA have been financed almost entirely with public money. This generally involves the procurement of an asset by a governing agency or body according to the terms of a legal contract along with specific profit agreements. Private companies are hired in all stages up to and including actual construction, after which the government assumes all managerial and operational responsibilities related to that particular asset. These assets all deliver services to the public over several decades, and they typically include the following (Taylor, 2007, pp. 28-30):

- railroads, bridges, toll roads, subways and highways;
- hospitals, prisons and schools; and
- water projects, such as causeways, canals, locks, dams, treatment plants and harbors.

Gaffey (2010, pp. 351-372) added that one of the largest PPP projects in the USA was the 1996 Military Housing Privatization Initiative (hereinafter: MPHI), which sought to privatize 70% of Department of Defense (DoD) owned housing on military bases and other federal property. A 2002 GAO inquiry into the first ten MPHI housing projects reported that the Government spent only US\$ 185 million to acquire housing improvements that would otherwise have required US\$ 1.19 billion in government funds. 50 States also have begun to use PPPs to maintain and improve highway infrastructure (Gaffey, 2010).

In the USA municipalities contract out more than 25 per cent of their services to the private sector. Among the services local governments in the USA most frequently contract out to private companies are street light maintenance, solid waste collection, street repairs, hospital management, mental health facilities, day care programs, ambulance services, bus operations, and drug and alcohol treatment programs (Rondinelli, 2003).

2.3 Public-private partnerships in the region

2.3.1 PPPs in Croatia

Croatia is one of the first countries that have recognised the importance of PPP and initiated the realisation of projects of this type. The first PPP contract in this country has been concluded in 1995. The subject of this, first Croatian PPP was “The Istrian Ypsilon Project” that included the financing, projecting, construction and management of a road network of 141 km, and the reconstruction of the Učka tunnel. The concession was signed for 32 years, after which the motorway becomes the property of the state with no further fees. The majority of PPPs in Croatia are related to projects for motorways and to waste water purification, because investments in these areas are too high for the state to realise them on its own (Muk et al., 2010).

The implementation of the Law on public-private partnership in the Republic of Croatia is entrusted to the Public-private Partnership Agency. The Agency was registered as a national institution in 2008, while it started to work in 2009. In Croatia, any PPP proposal and any draft contract need to be approved by this Agency. In addition, after the approval of the project drafts, this institution publishes the list of PPP projects. All the concluded contracts are enlisted in the register. In such a way, a database of PPPs is established, while the transparency of the entire project is ensured (Muk et al., 2010).

The Act on public-private partnerships refers to:

- The process of preparing, proposing and approving proposals for public-private partnership;
- Rights and obligations of public and private partners; and
- The establishment and jurisdiction of the Agency for Public-Private Partnership.

The PPP Agency in Croatia also educates national experts in this area. The experts are educated by participating in international cooperation and by studying domestic and international PPP practice. In this way, the Agency also becomes the birthplace of proposals for laws and derived legislation that will regulate PPP, while providing expert interpretation of these regulations.

City of Varazdin is the first example in Croatia that applied the practice in which the new model of financing school construction and reconstruction of the county's palace was used. City of Varazdin choosed a BOT model. Private partners have financed the construction and maintenance of public buildings owned by the City of Varazdin while the City of Varazdin committed to pay to its private partners monthly fees for a period of next 20-30 years. City of Koprivnica applied the BOT model to finance the construction of new schools (Damjanovic et al., 2010).

However, despite the fact that Croatia was among the first countries to recognise the significance of a specialised PPP coordinating institution, this country also faces significant challenges in PPP

realisation. Namely, there are some examples of PPPs in Croatia that have not brought the desired results to the state. Such was the case with the wastewater purification device in Zagreb, which was widely polemicised in public debates, due to multiple deficiencies in the implementation phase of this project. The main characteristic of this project was poor risk distribution, while a high fee burden was transferred to citizens and to companies. The construction contract for this device contained highly unfavourable conditions, and it cost the citizens of Zagreb much more than expected.

Sectors with contracted PPP projects:

- Highways – 2 projects;
- Buildings and institutions of public interest (e.g. schools, public administration...) – more than 30 projects;
- Sports halls – 3 projects;
- Urban infrastructure (garages, bus/railway stations) – more than 3 projects;
- Environmental projects (urban wastewater treatment facilities)

New projects are announced in following sectors:

- Buildings and institutions of public interest (hospitals, prisons, schools);
- Urban infrastructure;
- Environmental projects (landfills, wastewater treatment);
- Transport infrastructure (seaports, airports, railroads);

2.3.2 PPPs in Serbia

Over the past few years, municipalities in Serbia have made the first steps towards the introduction of public-private partnerships in the area of utilities. Desperate need for new investment in traditionally neglected sectors, such as public transport, heating, natural gas supply and solid waste management, have made the municipal authorities in Serbia to establish a PPP and open its doors for some more innovative forms of delivering utility services (Damjanovic et al., 2010).

As PPPs have not been regulated by a single piece of legislation in Serbia, but by a number of specific (primarily Law on Concessions, Law on Public Procurement, Law on Public Enterprises and Performance of Activities of General Interest, and Law on Communal Activities) as well as sectoral (e.g. Law on Waste Management etc.) laws instead, and these laws often not being mutually adjusted, the need for a single piece of legislation has been greater and greater as time went by and number of PPP projects has been on the rise. Finally, Ministry of Economy and Regional Development has come out with a draft Law on Public-Private Partnerships and Concessions in July 2011, which was primarily based on EU law, and made available to

stakeholders within the public discussion. Along with the new Law on Public Property, which will finally entitle units of local self-government to the property rights granted by the Constitution of the Republic of Serbia, which has been adopted in draft version by the Government of the Republic of Serbia, and which will be open to public discussion, as well as with the current work on the draft Law on Communal Activities, and forthcoming work on the bylaws on PPP in construction sector, it seems that legal framework for PPPs will be completed until the beginning of 2012. However, it remains to be seen whether the new laws and regulations will be adopted taking into account the possibilities for practical application, primarily regarding their mutual adjustment, as well as what will be the future for PPPs based on the current body of legislation. Finally, having in mind that PPPs are getting the regional dimension (e.g. Bar-Boljare highway, a Montenegrin PPP project, after three unsuccessful rounds of selection of partners, will be realized with technical support of Western Balkans Investment Framework - WBIF, special consideration should be paid to comparative experiences from neighboring states, such as Croatia, having a developed PPP framework, as well as large number of successful PPPs.

Complex and unclear legal environment, as much as risky market for investments are the things that prevent incentive for private sector investment in activities of public utility services and this is the result of poor or incomplete institutional structures, lack of strategy for the reform of the public utility companies etc.

Analysis of the PPP in Serbia is based on the experiences of the City of Belgrade's public transport sector and its struggle to provide safe, secure, reliable and clean public transportation for citizens. The City is faced with problems of rehabilitation and capacity expansion of the city landfill in Vinca, on which is disposed the most of the urban solid waste, and establishing a PPPs large-scale systems for improving water supply and sewerage. Two small-scale PPP based in Kikinda and Smederevska Palanka, that bring income from parking services, and secondly to maintain the landfill in Smederevska Palanka, illustrating the results of the PPP in the smaller municipalities (Damjanovic et al., 2010).

Examples of PPPs in Serbia:

- Public transport – Belgrade;
- Treatment and disposal of solid waste – Belgrade;
- Water supply and sanitation – Belgrade;
- Parking services in the Municipality of Kikinda;
- Hygiene and landfill in the municipality Smederevska Palanka.

2.3.3 PPPs in Montenegro

Public-private partnerships (PPP) in Montenegro are increasingly used as a mechanism for

covering the budget deficit. Moreover, the government has opted to intensify the use of this model in the privatisation process, thus opening all the sectors to PPP. However, as PPP is still in its developmental stage in Montenegro, the projects that have been completed through public-private partnerships do not mirror the positive examples from other European countries. Additionally, although the legislative framework of PPP has been enhanced by the adoption of the 2009 Law on concessions, it is still not fully harmonised with the EU's directives regulating this area.

According to Muk et al. (2010), the number of public-private partnerships in Montenegro is a relatively large one. However, despite the large number of partnerships that have been accomplished in the name of the overall public interest, there is no central register that would contain the details of the implementation of projects, or the names of the participants to tenders. Public-private partnership in Montenegro is regulated by Law on participation of private sector in the procurement of public services and the Law on concessions (Muk et al., 2010).

The Government of Montenegro has opened all the sectors to the PPP model, including healthcare and educations, the port, and the railway, energy, tourism, and the valorisation of attractive locations in the coastal and northern areas in Montenegro.

One of the projects of valorisation of tourist locations on grounds of PPP that have already been initiated is the construction of a tourist city at the Luštica peninsula. Namely, 6.8 million square meters of land at the Luštica peninsula is a subject of the agreement between the Government of Montenegro and the Egyptian company "Orascom Development Holding". A tourist city complex, containing 8 hotels and other tourist capacities such as a shopping mall, a school, a healthcare institution and golf terrains, will be developed at Luštica. The total value of the project is €1.1 billion (Muk et al., 2010).

On the grounds of the basic document "Concessions according to the combined DBOT arrangement for the exploration of watercourses and the construction of small hydro-power plants in Montenegro", the concessions were allocated for the period of 20 years. We can mention two important projects (Muk et al., 2010):

- Wind-power plants nearby Ulcinj and Nikšić;
- Construction of hydro power plants at the Morača River.

Hence, the construction of the motorway Bar-Boljare and the share of the Adriatic-Ionic motorway through Montenegro are of a strategic importance. Given that the expected expenses for the construction of these two motorways will reach at least €2.8 billion, 85 the government has opted to realise these projects through PPP. Hence the allocation of the concession for the construction of the Bar-Boljare motorway is the first major PPP project in Montenegro.

The PPP concept in the Capital City has been characterised as a significant management model. Initially, this type of privatisation was only applied to construction related projects, such as the tribunes of the stadium of the football club Budućnost, shopping mall “Mall of Montenegro”, etc. Such projects were the least complicated and the most profitable for the municipal authorities.

Other PPP projects are implemented in municipalities like Budva.

There are also other important PPP projects in the region like the following:

- Tirana International Airport – 20 year concession;
- small hydropower plants and two large hydropower plants based on the BOT concession in Macedonia;
- concession for the existing airports in Skopje and Ohrid, and for construction of an additional airport in the Stip area – Macedonia.

3 PUBLIC PRIVATE PARTNERSHIPS IN BIH

In this chapter it will be discussed about obstacles, legal framework and perspectives for PPPs in BiH.

3.2 Obstacles and legal framework for PPPs in BiH

In BH foreign aid is declining, budgets are facing hard constraints, infrastructure is outdated, inadequate to support economic growth and to serve the citizens. PPP is possible in all areas of meeting public needs, particularly in energy, mining and industry, transport and communications, water management, agriculture and forestry, communal services, health, education, social sector, culture, protection of cultural and historical monuments, sports, tourism and environmental protection (issues).

However, BiH has no adequate legal framework that defines the PPP on the state level. This form of partnership, but without an adequate, harmonized legal framework (except for Republic of Srpska since June 2009, Brcko District since February 2010, Canton Sarajevo and Una-Sana Canton), appears in some forms at the local level (eg. building a parking space).

Lately more frequently is mentioned this kind of "association" of public and private sectors resources, and is one of the possibilities of attracting domestic investors. Although investment opportunities in Bosnia and Herzegovina are promoted, the center of animating the investor is focused on foreign investors, without addressing the special attention to the existence and

possibilities of mobilizing domestic private capital in projects which will be based on the principles of public and private partnership.

First laws which regulates PPP in BiH are law on PPP of Republic of Srpska (hereinafter: RS) from 2009 and law on PPP of Brcko District from February 2010. Federation of BiH (hereinafter: FBiH) has prepared draft law on PPP and now it is in the phase of adoption. Because the procedure of adoption of law in FBiH is not finished and there is a need to meet the specific demand for public services by joining the resources, capital and expertise, there is a need to legislate this specific area. Two cantons adopted laws on public-private partnership. Those cantons are Canton Sarajevo and Una-Sana Canton. On the state level there is no law on this matter. Legislation should be harmonized on the way that represents a guide or certain framework to the governments on local level (entities, cantons, municipalities). Legal regulation of public and private partnerships in most EU countries are integrated into the Law on Public Procurement (Slovakia, Hungary, France) or integrated in the laws on concessions (Scandinavian countries). According to the Law on Public Procurement of BH from 2002 the concessions are excluded.

Assigning concessions by the competent authorities are regulated by a total of 14 laws on concessions and associated laws and regulations with the force of the state, entity and cantonal levels.

There are two basic procedure for awarding concessions in BiH (as well as entity level):

- public invitation procedure - means that we have done the study and designed a project for which we are inviting tenders;
- procedure of “unsolicited proposals” - when concessionaire design project, the study of economic justification and offers them to public sector.

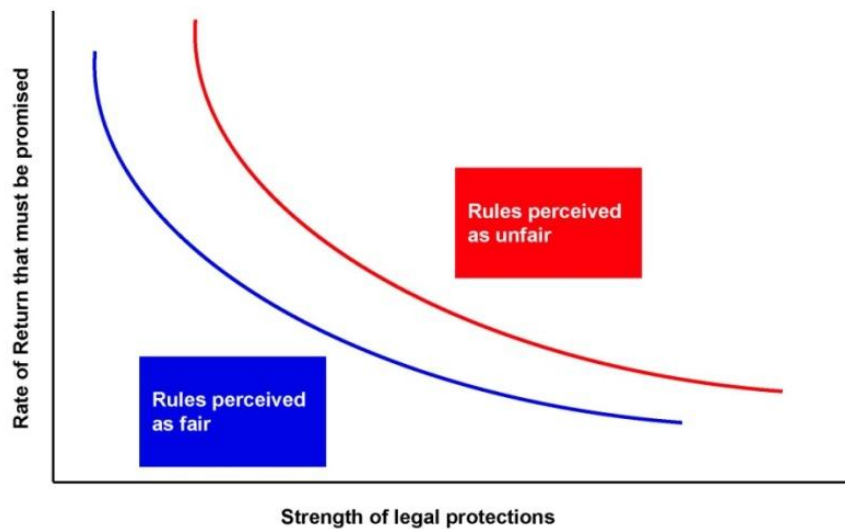
According to Public procurement agency of BiH, the vast majority of concessions and PPP contracts has been awarded by following the procedure of “unsolicited proposals”, without applying an open, transparent and competitive process. A formal cooperation between the commissions for concessions at different levels of government is not established. Administrative costs of such systems are high and the competence of different institutions tend to overlap.

There are a lot of adopted development strategies, plans and set goals for development at the state, entity and local levels. So far on concession market there have not been offered yet any significant projects. Considering that this is the job of the public sector, it raises the question whether the public sector has built organizational structure that can successfully operate. Concession and PPP in BiH are relatively new models of funding and a very small number of people (especially in the public sector) has sufficient experience and knowledge about them. If we look at the PPP cycle phases (Appendix 2), we can see that preliminary phase – legislation, institutional capacities, political commitments – is condition for initiating PPP.

Besides regulatory climate, poor political climate, the potential instability of new democracies such as Bosnia, the special agenda of government officials and the special status of some services (e.g. access to water) can create barriers to starting or maintaining public-private cooperation. Wherever is possible authorities should offer to private partners a guarantee that political factors will not lead to disruption of the contractual partnership.

The Figure 3 shows relationship between legal protection of private partners and expected rate of return of the private partners: higher implementation of laws and stronger protection leads to lower rate of return, because of lower investment and business risks.

Figure 3. Relationship between legal protection of private partners and expected rate of return



Source: World Bank, *Public private partnerships.*, 2007b.

So, in addition to poor legal framework and high level of political instability, barriers for developing PPP in BiH are disunity and the complicated structure of state government, dysfunctional administration, the high level of corruption, and poor awareness about the possibilities of financing public projects essential for the development and progress of BH society.

The construction and operation of any BOT/PPP projects cannot proceed successfully without the governments' cooperation and assistance, but sometimes the cost for such cooperation and assistance is too much for the investors due to the corruption of some local government officers (Sachs et al., 2007, pp. 126-148).

PPP in developing countries has not advanced to an extent that is comparable with developed countries. The infrastructures mainly needed by the developing countries to support their

economic activities are those related to transportation, energy and potable water and, more recently, telecommunication. Many developing countries cannot afford them without affecting other economic activities because of cost considerations (initial capital outlay and cost of operation and maintenance) and lack of appropriate technology to support them. All this opens avenues for PPPs to play a role in the design, construction, operation, maintenance and finance infrastructure of developing countries. Funding major infrastructure development is a major problem for many developing countries that often rely on government annual capital investment budget or foreign aid (Akintoye & Beck, 2009, p. 128).

The UNDP (2006) Memorandum to the UK Select Committee on International Development identified major barriers to the implementation of PPPs; these included an absence of efficient, transparent and participatory policies, mechanisms, and institutions in the developing countries which has consequential effects on an increase in the transaction costs of PPP projects. Other barriers identified for private sector development and investment were lack of adequate capacity and the absence of innovative partnerships and business models, of a policy environment to facilitate cooperation and partnerships between public and private actors and access to financing, of safety net mechanisms and basic services. However, UNDP is of a firm belief that it is through PPP that the developing countries can create employment and income growth as well as improve the quality of life for the poor (Akintoye & Beck, 2009, p. 128).

As a relatively new form of procurement, there are shortages of PFI/PPP experts. It is therefore important that lessons learned about processes and tacit knowledge of people involved are codified or transferred effectively to other individuals or organisations interested in PFI/PPP projects. This is absolutely critical for countries where there are public sector budgetary constraints and the need to improve the level of public services through PPP. Understanding the role of governance and how to transfer lessons learnt through knowledge management and capacity building is fundamental to facilitating a sustainable improvement in the delivery, efficiency and effectiveness of PFI/PPP projects (Robinson et al., 2010, p. 10).

Projects procured under the PPP/PFI approach require significant private investment and expertise. Skills are required for planning, design, construction, operation and maintenance of completed facilities and for monitoring the services provided. In the public sector, specialist expertise is required for project initiation, needs assessment, options appraisal and developing a business case for PFI projects. If specialist expertise is not available, technical, financial and legal advisers will be required. Technical advisers include planners, architects, engineers and quantity surveyors, asset and facilities managers and other specialists dealing with all aspects of planning, design, construction and operation. For example, this may include health, transport, education planners and epidemiologists. Equally, it is important to have the range of expertise or skills in private sector firms or the consortium. Highly specialised knowledge required to undertake different tasks in PFI/PPP programmes, for the public and private sector, should be carefully

assessed in terms of skills set required as part of the policy development process. Lack of skills could seriously derail the implementation of PFI/PPP programmes. The type of skills and investment required is crucial particularly at the early stages of implementation. In transition and developing economies where resource markets are often underdeveloped and unpredictable, there could be significant increases in transaction and infrastructure development costs due to shortages of various technical expertise. It is therefore essential that sufficient investment (from the public and private sectors) is available to support the implementation of PPP/PFI projects (Robinson et al., 2010, p. 22).

3.2.1 Analysis of legal framework in BiH

Specific structural / administrative – territorial arrangement of BiH, as well as the jurisdiction with regard to legislative regulation in specific areas dictate specific legal framework for PPPs and concessions.

At the state level the following regulations are relevant:

- Law on Concessions;
- Law on Foreign Direct Investment;
- Law on Public Procurement.

Contrary to the EU regulations, legislative regulations of concessions and public procurement and PPPs are separated. Such a state will have to overcome – there is no need for a separate regulation, and future steps towards joining the BiH and the EU will require harmonization. Considering the current political situation, forecast that law on the state level will be adopted cannot be based optimistic basis.

State law on concessions determines the awarding of concessions from the authorities of BiH, which is an obstacle for concessions that require the permission of authorities at lower levels. In the case of joint jurisdiction of BiH and/or the FBiH and/or the RS and/or the Brcko District, the competent authorities coordinate the type and conditions for awarding concessions, and any disputes arising from such joint responsibilities are handled by state Commission for concessions.

In Article 2 of the Law on PPP of RS, subject of public - private partnerships can be construction, use, maintenance and management or reconstruction in order to meet public needs in the areas of: transport (air, roads, river, railway) and its infrastructure, educational, cultural and sporting infrastructure, health infrastructure, utility infrastructure, infrastructure of information and communication, innovation - entrepreneurial infrastructure, environmental management and solid waste management, etc. These areas are mentioned in Article 7.

According to the Article 8 of the same law, PPP contracts can be in two basic forms:

- a) The contractual form of PPP in which the partnership is based solely on contractual relationships (concessions and PFI).
- b) The institutional form of PPP in which partnership includes establishment of common company for implementing the given project of PPP.

In Article 10 it is mentioned that public partner can suggest other form of PPP. Contractual form of PPP is not considered long-term contracts of service which the public sector only obtain services without capital investment partners of private contracts neither contracts for design, construction and performance for the public sector. Contractual forms of PPP according to this law are concession and private financial initiative.

In the Republic of Srpska were granted more than 200 concession contracts:

- More than 100 contracts in the energy sector;
- 66 contracts in the mining and minerals sector;
- 50 contracts in the agricultural sector;
- 1 contract for the construction of roads (400km), and it is the most important one.

Unfortunately, some contracts have been cancelled because they were not well prepared. The most contracts in the energy sector is not realized (only two implemented). Agreement on the construction of roads has not been yet finalized. There are huge problems with banks regarding financing.

According to Draft Law on PPPs, Article 6, in FBiH, subject of public private partnerships can be design, construction, reconstruction, maintenance and management of capacities in all areas in order to meet public needs. In this law, there are basic features of PPPs regards what private partner can get from public partner, or what public partner can concede to private partner like funds, property and rights.

In Federation of BiH, cantons generally awarded contracts. So far, just two cantons adopted Law on public-private partnerships – Canton Sarajevo and Una-Sana Canton. And here the situation is similar, but unfortunately there is no precise data on contracts award.

So we have the results:

- many contracts have been canceled;
- many contracts are still waiting;
- the contract for the construction of roads has not started yet;
- there are no data about contracts made in cantons (or FBiH).

Domestic and foreign persons and companies may be founders of health institutions in all forms of ownership, and only to the level of special hospitals.

Law on PPP of Brcko District gives the possibility of establishing a special purpose company (DPN), which establishes a private partner alone for the purpose of concluding contracts with public authorities and the implementation of PPP projects.

Government (on its own initiative or on the Commission proposal) may engage consultants for issues relating to finance, taxation, insurance, legal, technical or other questions concerning the project.

Concession contracts are not the best solution for the healthcare sector. The Law on Concessions of Bosnia and Herzegovina is clearly predicted that the Council of Ministers decides on the type and scope of the concession, as well as the extent of the granted concession, that is confirmed by the Parliamentary Assembly of BiH. In the decision there is no facilities of medical institutions. Also, the Law on Concessions regulates what may be the subject of a concession. Even in this decision there are no objects of health care institutions. In the present laws, there is no option to give a real estate to private partner to provide a service. However, it should be noted that the Act provided that the subject of a concession may be right to carry out activities of utilities and other public services, which is confirmed by the cantonal regulations. This means that if some cantons are intended to give a concession of public health service, they must also adopt their specific regulations. These laws must clearly regulate what public good may be the subject of PPP.

In health care the issue of ownership is very specific. The question of privatization in health care sector is one of the major challenges of the reforms, because the same is still not regulated. A law on privatization of social services is not adopted, nor special law on privatization in health care in general. The law is only about the privatization of enterprises and banks, but not social services. We should mention the fact that the High Representative for Bosnia in 2005. declared The law on temporary prohibition of the use of state property of the Federation of Bosnia and Herzegovina and which, among other things, temporarily prohibited the disposal of immovable property. In Article 3 Paragraph 2 of this law, on the proposal of the interested party, it is allowed to decide that certain state property can be taken as exception from the temporary prohibition established by this law.

3.3 Experiences and perspectives of PPPs in development of BiH

It is increasingly obvious that government can not satisfy the growing demand for services and needs support of other sectors in society. The link between infrastructure investment, growth and employment, and poverty reduction is clear and very strong.

Public and private sectors want to raise the general standard of living - governments and the community want to work on it in order to reduce poverty, and the companies want to achieve that more people buy their products. Both sectors also want to improve connections at the local level, especially in "emerging markets" - the business sector in aim to the growth of market; and governments and communities in aim to promote the development and exchange of ideas. In addition, both sectors wish to provide sufficient services - government and community in order to maintain low costs and increase coverage by services, and the business sector because it increases profits.

No government is going to stand up and say it is going to cut health care spending so it can invest more money in infrastructure projects (Lou, 2008). Infrastructure has been defined as "comprising those basic services without which primary, secondary and tertiary productive activities cannot function." It includes non-tradeables such as (Navnit & Srinivasan, 2005):

- a) transportation services - road, railways, ports and civil aviation;
- b) telecommunications,
- c) power,
- d) water supply,
- e) sanitation; and
- f) solid waste management.

Savings resulting from PPPs could be allocated to other core government functions (health education, welfare and security) that will increase economic stability and contribute to economic growth and job creation.

The success of PPPs depend on stable legal and political environments, which is often absent in developing countries. Government in BiH should have the business plan that identifies a series of comprehensive goals to be achieved, like it is done in Alberta – Canada. These goals should include a commitment to economic development and encouraging investment (Robertson, 1997, pp. 23-27).

Priorities for investment of Government of Federation of BiH from 2007 are:

- investment in transport infrastructure;
- investment in health service infrastructure;
- investment in infrastructure for environmental protection;
- investment in the regulation of water and hydropower plants;
- investment in water supply and sewerage;
- investment in cultural and sports facilities.

Communities across the BiH face huge obstacles as they struggle to provide reliable water service in the face of aging infrastructure, growing demand, and the increasing complexity of water management. To meet their obligations and renew their water systems, communities must invest vast amounts of money, resources, and expertise. Even with ready access to capital and a willingness to spend it, many communities lack the in-depth experience needed to design and/or implement their own plan. One solution that is expected to gain significant acceptance over the next few years is public-private partnerships, whereby private-sector water companies assist in designing, rebuilding, and operating publicly owned water systems.

It is important to first consider the types of challenges communities are facing (Young, 2007, pp. 56, 58, 60):

- Aging infrastructure - With water-related services being twice as capital-intensive as electricity and three times as capital-intensive as gas, many communities simply cannot afford to upgrade their systems, some of which are decades to a century old. Many municipal leaders believe that federal and/or state governments will make grants and other low-cost funding available as a way to deal with this infrastructure challenge
- Increasing complexity of managing a water utility - efficient water management is no longer simply about supplying water to the tap. It encompasses wastewater treatment, stormwater management, water reuse, and desalination-processes that require a high level of skill and expertise to design, implement, and manage.
- Growing demand - Increasing demand for water and the pressure it puts on infrastructure take a variety of forms. In many cities, growing populations drive demand. As a result, extensive planning and expertise are needed to develop cost-effective regional water supply solutions.

Mays and Roy (1999, pp. 66-68) state that in recent years, public-private partnerships in wastewater facilities have been on the rise. A private company often brings in a level of specialization that usually is impractical or too expensive for a municipality to develop alone. Other reasons for a municipality to privatize operations range from difficulties retaining certified staff to challenges complying with ever-stricter regulations, to the need for financing, designing and building a new or expanded system. (Mays & Roy, 1999).

According to Abramov (2010, pp. 481-494), in countries torn apart by war and armed conflict, the state is fragile, rule of law is weak, and institutions are largely absent. Such conflict and postconflict countries face many economic development challenges to security, governance, economic and infrastructure development, and reconciliation.

Siemiatycki (2010) shows how attracting private financing for public investment can distort regional planning priorities, favoring projects with the greatest potential of recovering costs through user fees (Siemiatycki, 2010). In many jurisdictions, the availability of funding from

different levels of government plays a large role in determining regional strategic transportation plan priorities, and thus the selection and design of individual projects (World Bank, 2007a).

According to Wu (2010, pp. 304-312), promoting the regeneration of historical buildings by introducing suitable economic activities as a means to generate economic and social benefits has become a global trend. However, due to the limit of financial resources and management technology of the public sectors, how should the reuse and management historical buildings be implemented through the concept of PPP that the results can benefit historical buildings, investors, as well as the society remain a critical research issue. Historical buildings are valuable economic and cultural resources to promote place marketing and tourism development. However, the reuse of many important historical buildings in BiH currently faces several critical problems regarding planning and management (Wu, 2010):

- current historical preservation focuses on the designated heritage buildings, and lack of a comprehensive management for their surrounding environment;
- traditional urban contexts and living styles associated with historical buildings usually cannot merge with rapid urbanization and the development trend of modern cities;
- most urban preservation work is funded by the government but limited funds available create difficulties in maintenance; and
- poor positioning of reuse plans for the historical buildings and a lack of efficient management, resulting in the original goals of cultural tourism and historical education not being achieved (Wu, 2010).

Bosnia and Herzegovina is a country with a long history and culture. During that time, numerous cultural and historical monuments are built and they represent a significant potential for tourism. However, due to lack of money, these monuments are not maintained, and this potential is not exploited. This is an opportunity for entry of private capital.

Negotiations between the partners should begin by explicitly defining the risks and identifying and agreeing on who is in the best position to bear the responsibility for the risks in the partnership (Forrer et al., 2010, pp. 475-484, 347). The partnership may affect a variety of social and environmental systems, including educational, health related, legal, and environmental systems. In assessing impact, social equity effects, such as the differential impacts on socioeconomic segments of society, also should be considered. The distribution of social impacts can have implications on the political system by affecting voters and citizen's opinions, thereby potentially affecting electoral outcomes (Forrer et al., 2010).

Strong expansion of PPP in the last fifteen years in the world has not bypassed tourism where many forms of partnership and numerous finished projects can be identified (Peric, 2010, pp. 1129-1141). However, despite the fact that tourism is recognized as a powerful generator of

economic activity, BiH experience in implementing the public-private partnership projects in tourism is still very limited.

Some enabling factors for PPP development include: creation of contractual and legal frameworks to expedite PPP projects; development of guidelines that promote PPP contracts; partnering role in procurement process; and PPP strategy that focuses investment in optimum areas (Akintoye & Beck, 2009, p. 141).

Political support is crucial to build momentum and maintain confidence in PPP schemes. More significantly, it helps to ensure that the concerns of the private sector in the marketplace and other stakeholders are adequately addressed. An appropriate monitoring and evaluation mechanism is a critical aspect of policy development to control the behaviour of actors, and to avoid poor decision-making so that undesired consequences are eliminated or minimised during the different phases and stages of the PPP/PFI project. Monitoring and evaluation mechanisms are needed to reduce potential abuse from key actors including the private contractor (agent) to ensure that the intended policy outcomes are achieved and the public sector client (principal) gets value for money in the delivery of services (Robinson et al., 2010, p. 18).

Public infrastructure is vital to a nation's production and distribution of private economic output as well as to its citizens' overall quality of life. Hard or economic infrastructure commonly comprises roads, transport systems, communications, water and sewerage, electricity, gas and ports; soft or social infrastructure comprises schools, universities, research facilities, military housing, waste water treatment plants, prisons, hospitals, libraries, public buildings and parks (Bult-Spiering & Dewulf, 2006, p. 33).

There is no single best PPP approach: the choice for a certain PPP arrangement should, however, be a strategic one.

Learning by doing is an oft-heard statement by people working in practice. However, it is the role of academics to generate insights, to build up theories and to develop innovative tools which can be used in that respect. Therefore, it is important to test and check academic knowledge and tools in practice. Academic and practical research are often considered to be at odds with one another; it should not be like that. Action-oriented research in which practice and science co-operate is an important condition for generating and disseminating new insights in PPP (Bult-Spiering & Dewulf, 2006, p. 199).

BiH can use help that some respectable international organizations have offered. Networking is an efficient means of sharing knowledge and experience:

- EBRD - Public-Private Partnership in developing municipal infrastructure;

- PPIAF (Public – Private Infrastructure Advisory Facility - WB Group) which worked on “Port reform management of Brčko port“ - Towards improvement port efficiency and operational performance;
- IFC (International Financial Corporation / WB Group) which participated in number of projects in transitional countries: Ashta Run-on-River Hydro Power Plant, Albania – Verbund, 2008; KESH Power Distribution, Albania – CEZ, 2009; Bar-Boljare Full Motorway, Montenegro - Konstruktor, 2009; Moraca Hydro Cascade Power Plants, Montenegro;
- UNECE (United Nations Economic Commission for Europe), etc.

Because of its importance, we will separately discuss about PPPs in health care and transportation.

3.3.1 PPPs in health care

Barr (2007, pp. 19-25) states that public-private partnerships have become a common approach to health care problems worldwide. There are a number of ways a public-private partnership project can operate in an effort to improve health and welfare services. These include (Barr, 2007):

- establishing direct service provision by a new public or private entity with joint funding;
- expanding existing private sector service provision through increased public sector funding, or conversely, expanding existing public sector service provision through increased private sector funding; and
- establishing new private sector service provision through new public sector funding, or conversely, establishing new public sector service provision through new private sector funding.

Addressing questions such as the following should use both qualitative and quantitative methods of analysis, as appropriate to the situation:

- What were the intended outcomes of the public-private partnership effort?
- Did the effort target specific aspects of health and wellbeing for improvement?
- Did the effort identify specific, measurable indicators of the intended outcomes?
- Did the effort identify specific target levels to be attained for these indicators?
- Are the methods used to measure the outcome indicators reliable and consistent over time?
- Did the indicators change during the period of the effort under study? If so, in the desired direction? Did they attain the target levels?

- Are there sufficient longitudinal or comparison data to support the conclusion that identified changes in the indicators were the result of the programs and activities under study?
- Were there any outcomes from the effort (either beneficial or detrimental) that were not expected to occur?

The first step towards the integration of private and public sectors in health care has been made recently in Sarajevo. Given that patients in public health institutions have waited for several months on examinations, the Health Insurance Institute and the Ministry of Health of Canton Sarajevo decided to sign a contract with 10 private health clinics, allowing patients to choose where they will do an examination.

In Federation of Bosnia and Herzegovina, experience in applying the method of contracting through public-private partnerships exist only in Unsko-Sanski Canton, and refers to the organization and functioning of dialysis. Other similar experiences haven't existed so far in the health sector. The health sector is suitable for the realization of projects of public-private partnerships, especially when it comes to dialysis services, radiation therapy, cardiac surgery, and other most complex forms of health care.

Making public-private partnerships in health care a reality requires political commitment and a clear understanding of how they can be best implemented. To have a successful public-private partnership there need to be (Gurusamy, 2007, p. 14):

- properly empowered public partners, which own the project and carry out essential government functions;
- private partners, which capture the efficiencies and innovations available in the marketplace;
- a project delivery mechanism, in the form of one or more properly procured contractual arrangements that will carefully delineate and allocate roles, responsibilities, risks and rewards, will protect the public interest and will capitalize on private-sector entrepreneurial, technical and financial resources;
- private financial markets - the private capital markets component of the overall project financing.

Creation of PPPs is being seen as a win-win arrangement wherein the public sector gets the much-needed infusion of capital and skilled human resource to initiate newer health initiatives and run the existing ones more efficiently, whereas the corporates and the various private foundations get the needed governmental backing and hence credibility to be a part of the national health programmes (O'Leary, 2010, pp. 1-5).

Examples of public-private partnerships in the RS, are the following centers:

- Dialysis Center Bijeljina;
- Dialysis Center Banja Luka;
- Dialysis Center Laktasi;
- Dialysis Center Kasindo, East Sarajevo;
- Dialysis Center Doboj;
- Dialysis Center Samac;
- Dialysis Center Zvornik;
- Dialysis Center Prijedor;
- Center for radiotherapy in Banja Luka.

One of the PPP projects planned for the coming period is the Center for Cardiac Surgery. An example of public-private partnership can be found in Aquana swimming pool in Banja Luka, which is a partnership of the City of Banja Luka and Italian private firm.

3.3.2 PPPs in transportation

There is enormous gap between available funds and the level needed to accommodate the anticipated growth in transportation demand and particularly goods movement demand.

Feasibility study on the Corridor Vc highway was made in 2006. Its goal was to demonstrate the impact of the highway construction. Government of Bosnia and Herzegovina, intends to build Corridor Vc using BOT model (Build, Operate, Transfer).

Total length of road network in BiH is 22,501 km, of which 3750 km are main roads, 4751 km are regional roads, and 14,000 km are local roads. From this total length, there is 14,020 km asphalt roads.

Direct effects of highway construction are as follows (Feasibility study, 2006):

- savings on vehicle operating costs,
- savings in travel time of passengers,
- savings in accidents, and
- savings in maintenance costs of infrastructure.

Improvement of the accessibility to the tourist resorts, restaurants and religious complexes, hunting grounds, healthcare and other facilities for recreation will create special benefits to this sector of the economy.

Other benefits are (Feasibility study, 2006):

- construction of the project will certainly lead to the opening of a large number of jobs, intensify and increase production in existing plants and opening up of new production capacities, particularly in the construction sector, production of construction materials and equipment, agri-food industry and services;
- significant changes in the inflow of foreign direct investment in certain segments of the manufacturing sector in the country and its surroundings;
- there will be additional direct employment in management and maintenance of highways, and some other services;
- influence of highway construction on employment and increase of the production is transferred to a wide array of manufacturers and indirect suppliers of consumer products, materials and equipment;
- engagement of the domestic construction companies on large and complex transactions will enable its personnel, technical and technological strengthening and training for engagement in markets around the world and restore its reputation and position;
- engagement of highly qualified domestic personnel to provide consulting services in the preparation phase, construction works and project management in service, will create structure, capable of creating their own development strategies and policies and management of other development programs;
- construction of planned highway will relieve the city's network of roads, and that will alleviate pollution problems and thereby delay the need for investment interventions, will reduce noise and emissions of harmful substances, and thus improve the general living conditions in cities;
- moving the traffic outside the urban area will allow more appropriate use of space, better deployment of various town facilities, and will help them develop more rational and more functional development;
- the average increase in GDP in these areas and municipalities, in the case of highway construction could reach a rate of 6.2%. The authors came to the effects of the amount of 323.7 million KM in 2013-th., 857.2 million in 2020-th, and 1495.5 million in the year 2025;
- according to the author, on the servicing and maintenance of highway will be permanently employed about 1,000 workers, while employment in the different economic sectors, from industry, trade and tourism, will result in about 10,000 additional jobs.

The first thing to do is to create what is called investor-friendly environment which means:

- political stability and good governance of the country;
- history of regular payments and debt repayment;
- a good macro-economic policy;
- convertible currency;
- the rule of law and a high degree of transparency; and

- clearly defined regulatory framework for BOT and concessions.

Another group of measures is assistance of the Government that the project is financially attractive to private investors. This is possible in the following ways:

- provision of land without compensation;
- project documentation;
- partial guarantee of traffic or revenue;
- complete the facilities that are free of charge at the disposal of the project company;
- share in the founding capital of the project company;
- tax relief;
- state guarantees; and
- obtaining guarantees from international financial institutions.

A grantor awards a concession to an operator to build and operate a rail system. The grantor transfers to the operator the land on which the rail system will be operated. Construction is expected to take five years, after which the operator will operate the rail system for 25 years. At the end of the arrangement, the rail system including the land will revert to the grantor. The rail system is used by the general public. Fees for the use of the rail system may be set in a variety of ways. These variations will affect the accounting by the operator (Pratt, 2007, pp. 12-16).

Model of public-private partnership is the only way to quickly build a 5-C Corridor, taking into account the limited fiscal and credit potential of Bosnia and Herzegovina. Representatives of the Ministry of Communications and Transport, the European Bank for Reconstruction and Development (EBRD) and experts from Croatia and Slovenia, met to exchange information and experience in the financing according to model of PPP in the region. This model of private-public partnership includes that state BiH does part of the work. BiH did it: prepared study-project documentation, environmental study and feasibility study. It is designed about 170 kilometers of highway. BiH will offer the already built sections, those that build and project documentation. It can accept the costs of remaining project documentation, the costs of expropriation and the costs of necessary administrative procedures.

Start of public investment is an element of developing of country with the aim that BiH becomes a energy confident and infrastructure integrated area, and to be a real partner in the European Union.

4 CONCLUSION

Characteristics, challenges, benefits, positive and negative experience around the world are presented in this thesis. It is shown that PPPs are growing in popularity as a governing model for the delivery of public goods and services, and increasingly have become the default solution to

government problems and needs, most recently for infrastructure, and they are embraced by a wide range of constituencies, across political parties, and throughout the world. This trend may accelerate as governments experience fiscal deficits and look for alternative ways to finance and deliver government services.

There is without question an increasing global need for infrastructure investment whether it's to spur economic growth to developing regions around the globe or to replace our aging assets. There's clearly a need in the public sector for spending significant capital on infrastructure. In many industrialized and developing countries, economic realities are motivating government officials to seek alternate means of delivering essential services to the public. However the public sector is not equipped to meet these needs. Deficits are increasing and P3 projects can provide an alternative and efficient solution to the public sector.

BiH needs billions of euros worth of new infrastructure investment - in water, roads, health care - that cannot be provided by government. The public sector simply does not have the financial capability or the service capacity to answer the demand for public service. Private investment and private operations can fill the demand. The public sector can no longer afford large investments, so private sector involvement is required. For past 11 years it has been built only 36 km of highway and expenses of road construction are higher than in the other countries. Our country also have obligations to IMF and World Bank in the next years, so funds for important investments will be significantly reduced, and that means stagnation of economic development. First hypothesis was that PPPs will bring benefits to our government. By applying PPP model, it will be possible to pay the debts, build infrastructure that has essential role for further development and satisfy growing needs of community for services, what is explained in this paper work as primary objective.

Public dissatisfaction with the quality and coverage of government-provided services and the slowness with which national and local governments extend infrastructure could pressure them to seek more private sector participation. Involving the private sector often brings stronger managerial capacity, access to new technology, and specialized skills that governments cannot afford to develop on their own. The central question about PPP proposals is whether they provide a way of financing and running public services which is better for the public and the services.

Partnership with the private sector can produce positive results for the public and national economy. Examples abound that demonstrate how market forces and private investment can help control the cost of transportation projects, optimize facility utilization, accelerate completion and delivery of project benefits beyond that possible if only traditional financing strategies were used.

Economic globalization is also creating strong pressures on private firms to respond more flexibly to rapidly changing world markets and to gain access to modern transportation and

telecommunications systems that facilitate international trade and investment. They can fill voids in countries where governments are slow to respond to demands for the technologically sophisticated infrastructure and services on which improvements in economic competitiveness depend.

In most countries the size and impact of the private sector is growing. Experience suggests, however, that no single approach to public-private sector cooperation is suitable for all countries or for all types of services and infrastructure.

For a partnership to succeed there must be real incentives for the private sector and the bureaucratic procedures should be minimised to make it simple for the private sector. The motivation for the use of PPPs in BiH is a desire to improve the public sector infrastructure, whilst staying within public spending limits. PPP is an inter-disciplinary undertaking requiring all project participants with comprehensive knowledge which is lacking especially in BiH.

PPPs contribute to the public sector's objectives to provide better services and expand the necessary infrastructure. Strengthening infrastructure, the foundation for any economy, will help attract more investment, create jobs, and improve the lives of people across BiH. National, regional, and municipal governments must be aware of the expectations of the society they serve. In this paper work, it is shown what benefits will be for society and government just for constructing a highway on Corridor 5c. Citizens will also have many benefits with quality health care. There are also other areas where PPPs could be applied and that could have direct impact on living standard, like tourism, custodial services, utilities, environmental projects, etc. This would improve state in our society, which was the second hypothesis. This would be a good way to overrun differences between people.

The PPP approach might be more successful in some sectors than others. The emphasis on PPP should also not preclude other options, including traditional public sector models. A successful PPP program will likely require a degree of reform by both the public and the private sector to create the right enabling environment. If the project is not well designed, if it is not well monitored, if expectations are not clearly spelled out and if there is not clear transparency in all phases of this process the project stands the possibility of not being successful and an embarrassment to all parties. Public entities need to consider not only the mechanisms they will use to hold their private partners accountable, but also how government will be accountable to their private partners. Public and private benefits should be measured for each PPP.

Critical changes related to all aspects of PPP governance, including general policy, procurement policies, and financial and legal processes, are required in order to successfully promote the use of PPPs. Chief among these are the capacity to clearly define outcomes and performance metrics,

the ability to create financial and legal structures to implement unique programs, and the expertise to successfully and efficiently manage programs and mitigate risks.

The lessons learned can be used to provide recommendations for best practices aimed at creating a framework for successful implementation. The recommended best practices do not answer all questions, but provide a solid foundation for institutionalizing and achieving outcomes. Further study is required to address implementation. Utilizing the framework discussed in this paper is an effective first step in achieving successful partnerships.

Many of the issues discussed in this thesis have been subject of debate for a long period of time. The thesis maybe has not provided clear-cut solutions or definite answers on the issues discussed. However, books or paper works on PPPs written in the future will still not have all the answers to these questions. The decision to start a PPP should be a strategic one, dependent on the goals and values governments and business wish to achieve. There is still a large gap in our knowledge on PPPs and much work remains to be done. This gap in knowledge may not, however, be an excuse not to think and act strategically.

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APPENDIXES

TABLE OF APPENDIXES

Appendix 1: Pre-qualification criteria and checklist.....1
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Appendix 1: Pre-qualification criteria and checklist

PQQ criteria	Description of criteria
A1	Details of the organisation/consortium
A2	1. Type of organisation/status of consortium 2. Certificate of incorporation (if applicable) 3. Certificate of change of name (if applicable) 4. Evidence of formation of relevant organisation/consortium 5. Detailed information of relevant organisations and their specific roles: design and build contractor and FM services provider (soft and hard FM) 6. Information on advisers (including designers, technical, legal, financial and others)
A3	Contact details for consortium's authorized representative
A4	1. Details of bid manager and other key team members/representative(s) 2. CV for each key team member 3. Details of capacity of key team members in terms of time allocation and potential time conflicts
A5	Statement in respect of Regulation 14 of the Public Services Contracts Regulations 1993
A6	Details of court actions and/or legal proceedings (where relevant to the bidder's ability to fulfil the role of finance adviser to the trust)
A7	Statement on potential conflicts of interest and how these will be dealt with
A8	Evidence of professional liability or indemnity insurance
B1	Previous 3 years of audited financial accounts, cash flow statements, overall turnover and specific turnover for PFI/PPP projects, and other relevant information (e.g. announcement to stock exchange, market)
B2	Experience in raising finance on project finance and PFI-type projects. Name and contact details of bidder's bankers along with confirmation that Trust may contact the bank to obtain a reference, if necessary
B3	Experience of each relevant organisation identified (including third party equity providers) in providing equity on PFI-type projects
C1	1. Details of PFI experience in the particular sector (e.g. health sector) 2. Contact details of 3 client references from project listed in C1
C2	Details of PFI experience in other sector (e.g. transport, housing, education, etc.)
C3	Details of non-PFI experience
C4	Details of previous experience where the consortium or relevant organisations in A2(5) have worked together
C5	Details of percentage of staff currently employed in PFI work
C6	Average/total number of employees over the past 3 years
C7	Staff turnover as a percentage of the workforce for the past 3 years
D	Employment and training policies
E	Quality assurance, health and safety and environmental policies

Appendix 2: PPP project cycle

