PPP Projects in Poland

2013 could be a pivotal year for public-private partnership in Poland because of the scale that the PPP market is going to reach during the next 12 months and the financial support that the government has announced for PPP projects.

If the A1 Tuszn-Pyrzowice motorway project is launched this year under a PPP scheme, it will mean that, in 2013, around 20 large and medium-sized PPP projects with a total value of approx. PLN 12 billion (EUR 2.85 billion) in 5 infrastructure sectors will be carried out in Poland. These figures will increase by the number and value of many smaller projects (with a value below EUR 35 million) to be implemented in various infrastructure sectors and subsectors including those where, so far, the PPP model has not been tested.

The government has announced that under the umbrella of the “Polish Investments” programme, the State Treasury will be actively involved in sponsoring and financing PPP projects in various infrastructure sectors. Inevitably, to get the wheels turning and effectively develop the PPP market, the government will have to establish a PPP task force and develop sector PPP programmes.

Positive trends
In the past there has been a perception that the Polish PPP market is incapable of realising its full potential. This perception could soon start to change.

In 2013, between 3 to 5 large or mid-size PPP projects will be carried out at the same time in 5 infrastructure sectors (public roads, environmental protection, car parks, hospitals and telecommunications).

It will enable public sponsors conducting these projects to exchange project related know-how, standardize project documentation and hire experienced advisers having appropriate knowledge and analytical tools to properly structure the PPP projects, in particular with regard to risk allocation.

Investment needs

- The Minister of Treasury estimates that the value of infrastructure investment in Poland required by 2020 is approx. PLN 500 billion (approx. EUR 120 billion).
- It is likely that during the 2014-2020 EU financial framework up to PLN 300 billion (approx. EUR 72-73 billion) of EU funds will be made available to co-finance eligible investments in Poland (although not all of those funds will be earmarked to finance development of infrastructure).
- As a result, there is a funding gap of at least PLN 250-260 billion (approx. EUR 65 billion) in meeting the financing needs for the proposed investment. The government intends to bridge this gap, to the maximum possible extent, from private sector funds. To this end, the State Treasury plan to promote the PPP model as its preferred investment structure for infrastructure investment projects and become an equity investor in these projects through its subsidiary, Polskie Inwestycje Rozwojowe (PIR).
- The State Treasury is planning to inject a substantial amount of capital into Bank Gospodarstwa Krajowego (BGK). BGK's primary task will be to provide long-term (10 to 15-year) debt-financing for infrastructure projects including those implemented through under the PPP model.
- It is planned that by the end of 2015 (i.e. when the availability of EU Funds will be limited) the government will designate PLN 40 billion (approx. EUR 9.85 billion) as equity and debt financing for infrastructure projects.
Implementing a series of projects in the same infrastructure sector should, thanks to the benefits of economies of scale (both at the project preparation stage and during implementation), attract private sponsors’ interest for that particular sector.

If there are no delays in 2013 from those timelines currently announced, the next 12 months should be exceptionally good in terms of the number and value of PPP projects being initiated and implemented in Poland.

However, the most significant benefits for Poland’s PPP market could be brought by the "Polish Investments" programme, i.e. the investment enhancement programme that was announced by the government in November 2012.

"Polish Investments" programme

The primary aim of the "Polish Investments" programme is to encourage private investors to provide financing for infrastructure investment in Poland. The government sees this as a means to stimulate the country’s economic growth at a time when Poland will stop receiving EU funds. To encourage private capital to invest in public infrastructure in Poland, the State Treasury plans to both sponsor selected PPP projects itself and to support PPP projects sponsored by local government.

It is likely that the list of infrastructure projects to be sponsored or supported by the State Treasury under the "Polish Investments" programme will be announced in April 2013.

According to the government’s plans, the State Treasury will be involved in PPP projects relating both to hard and social infrastructure as an equity investor and BGK’s role will be to make long-term debt financing available for those projects.

At the heart of the government’s plans is the intention to create a leverage effect. The capital provided by the State Treasury for projects should make it easier for those projects to attract far more private funds.

Sectors

Under the "Polish Investments" programme the State Treasury wishes to invest capital in investment projects related to energy infrastructure (distribution and extraction), gas infrastructure (distribution and extraction), sea port infrastructure (breakwater structures, improving accessibility), road infrastructure (toll roads, free roads, municipal roads), railway infrastructure (railway lines, rolling stock), data communications infrastructure (fibre-optic lines), environmental infrastructure (sewage treatment plants, waste incineration plants, landfills), municipal housing, public transport and schools.

Project Bond Initiative

The State Treasury has declared that it is willing to become involved in PPP projects that are to be implemented in sectors covered by the EU 2020 Project Bond Initiative. In some future PPP projects to be implemented as part of the "Polish Investments" programme in the energy (TEN-E), transport (TEN-T) and telecommunication sectors (broadband/ICT), project bonds (secured bonds issued by an SPV with no recourse to sponsors) may be one of the possible sources of financing. To enable private sponsors to submit bids involving projects bonds as a potential source of financing for a project, the European Investment Bank will have to be involved in the project at an early stage of its preparation (under the Project Bond Initiative, the EIB’s task is to provide eligible infrastructure projects with project bonds credit enhancement in the form of a subordinated instrument – either a loan or contingent facility – to support senior projects bond issued by a SPV).

Legal regulations concerning PPP projects

- There are, at present, no major legal obstacles preventing PPP projects from being successfully launched and implemented in Poland. However, certain tax and legal regulations applicable to PPP projects unnecessarily increase costs of their preparation (e.g. lack of provisions allowing to formally eliminate unsuitable or low scoring solutions from the competitive dialogue process) or implementation (e.g. provisions on tax costs in PPP projects).

- In Public Finance Law, the criteria enabling the availability fee to be classified as a capital expenditure and not as operating expenditure should be clearly set out (capital expenditure is neutral for the individual indebtedness index of public sponsors).
PPP projects in 2013

In November 2012 the Minister of Transport announced that in 2013 the A1 Tuszyn-Pyrzowice motorway project will be launched using the PPP model.

The project will be of considerable value. The investment outlays during construction will equal approx. EUR 1.5 billion.

Rationale underlying the government’s intention to launch the project by using the PPP model was to help to foster the credibility of the Polish PPP market after the failure of the A1 Stryków-Pyrzowice PPP project in 2010 (the Stryków-Pyrzowice project did not reach the financial close). Due to its scale, the A1 Tuszyn-Pyrzowice project would have sufficient critical mass to attract the largest sector players and serve as a model for rebuilding the private sector’s trust in the Polish PPP market.

The government, having learnt its lesson from 2010, announced that it will attempt to tie commercial and financial closings of the project (a similar concept was used in the PPP project for the construction and maintenance of a municipal waste incineration plant by the city of Poznań). The necessity that a consortium of private investors becomes associated with a selected consortium of commercial banks even before the preferred bidder is chosen will clearly limit the number of participants in the proceedings and complicate the closing procedure for subsequent stages of the proceedings.

The future will tell whether, in fact, the A1 Tuszyn-Pyrzowice motorway project will finally be commissioned as a PPP project or as a conventional public works procurement. Some doubts arose when the General Directorate of National Roads and Motorways announced on January 24 that it is thinking of implementing the project through a state owned SPV without private sector involvement.

If the A1 Tuszyn-Pyrzowice project is not implemented using the PPP model, the Minister of Transport will miss the opportunity to reinforce new governmental policy aimed at supporting the development of the PPP market in Poland. In the eyes of private investors the A1 Tuszyn-Pyrzowice PPP project would be a litmus test confirming the government’s determination and ability to effectively implement and close large scale PPPs. Success of this project should convince industry sponsors, financial investors and lenders that Poland is a place with real potential to become a robust PPP market.

The scale of the Tuszyn-Pyrzowice project should not, however, make investors blind to the fact that procedures for the selection of private partners in almost 20 other PPP projects with relatively a high value will also be launched in Poland in 2013.

The table below sets out basic information on these projects.

<table>
<thead>
<tr>
<th>No.</th>
<th>Description of project</th>
<th>Sector</th>
<th>Public sponsor</th>
<th>Estimated investment outlays (construction period)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Construction and operation of the Tuszyn-Pyzowice section of the A1 motorway (pre-announcement stage, due to recent announcement of the General Directorate of National Roads and Motorways it is uncertain whether this project is launched under the PPP scheme)</td>
<td>Roads - toll motorway</td>
<td>State Treasury</td>
<td>EUR 1.5 billion</td>
</tr>
<tr>
<td>2</td>
<td>Programme for the modernisation and maintenance of 200 km of voivodeship roads (pre-announcement stage)</td>
<td>Roads - public road</td>
<td>Marshal’s Office of DolnoslaskieVoivodeship</td>
<td>EUR 300 million (approx. amount of the private partner’s remuneration during the 20 year term of the PPP agreement)</td>
</tr>
<tr>
<td>3</td>
<td>Construction and maintenance of a municipal road and Wschodni Bridge in Wroclaw (pre-announcement stage)</td>
<td>Roads - public road</td>
<td>City of Wroclaw</td>
<td>EUR 100 million</td>
</tr>
<tr>
<td>4</td>
<td>Construction of Krosno ring road (pre-announcement stage)</td>
<td>Roads - public road</td>
<td>Town of Krosno</td>
<td>EUR 40 million</td>
</tr>
<tr>
<td>5</td>
<td>Construction and operation of a waste incineration plant in Gdansk (pre-announcement stage)</td>
<td>Environment</td>
<td>Municipal company of the city of Gdansk</td>
<td>EUR 185 million</td>
</tr>
<tr>
<td>6</td>
<td>Construction and operation of a waste incineration plant in Lodz (pre-announcement stage)</td>
<td>Environment</td>
<td>City of Lodz</td>
<td>EUR 170 million</td>
</tr>
<tr>
<td>No.</td>
<td>Description of project</td>
<td>Sector</td>
<td>Public sponsor</td>
<td>Estimated investment outlays (construction period)</td>
</tr>
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<td>---------------------------------------------------</td>
</tr>
<tr>
<td>7</td>
<td>Construction and operation of a municipal CHP using fuel from biomass and municipal waste in Olsztyn (announced)</td>
<td>Energy / Environment</td>
<td>Municipal company of the town of Olsztyn</td>
<td>EUR 170 million</td>
</tr>
<tr>
<td>8</td>
<td>Construction and management of broadband Internet access in the Mazowsze region (announced)</td>
<td>Telecommunication</td>
<td>Marshal’s Office of Mazowieckie Voivodeship</td>
<td>EUR 115 million</td>
</tr>
<tr>
<td>9</td>
<td>Construction and management of broadband Internet access in the Warmia and Mazury region (announced)</td>
<td>Telecommunication</td>
<td>Marshal’s Office of Warmińsko-Mazurskie Voivodeship</td>
<td>EUR 100 million</td>
</tr>
<tr>
<td>10</td>
<td>Construction and management of broadband Internet access in the Podkarpacie region (pre-announcement stage)</td>
<td>Telecommunication</td>
<td>Marshal’s Office of Podkarpackie Voivodeship</td>
<td>EUR 75 million</td>
</tr>
<tr>
<td>11</td>
<td>Construction and management of broadband Internet access in the Podlasie region (pre-announcement stage)</td>
<td>Telecommunication</td>
<td>Marshal’s Office of Podlaskie Voivodeship</td>
<td>EUR 55 million</td>
</tr>
<tr>
<td>12</td>
<td>Construction of an Oncology Hospital in Wrocław and a Radiotherapy Centre branch located in Jelenia Góra</td>
<td>Hospitals</td>
<td>Marshal’s Office of Dolnośląskie Voivodeship</td>
<td>EUR 138 million</td>
</tr>
<tr>
<td>13</td>
<td>Construction of a new Mother and Child Hospital in Poznan, and equipping it with the necessary medical equipment for approximately 450 beds (30,000 hospitalizations per year)</td>
<td>Hospitals</td>
<td>Marshal’s Office of Wielkopolskie Voivodeship</td>
<td>EUR 55 million</td>
</tr>
<tr>
<td>14</td>
<td>Extension of Bielany Hospital in Warsaw (operating unit and new wing with 200 beds) (announced)</td>
<td>Hospitals</td>
<td>City of Warsaw</td>
<td>EUR 55 million</td>
</tr>
<tr>
<td>15</td>
<td>Construction of the Proton Radiotherapy Centre in Poznań (pre-announcement stage)</td>
<td>Hospitals</td>
<td>Wielkopolskie Oncology Centre in Poznań</td>
<td>EUR 45 million</td>
</tr>
<tr>
<td>16</td>
<td>Construction and operation of car parks in Warsaw based on a concession (announced)</td>
<td>Car parks</td>
<td>City of Warsaw</td>
<td>EUR 90 million</td>
</tr>
<tr>
<td>17</td>
<td>Construction and operation of car parks in Poznań (pre-announcement stage)</td>
<td>Car parks</td>
<td>City of Poznań</td>
<td>EUR 60 million</td>
</tr>
<tr>
<td>18</td>
<td>Construction and operation of car parks in Gdansk based on a concession (announced)</td>
<td>Car parks</td>
<td>City of Gdańsk</td>
<td>EUR 45 million</td>
</tr>
<tr>
<td>19</td>
<td>Construction and operation of car parks in Katowice (pre-announcement stage)</td>
<td>Car parks</td>
<td>City of Katowice</td>
<td>EUR 45 million</td>
</tr>
<tr>
<td>20</td>
<td>Construction and operation of car parks in Łódź (pre-announcement stage)</td>
<td>Car parks</td>
<td>City of Łódź</td>
<td>EUR 45 million</td>
</tr>
</tbody>
</table>
In addition to the PPP projects set out in the table, at least a dozen PPP projects with a lower value will be launched, concerning the construction and maintenance of schools, construction and operation of car parks, building insulation, construction and maintenance of bus and tram stop shelters, replacement of street lighting, construction and maintenance of photovoltaic farms, modernisation and equipping of radiotherapy centres, construction and maintenance of municipal roads, construction and maintenance of municipal housing, construction and maintenance of CHPs, and maintenance of water and wastewater systems.

**Perspectives**

The government wishes to take action to support PPP projects in Poland to secure private sector financing for major infrastructure projects in a period of limited availability of public funds (both national and EU).

Consequently, for the first time PPP has been selected as the instrument by which the government’s economic strategy is to be implemented. This should alter the political climate surrounding PPP projects and force central administration to swiftly develop a coherent governmental policy towards PPP. The “testing PPP” approach that currently prevails among public sector sponsors should be replaced by a sense of “responsibility for implementing PPP projects”.

The State Treasury’s involvement in PPP projects as sponsor should soon provide the central administration with useful knowledge as to the political, organisation and legislative actions that should be swiftly taken so that (i) the Polish PPP market competes effectively and attracts domestic and foreign private investors, and (ii) PPP projects, thanks to standardization and appropriate allocation of risks, become less costly for sponsors and are more easily able to obtain debt financing.

If the government takes advantage of that knowledge gained during the first PPP projects carried out under the aegis of “Polish Investments” programme and, in addition to financing specific projects, the government develops sector-specific PPP programmes and introduces a system of organisational support for PPP projects (maintained by a dedicated PPP task force), in the next few years the PPP market in Poland should be one of the most dynamic in Europe.
Notes:
PPP Projects in Poland

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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spółka komandytowa
Norway House, ul. Lwowska 19, 00-660 Warsaw, Poland

www.cliffordchance.com

Climate Change has a co-operation agreement with Al-Jadaan & Partners Law Firm in Riyadh

Contacts:

Grzegorz Namiotkiewicz
Partner
T: +48 22 627 1177
E: grzegorz.namiotkiewicz@cliffordchance.com

Marcin Bejm
Counsel
T: +48 22 429 9473
E: marcin.bejm@cliffordchance.com

Pawel Piotrowski
Senior Associate
T: +48 22 429 9676
E: pawel.piotrowski@cliffordchance.com