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JPP KAO MODERAN KONCEPT OBEZBEĐIVANJA JAVNIH DOBARA I USLUGA I NJEGOVA PRIMENA U SRBIJI

Rezime

Javno privatno partnerstvo (u daljem tekstu: JPP) predstavlja nekonvencionalan i moderan način finansiranja izgradnje i eksploatacije javnih dobara koji uvodi tržišne principe poslovanja u javni sektor u vodećim privredama sveta kao rezultat deregulacije i liberalizacije tržišta. Cilj ovog rada je da predstavi osnovne karakteristike JPP, modele finansiranja i da ukaže na činjenicu da se ovaj koncept pružanja javnih dobara i usluga nedovoljno koristi u Srbiji nezavisno od činjenice što postoji zakonski okvir, obrazovan kadar i u javnom i u privatnom sektoru, uključujući i finansijski sektor i aktivna promocija samog koncepta. Ovim radom se želi ukazati da je JPP jedini održivi model razvoja javne infrastrukture (putevi, tuneli, mostovi, vodoprivreda, projekti u energetici itd.) u Srbiji koja nosi breme ogromnog budžetskog deficita i javnog duga, visoke stope nezaposlenosti i privrede koja je u stagnaciji.

Ključne reči: JPP, javno dobro, privatni kapital, projektno finansiranje, transfer rizika

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PPP AS A MODERN CONCEPT FOR PROVIDING PUBLIC GOODS AND SERVICES AND ITS APPLICATION IN SERBIA

Summary

Public-private partnership (hereinafter: PPP) is an unconventional and modern pattern used to finance the construction and exploitation of public goods, which introduces the market based principles of operation in the public sector in the leading word economies as a result of market deregulation and liberalization. The purpose of this paper is to present the basic PPP characteristics, models of funding, and to highlight that this concept of financing the public goods and services is not sufficiently used in Serbia despite the fact that the necessary legal framework and educated staff in the public private and financial sectors, and active promotion of the concept as such are in place. This paper is intended to point that PPP is the only sustainable model of public infrastructure development (roads, tunnels, bridges, power generation plants, etc.) in Serbia which is struggling with the significant budget deficit, huge public debt, high unemployment rate and a stagnating economy.

Key words: PPP, public goods, private capital, project finance, risk transfer

JEL: G38, H54, H57

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Uvod

Definisati JPP kao fenomen savremenog društva nije jednostavno jer je praktična primena značajno razvijenija od teorije (Akintoye, Beck, Hardcastle 2003, 3). U poslednjih dvadeset godina intenzivne primene JPP u svim razvijenim zemljama sveta, nastao je jako veliki broj modaliteta i bilo kakav pokušaj uniformnog definisanja JPP je nezahvalan. Najšire rečeno, JPP predstavlja saradnju javnog i privatnog sektora u pružanja javnih dobara i usluga. U literaturi (Akintoye, Beck, Hardcastle, 2003) se tretira kao savremeni model obezbeđivanja javnih usluga i dobara iako se primeri mogu naći još u doba Rimskog carstva (Aralica, Račić, Šišinački, 2007), kada su mnogi javni objekti (npr. luke, pijace i javna kupatila) izgrađeni dodelom koncesije privatnom partneru. Javni infrastrukturni projekti su finansirani privatnim kapitalom i u 18. i početkom 19. veka. Primer je mreža puteva u Engleskoj. Železnički saobraćaj, gasovodi, elektroprivreda i telekomunikacije su samo neke od privrednih grana koje su širom sveta razvijene u 19. veku prvenstveno investicijama privatnog sektora. Ipak, u mnogim zemljama država je preuzela vođstvo nad ovim granama tokom prve polovine 20. veka, i tek u poslednjih 20 godina vraća se dominantna uloga privatnom sektoru.

Suprotno javnom ubeđenju, začetak savremene primene JPP može se vezati za vladavinu Laburista kasnih 70-ih godina XX veka (Akintoye, Beck, Hardcastle, 2003, 371). U to vreme, SAD su eksperimentisale sa JPP, kao sredstvom za preporod oblasti koje su u nepovoljnom položaju, na državnom i na lokalnom nivou vlasti. Primena JPP u Sjedinjenim Državama je pokazalo mogućnost uštede milijardi dolara, a okidač razvoja je bio koncept menadžmenta koji se primenjuje već skoro pedeset godina tzv „rukovođeno takmičenje“ (*managed competition*). Rukovođeno takmičenje predstavlja proces u kojem se državne agencije takmiče protiv organizacija privatnog sektora u cilju utvrđivanja koji sektor je u stanju da pod najpovoljnijim uslovima pruži svoje usluge vladi (Akintoye, Beck, Hardcastle, 2003, 288). Na federalnom nivou, Vlada SAD formalno priznaje rukovođeno takmičenje kao sredstvo poslovnog menadžmenta već 48 godina. Vladin

primarni mehanizam za primenu ovog koncepta je Brošura A-76, „Izvođenje komercijalnih aktivnosti“, Kancelarije za upravljanje i budžet (OMB, Office of Management and Budget), prvobitno objavljena 1966. godine, zajedno sa odgovarajućim zakonodavnim aktima i smernicama za implementiranje. Kada je Piter Šor (*Peter Shore*), tadašnji sekretar za zaštitu životne sredine Velike Britanije, posetio SAD 1978. godine, odlučio je da primeni ovaj koncept i napravio je planove za pokretanje sličnih udruživanja u Velikoj Britaniji. Zatim je usledio poraz Laburista na izborima 1979. godine, i Konzervativci su preuzeli koncept. Na taj način, JPP više nije posmatran samo kao sredstvo za obnovu oblasti koje su u nepovoljnom položaju, već kao supstitut i alternativa tradicionalnom konceptu pružanja javnih usluga i dobara (Glaister, 1999). Kompleksnost modela JPP, koji podrazumeva jako veliki broj učesnika, bila je glavna kočnica razvoja i zato je bilo jednostavnije primeniti ili potpunu privatizaciju ili zadržati tradicionalan način obezbeđivanja javnih dobara. Zahvaljujući odlučnosti Velike Britanije, od devedesetih godina 20. veka, koncept JPP posebno dobija na značaju u celoj Evropi u cilju podsticanja bržeg razvoja privrede, infrastrukture i javnih usluga.

Teorijski osnov za primenu JPP predstavlja neoliberalizam (Nathan, 2007) kao pravac u ekonomiji zasnovan na neoklasičnoj ekonomskoj teoriji. Može se zaključiti da neuspeh kenzijanske ekonomije daje značaj deregulaciji i privatizaciji i na taj način sam koncept JPP postoje aktuelan. Paralelno sa razvojem JPP razvija se i projektno finansiranje (Yescombe, 2002) koje predstavlja glavni generator razvoja JPP u finansiranju kapitalno intenzivne javne infrastrukture jer igra značajnu ulogu u obezbeđivanju izvora finansiranja kod projekata koji imaju relativno predvidiv novčani tok.

Cilj saradnje javnog i privatnog sektora je ekonomičnije i efikasnije obezbeđivanje javnih dobara i usluga u odnosu na tradicionalan način jer je privatni sektor, koji je inače izložen tržišnoj utakmici, mnogo efikasniji od sporog, nefleksibilnog i korupcijama podložnog državnog aparata. Pored toga, budžetska sredstva čak i razvijenih zemlja nisu bila dovoljna da podrže finansiranje projekata

Introduction

It is neither easy nor simple to define a PPP as a phenomenon of modern society as its practical application is significantly more developed than theory (Akintoye, Beck, Hardcastle 2003, 3). Intensive PPP application in all developed countries of the world over the last twenty years has produced a large number of PPP modalities. Therefore, any attempt to define the PPP in a uniform manner is unappreciative. In broadest terms, a PPP is a cooperative venture of the public and private sectors that provides for public goods and services. In literature (Akintoye, Beck, Hardcastle, 2003), PPP is treated as a modern model for the provision of public services and goods, although such examples can be found to have existed back at the time of the Roman Empire (Aralica, Račić, Šišinački, 2007) when numerous public facilities (e.g. ports, market places and public bathrooms) were built by awarding concession to the private partner. Public infrastructure projects were financed by private capital in both the 18th and early 19th century. The example is the roads network in England. Railway transport, gas pipelines, electric power industry, and telecommunications are only some of the economic branches that developed worldwide in the 19th century mainly thanks to the private sector's investments. However, management of these branches was taken over by the government in many countries in the first half of the 20th century, and only in the last 20 years the dominant role is in this area going back to the private sector.

Contrary to public perception, the beginning of modern PPP application can be connected with the rule of the Labor Party in late 70-ties of the past century (Akintoye, Beck, Hardcastle, 2003, p. 371). At that time, the US was experimenting with PPP as a tool for renaissance of the areas in unfavorable position at the central and local government levels. PPP application in the United States showed that it was possible to save billions of dollars. The trigger of the development was the so-called managed competition concept applicable for almost fifty years. Managed competition is a process where government agencies are competing against the private sector

organizations in order to decide which sector is able to offer its services to the government under the most favorable terms and conditions (Akintoye, Beck, Hardcastle, 2003, p. 288). At federal level, managed competition has been formally recognized by the US Government for the past 48 years. The Government's primary mechanism for application of this concept is the paper A-76, „Execution of Commercial Activities” of the Office of Management and Budget (OMB) originally published in 1966 together with corresponding legal acts and guidelines for its implementation. When Peter Shore, the then UK Secretary of State for Environment visited the United States in 1978, he decided to apply this concept and made plans for launching similar partnerships in the UK. The Labour Party lost the 1979 elections, but the winning Conservative Party took over the concept. Since that moment on, PPP has no longer been viewed as a tool to help regenerate the areas in unfavorable position. Instead, it has been viewed as a substitute for and alternative to the traditional concept of providing public services and goods (Glaister, 1999). Complexity of the PPP model, which involves a great many participants, was the main obstacle to the development. It was, therefore, simpler to apply either a complete privatization or preserve the traditional mode in the provision of public goods. Thanks to the UK resolution, the PPP concept has been gaining in importance since the nineties of the 20th century throughout Europe as a mechanism used to encourage a faster development of the economy, infrastructure and public services.

Theoretical basis for PPP application is neoliberalism (Nathan, 2007) as an economic trend based on the neo-classical economic theory. One could claim that the failure of the Keynesian economics gave importance to deregulation and privatization thus contributing to making the PPP concept topical. In parallel with the PPP development, project finance was also developing (Yescombe, 2002) as the principal generator of the PPP development in the financing of capital intensive public infrastructure in view of its significant role in providing the sources of funding for the projects that have a relatively predictable cash flow.

The purpose of the public and private sectors'

velike vrednosti u koje se inače ni predstavnici privatnog kapitala ne bi upustili samostalno već samo pod uslovom diverzifikacije rizika, tj. u formi sindiciranih kredita kada u finansiranju takvog kapitalnog projekta učestvuje veći broj finansijskih institucija. Sindicirani kredit je kredit odobren od strane dve ili više banaka i stavljen na raspolaganje jednom korisniku kredita (ili grupi povezanih lica) koji je uređen jednim ugovorom između svih ugovornih strana. Konkretni primer jednog takvog projekta je izgradnja tunela ispod Lamanša. Pristalice JPP u Velikoj Britaniji navode često ovaj projekat kao jednu od pozitivnih strana primene ovog modela finansiranja javnih dobara. Poslednji argument koji se navodi je da ovakvi projekti ne opterećuju javne finansije, ne guraju državu u kreiranje deficita i na makroekonomskom nivou ne generišu negativne efekte.

Sagledano kroz pozitivne efekte koji ovaj model finansiranja nosi na primeru razvijenih ekonomija, neosporno je koliko bi dobrobit donela njegova primena u zemljama u razvoju koje su već prezadužene i nose teret tranzicije, tako da se dodatno direktno zaduživanje države i ne razmatra kao alternativa obezbeđivanja javnih dobara sa krajnjim pozitivnim efektima.

Zbog značaja koji ima za razvoj javne infrastrukture, međunarodne institucije kao što su Svetska banka, MMF, Evropska komisija itd. promovišu ga kroz veliki broj publikacija čiji je krajnji cilj edukacija i viši stepen primene. Dokument politike Evropske komisije iz 1997. godine, AGENDA 2000 (Akintoye, Beck, Hardcastle, 2003), poziva se na potrebu razvoja javno-privatnog finansiranja i ukazuje da je potrebno unapređenje regulatornog okvira javnih nabavki, posebno u segmentu javno-privatnog finansiranja. U ovom kontekstu Komisija želi da sagleda delotvornu koordinaciju svojih postojećih finansijskih instrumenata uključujući i Kohezioni fond, Evropski fond za regionalni razvoj (ERDF), Evropsku investicionu banku (EIB) i Evropski investicioni fond (EIF). Zbog izuzetne složenosti i velikog broja učesnika u projektima JPP, Evropska komisija je 2003. godine donela „Smernice za uspešna javno-privatna partnerstva“ (Guidelines for Successful Public-Private Partnerships), a 2004. godine „Zelenu knjigu o javno-privatnim partnerstvima“ (Green Paper on Public-Private

Partnerships and Community Law on Public Contracts and Concessions).

Danas, u najrazvijenijim zemljama JPP aranžmani se koriste u većoj ili manjoj meri za pružanje usluga javnog karaktera i/ili za izgradnju javne infrastrukture. U zapadno-evropskoj hemisferi najbogatije iskustvo ima Velika Britanija kada se radi o nabavkama na bazi privatne finansijske inicijative i glavnu primenu ima u sektoru zdravstvenih usluga. Velika Britanija je otišla čak značajno ispred svih u primeni ovog koncepta jer ne samo da je stimulisala upliv privatnog kapitala, već je insistirala i na razvoju koncepta „javnog menadžmenta“ (public management) umesto klasičnog pristupa koji samo obuhvata administraciju u javnom sektoru (public administration) (Akintoye, Beck, Hardcastle 2003, 205). Primena koncepta javnog menadžmenta znači proaktivan pristup upravljanja u javnom sektoru i implementaciju svih metoda upravljanja u javnom sektoru koje su inače tipične za privatni sektor. U SAD postoje različiti tipovi JPP koji obuhvataju skoro sve sektore vlade, pri čemu je ugovaranje upravljanja otpadom sa privatnim kompanijama veoma popularno. Pored toga, vlada snažno podržava poslovni sektor kada se radi o zajedničkom ulaganju kapitala u sektorima poput energetike, vodosnabdevanja, saobraćaja, itd.

U zemljama u razvoju postoji snažna regionalna koncentracija JPP ugovora, uglavnom u Latinskoj Americi, a potom u jugoistočnoj Aziji. Područja u kojima je sve veće privatno učešće obuhvataju frankofonski deo Afrike, istočnu Evropu, centralnu Aziju (posebno Tursku) i južnu Aziju. Regioni sa najmanjim brojem JPP su afričke zemlje južno od Sahare gde je primena projekata JPP uglavnom zapostavljena.

Osnovni modaliteti JPP naspram tradicionalnih modela izvršavanja javnih poslova i privatizacije

Na prvi pogled JPP se može poistovetiti sa privatizacijom, ali sudeći po definiciji, ipak ne spada u područje privatizacije. U narednim redovima objasnićemo razliku između JPP i privatizacije, sa jedne strane i tradicionalnog

cooperation is a more cost-effective and a more efficient provision of public goods and services against the traditional mode because the private sector, exposed to market competition, is much more efficient than the slow, inflexible state apparatus subject to corruption. Moreover, budgetary assets of even richer countries were not sufficient to support the financing of high value projects that even the representative of private capital would not dare finance based on risk diversification, i.e. in the form of syndicated loans with participation of several financial institutions in the funding of such capital projects. A syndicated loan is approved by two or more banks and is placed at disposal of one loan beneficiary (or a group of related persons), and it is governed by one contract among all contracting parties. A concrete example of such a project is the construction of the tunnel under the English Channel. PPP supporters in the UK quote frequently this project as one of the positive sides of this model's application to the financing of public goods. The last argument being claimed is that these projects do not burden the public finance, do not push the government to deficit creation and do not generate negative effects at macroeconomic level.

There is no doubt that this model of financing, in view of the positive effects it has produced in the developed economies, would be highly beneficial for the well-being of the developing countries that are already excessively indebted and bear the burden of transition. Consequently, additional direct state borrowing in these countries is not considered as an alternative to the provision of public goods with ultimate positive effects.

Because of its importance for the development of public infrastructure, international institutions such as the World Bank, IMF, European Commission, etc. are promoting the PPP through a large number of publications the end purpose of which is education and a higher level of application. The European Commission's 1997 policy document, AGENDA 2000 (Akintoye, Beck, Hardcastle, 2003), invokes the need for public-private financing development emphasizing particularly the need for improvement of the regulatory public procurements framework, especially in the segment of public-private

financing. In this context, the Commission wishes to see the effective coordination of its existing financial instruments, including the Cohesion Fund, European Regional Development Fund (ERDF), European Investment Bank (EIB), and the European Investment Fund (EIF). Because of the extraordinary complexity and the large number of participants in PPP projects, the European Commission adopted in 2003 the "Guidelines for Successful Public-Private Partnerships", and in 2004 the "Green Paper on Public-Private Partnerships" and Community Law on Public Contracts and Concessions.

Today, in the most developed countries, PPP arrangements are used to a greater or lesser extent for the provision of services of public character and/or for the construction of public infrastructure. In the West European hemisphere, the UK has the richest experience with this type of arrangements in the field of procurements based on the private financial initiative, which are principally applied in the area of health services. The UK has gone farthest in using this concept. Indeed, it has not only stimulated the inflow of private capital, but has also insisted on the development of the public management concept instead of the conventional approach that comprises the public administration only (Akintoye, Beck, Hardcastle 2003, p. 205). The use of public management concept means a proactive management approach in the public sector and implementation of all management methods in the public sector which are, by the way, typical of the private sector. In the US, there are different PPP types that comprise almost all government segments. However, the waste management contracting with private companies is very popular. Moreover, the Government is strongly supporting the business sector in the cases of joint capital financing in the fields of energy, water supply, transport, etc.

In developing countries, a strong regional concentration of PPP contracts is present, principally in Latin America, followed by the countries in south-east Asia. The regions with an increasing private participation include the francophone part of Africa, Eastern Europe, Central Asia (Turkey in particular), and southern Asia. The regions with the least number of PPP are the Sub-Saharan countries where they are generally non-existent.

modela pružanja javnih dobara i usluga, sa druge strane.

Javna uprava može javne poslove obavljati u vlastitoj režiji, tj. vlastitim sredstvima i vlastitim osobljem. Međutim, u pojedinim slučajevima javna uprava nije u mogućnosti da neposredno obavlja javne poslove u vlastitoj režiji, najčešće iz dva razloga:

- zbog nedovoljne stručnosti radnika javne uprave, kada su u pitanju specifično stručni poslovi (npr. medicina, prirodni resursi, IT usluge i sl.);
- zbog velikih troškova obavljanja javnih poslova u vlastitoj režiji (npr. nabavka građevinske mehanizacije).

Javna uprava tada koristi tradicionalne modele izvršavanja javnih poslova:

- javna nabavka, prilikom koje se sklapa trgovački ugovor između javne uprave i privatnog sektora, a koji se smatra modelom klasične nabavke (model klasične nabavke ne može se smatrati javno-privatnom saradnjom ako nije prisutna dugoročna saradnja i ako nema raspodele poslovnog rizika između javnog i privatnog sektora);
- formalna ili organizaciona privatizacija, kada se javna uprava javlja kao osnivač trgovačkog društva s ciljem obavljanja specifičnih

stručnih javnih poslova (npr. KBC, Hrvatska Pošta, komunalna društva i sl.).

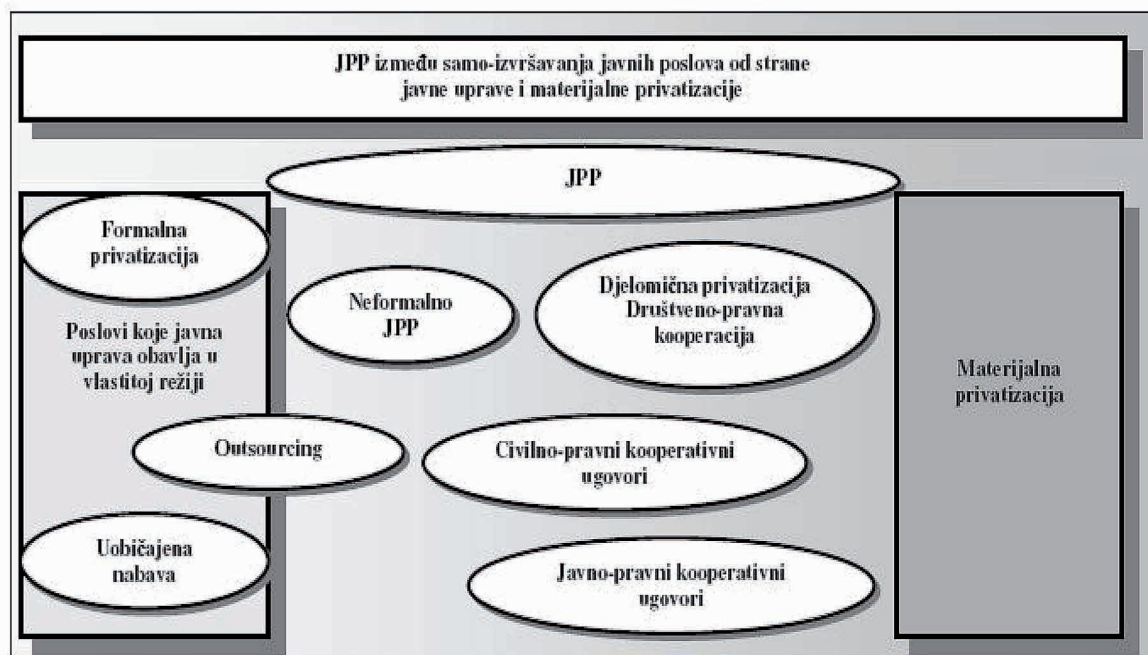
Outsourcing je model u kojem javna uprava ustupa određene interne poslove privatnom sektoru. Uglavnom su to poslovi propratnog i servisnog karaktera, kao npr. čišćenje javnih zgrada, poslovi kantine i sl., te se ovaj model može smatrati graničnim slučajem javno-privatne saradnje.

S druge strane su prisutni različiti oblici privatizacije (Vladušić, 2012):

- materijalna privatizacija, kada javna uprava u potpunosti prepušta obavljanje javnih poslova privatnom sektoru, odričući se većinskih vlasničkih prava, uz zadržavanje nadzornih funkcija (kroz nadzorne odbore);
- potpuna privatizacija, kada se javni sektor odriče svih vlasničkih prava ili osnivačkih udela i svih nadzornih funkcija;
- funkcionalna privatizacija (*Contracting out*) kada se privatni sektor javlja kao ispomoć u izvršavanju određene javne funkcije, tj. javnog posla (npr. poslovi osiguranja zgrada).

Modaliteti javno-privatnog partnerstva nalaze se između tradicionalnih oblika obavljanja javnih poslova, s jedne strane, i privatizacije, s druge strane, kao što je prikazano na slici 1 u tekstu dole.

Slika 1 - JPP između samo-izvršavanja javnih poslova od strane javne uprave i materijalne privatizacije



Basic PPP Modalities against Traditional Models of Private Public Works and Privatization Implementation

At first glance, a PPP can be equated with privatization. However, judging by its definition, it does not belong to the domain of privatization. Here follows an explanation of the difference between a PPP and privatization, on one side, and the traditional model of the provision of public goods and services, on the other.

Public administration may perform public operations on its own, i.e. with its own assets and own staff. However, in some cases the public administration is not able to directly perform the public operations on its own, most often for two reasons:

- due to insufficient technical knowledge of the public administration staff when specific technical operations are concerned (for example, medicine, natural resources, IT services, etc.);
- due to sizeable costs of the execution of public works on one's own (for example, procurement of building machinery).

In such cases, public administration uses the traditional models of public works execution:

- public procurement that requires conclusion of a commercial contract between the public administration and the private sector, considered to represent a classic procurement model (classic procurement model cannot be deemed to be a public-private cooperation if the long-term cooperation is not present and if the business risk is not shared between the public and the private sectors);

- formal or organizational privatization when the public administration appears as a founder of a company for the purpose of performing specific technical public operations (for example, the Clinical-Hospital Centre (KBC), Hrvatska Pošta (Croatian Post and Telecommunications, utility companies, etc.).

Outsourcing is a model where public administration assigns certain internal works to private sector. These are primarily the works of an auxiliary and service-repair nature, such as the cleaning of public buildings, canteen-related operations, etc. Accordingly, this model can be considered as a marginal example of the public-private cooperation.

On the other hand, diverse forms of privatization are present (Vladušić, 2012):

- material privatization, where public administration fully assigns the performance of public operations to the private sector, by giving up majority ownership rights while keeping the supervisory function (through supervisory boards);
- full privatization, when the public sector renounces all ownership rights or original stakes, and all supervisory functions;
- functional privatization or the *Contracting out* when the private sector assists in the exercise of a certain public function, i.e. public work (for example, building security services).

The public-private partnership modalities are positioned between the traditional forms of the performance of public works, on one side, and the privatization, on the other, as shown in picture 1 below.

U literaturi (Akintoye, Beck, Hardcastle 2003) i u Zakonu o javno privatnom partnerstvu i koncesijama-ZJPPK (*Službeni Glasnik RS*, br. 88/2011, čl. 4) postoje dva osnovna oblika:

- **institucionalno JPP** koje predstavlja zajedničko ulaganje lokalne vlasti i privatnog partnera u zajedničko privredno društvo (društvo za posebne namene, tzv. „DPN“) radi realizacije javnog projekta i pružanja javnih usluga, i
- **ugovorno JPP** kod kojeg su međusobni odnos prava i obaveza lokalne vlasti i privatnog partnera uređeni javnim ugovorom koji se sklapa na određeno vreme.

Svaki od ova dva osnovna oblika se može dalje razvrstati na dve osnovne podgrupe. Tako se u literaturi, institucionalno JPP može pojaviti kao:

- delimična privatizacija, kada javni sektor ustupa deo svog osnivačkog prava privatnom sektoru na način da zadržava većinsko vlasništvo, čime se stvara osnova za dugoročnu saradnju između javnog i privatnog sektora i zajedničko pružanje javnih usluga;
- društveno-pravna kooperacija ili spajanje javnog sektora sa privatnim sektorom u DPN, pri čemu privatni sektor pruža javnu uslugu ili upravlja javnim dobrom, a javni sektor za obavljanje takvih javnih poslova plaća privatnom sektoru mesečnu naknadu, uz kontrolu privatnog sektora nad obavljanjem javnih poslova.

Sa druge strane posmatrano, Evropska Komisija, sva ugovorna JPP razvrstava u dve podgrupe:

- **koncesija ili javno-pravni kooperativni ugovori**, kako se još u literaturi nazivaju, je vrsta ugovora o JPP gde privatni partner preuzima potpunu odgovornost za pružanje javne usluge uključujući finansiranje, projektovanje, izgradnju i korišćenje objekta i naplatu usluge od krajnjih korisnika. Tipičan primer je ugovor o izgradnji, korišćenju i prenosu projekta (*Build-Operate-Transfer BOT*) i
- **privatna finansijska inicijativa** (*Private Finance Initiative*) ili **civilno-pravni kooperativni ugovori**, predstavlja vrstu ugovora gde privatni partner finansira, gradi, održava i rukovodi objektom za potrebe javnog partnera, koji je odgovoran

da plaća naknadu za korišćenje objekta privatnom partneru.

Kritični faktori primene JPP

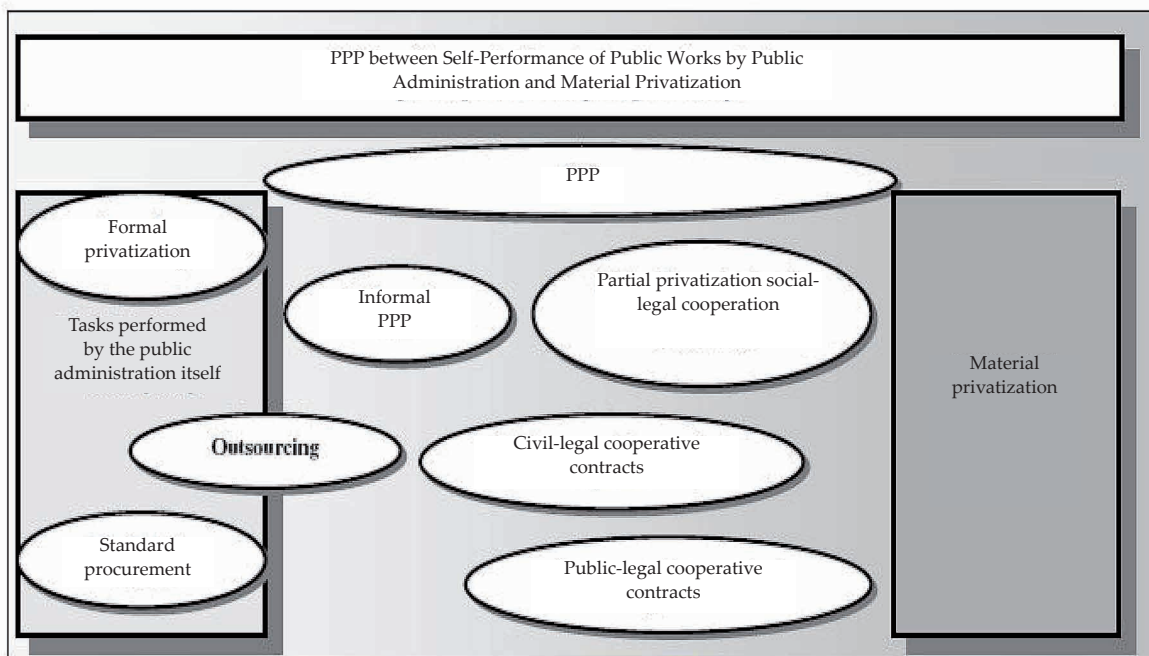
Da bi realizacija projekta JPP bila i ekonomski opravdana neophodno je da svaki od ovih projekata ispuni četiri osnovna kriterijuma, kao što je navedeno u tekstu dole, jer ne postoji ustaljena superiornost projekata JPP u odnosu na tradicionalan model pružanja javnih usluga i dobara.

Veća vrednost za novac od tradicionalne javne nabavke. - Predstavnici vlasti ugovaraju projekat JPP kada mogu da ostvare veću vrednost za novac u odnosu na tradicionalnu javnu nabavku radova za izgradnju infrastrukture. Veća vrednost za novac u okviru JPP postiže se na razne načine: skraćivanjem roka izgradnje, povećanjem kvaliteta usluge, povećanjem obima usluge za istu cenu, isporukom iste usluge po nižoj ceni ili prenosom dela rizika na privatnog partnera, čime se povećavaju finansijski rezultati. Procena veće vrednosti za novac vrši se uporednom analizom ukupnih prihoda i rashoda i rizika projekta u okviru JPP i kada ga sprovodi lokalna samouprava primenom modela javne nabavke.

Dugoročna usklađenost dostupnosti projekta sa budžetskim ograničenjima. - Pre sklapanja ugovora o JPP predstavnici vlasti proveravaju da li su njene ugovorne finansijske obaveze u toku izgradnje i korišćenja projekta u skladu s propisanim ograničenjima raspolaganja prihodima i primanjima budžeta tokom trajanja ugovora o JPP. Tom prilikom se posebno analizira mogućnost sufinansiranja investicionih troškova tokom gradnje, a posebno mogućnost plaćanja naknade tokom korišćenja objekta.

Stabilnost tražnje za javnim objektom i/ili uslugom u okviru JPP. - Predstavnici vlasti ugovaraju projekat JPP na osnovu strategije razvoja grada/opštine i/ili strategije razvoja delatnosti u kojoj se sprovodi projekat. Na osnovu strateških dokumenata utvrđuje se dugoročna potreba korišćenja infrastrukturnog objekta i dugoročna tražnja za uslugom koju obezbeđuje privatni partner. Ovim predviđanjima se povećava finansijska sigurnost oba partnera. Privatni partneri žele da se uključe u pružanje javnih

Picture 1 - PPP between Self-Performance of Public Works by Public Administration and Material Privatization



Source: Prozessleitfaden Public Private partnership (www.initiaved21.de), str. 11

In literature (Akintoye, Beck, Hardcastle, 2003) and in the Law on Public-Private Partnership and Concessions - LPPPC (*RS Official Gazette*, No. 88/2011, Article 4) there are two basic forms:

- **institutional PPP** that represents joint investment by the local government and the private partner in a joint company (a special purpose vehicle, the so-called "SPV") intended to implement a public project and render public services, and
- **contractual PPP** where the mutual relationship of the rights and duties of the local government and the private partner are governed by the public contract that is entered into for a definite time period.

Each of these two basic forms can be further segregated into two basic sub-groups. In literature, institutional PPP can take the following forms:

- partial privatization, where the public sector assigns a part of its founding right to the private sector by keeping majority ownership; a basis is in this way created for a long-term cooperation between the public and private sectors and for collective rendering of public services;
- social-legal cooperation or the public and

private sector merging in SPV, where private sector renders a public service or manages a public good, and the public sector pays a monthly fee to the private sector for the performance of such public activities, and exercises control over the private sector's execution of public works.

On the other hand, the European Commission classifies all contractual PPPs into two sub-groups:

- **Concession or Public-Private Cooperative Contracts**, as also called in literature, is a type of PPP contract where a private partner assumes full responsibility for the rendering of a public service, including financing, designing, building and operation of a facility, and collection for the service from end-beneficiaries. A typical example is the Build-Operate-Transfer (BOT) contract, and
- **Private Finance Initiative or a Civil-Legal Cooperative Contract** that represents a type of contract where the private partner finances, builds, maintains and manages a facility for the needs of the public partner whose responsibility is to pay remuneration to the private partner for the facility's operation.

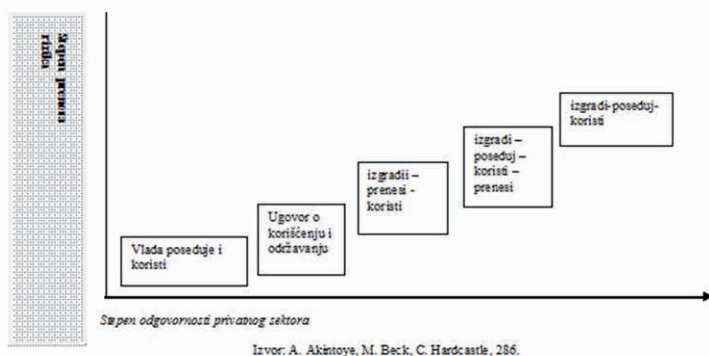
usluga samo ukoliko mogu sigurno naplatiti prihode iz kojih će pokriti uložena sredstva i ostvariti očekivan prinos.

Prenos rizika realizacije projekta na privatnog partnera. - Svi investicioni projekti nose rizike koji mogu značajno uticati na finansijski položaj javnog sektora zbog prekoračenja planiranih rokova i troškova izgradnje. Mogućnost prenošenja rizika izgradnje i korišćenja objekta je jedan od glavnih razloga zbog kojih se lokalne vlasti opredeljuju za sprovođenje projekata JPP. Od privatnog sektora se očekuje da ima veštine i iskustvo potrebno za efikasnije upravljanje rizicima (uz niže troškove).

Transfer rizika kao jedan od osnovnih elemenata modela JPP

Osnovni elementi modela JPP su jasna alokacija odgovornosti, podela rizika i dug rok trajanja partnerstva. Adekvatno izvršena podela rizika predstavlja jedan od ključnih kritičnih faktora uspeha svakog pojedinačnog projekta JPP. U tom smislu, svaki projekat treba tretirati posebno i donositi odluku o stepenu prenosa rizika za svaki projekat pojedinačno. Gradacija u stepenu prenetog rizika sa javnog na privatnog partnera je prikazana u okviru dijagrama na primeru mogućih modela upravljanja sistemom snabdevanja pijaćom vodom na Slici br. 2 u tekstu dole.

Slika 2 - Modaliteti JPP-a u zavisnosti od gradacije u stepenu prenosa rizika na privatni sektor



U donjem levom uglu dijagrama vidimo da vlada u svom vlasništvu ima vodovod i njime rukovodi, i u potpunosti je odgovorna za snabdevanje vodom. U slučaju nesavesnog ponašanja, katastrofalnog kvara opreme ili

nepredviđene tražnje za vodom, vlada snosi potpunu finansijsku i pravnu odgovornost za uslugu. Ukratko, sa rizicima snabdevanja vodom nosi se država; znači da rizik postoji, ali ne i prenos rizika.

Uobičajeni oblik JPP je ugovor koji podrazumeva korišćenje i održavanje. Kod takvog ugovora, privatni partner koji je potpisnik ugovora ima potpunu odgovornost za korišćenje i održavanje postrojenja, i mora održavati određene standarde kvaliteta vode, opreme, itd., i takođe na sebe preuzima sav rizik za rad postrojenja. Vlada zadržava vlasništvo nad postrojenjem, a samim tim i sav rizik kapitala, do kojeg može doći u slučaju zastarevanja postrojenja, promene u nivou tražnje ili promene uredbi za zaštitu životne sredine.

Svaki od gore navedenih primera podrazumeva upotrebu postojećih objekata u vlasništvu vlade. Pretpostavimo da, ipak, postoji potreba za novim vodovodom, da bi se izašlo u susret povećanoj tražnji zbog porasta broja stanovništva. Mnoge lokalne uprave smatraju da je teško finansirati takav poduhvat upotrebom konvencionalnog mehanizma državnog finansiranja. Čak i kada bi se sredstva obezbedila, bio bi to značajan udar na poreske obveznike u veoma kratkom roku.

Alternativa je JPP u kojem privatni partner preuzima rizik realizacije projekta. Ušteda u trošku kapitala je jedan od glavnih razloga ulaska javnog partnera u partnerstvo sa predstavnicima

privatnog kapitala u izgradnji infrastrukture. Drugi razlog je pristup ekspertizi privatnog sektora. Jedan takav oblik partnerstva jeste BTO (*Build-Transfer-Operate*; izgradi-prenesi-koristi). Kod ovog modaliteta privatni partner je taj koji finansira i gradi vodovod. Kada se konstrukcija završi privatni partner vrši prenos prava vlasništva na vladu, koja zatim izdaje postrojenje partneru uz dugoročni ugovor tokom kojeg

partner rukovodi postrojenjem. Na taj način privatni partner preuzima rizike kapitala i izgradnje i, naravno, rizike fluktuacije tražnje.

Drugi uobičajeni oblik udruživanja je BOOT (*Build-Own-Operate-Transfer*; izgradi-poseduj-

Critical Factors of PPP Application

In order for a PPP project implementation to be economically justified, it is necessary that each of such projects meet four basic criteria, as mentioned below, as there is no established PPP project superiority vis-à-vis the traditional model of rendering public services and goods.

Higher value for money than traditional public procurements - Government representatives enter into a PPP contract when they can achieve a higher value for money vis-à-vis the traditional public procurement of infrastructure construction works. Higher value for the money within a PPP is achieved in different ways: by shortening of the construction period, better quality of services, increase of the volume of services for the same price, supply of the same service at a lower price or by transferring a part of the risk to the private partner whereby the financial results are better. Estimate of the higher value for money is also done by a comparative analysis of the total project revenues, expenses and risks within a PPP when implemented by the local government by applying the model of public procurement.

Long-term project accessibility compliance with budget limitations - Prior to entering into a PPP agreement, the public entity representatives check whether its contractual financial obligations during the project building and operation are compliant with the prescribed limitations with the budget’s revenues and earnings during the life of the PPP agreement. Particularly is analyzed the possibility of the investment cost co-financing during the building, and most of all the possibility of the availability fee payment by State, during the project’s operation.

PPP public project and/or service demand stability - Representatives of the public entity contract a PPP project based on the development strategy of a town/municipality and/or the development strategy of the activity in which the project is implemented. In this context, strategic documents help determine the long-term need of an infrastructure project

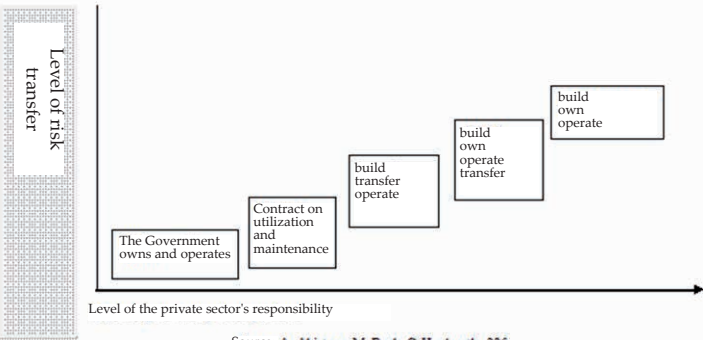
operation and the long-term demand for the services provided for by the private partner. Such predictions increase financial security of both partners. Private partners wish to get involved in the provision of public services only if they are certain they will generate and collect the revenues from which they will cover the invested funds and realize the expected return.

Risk Transfer of Project Implementation to Private Partner - All investment projects bear the risks that may exert significant influence on the financial position of the public sector because of the overrun of planned building costs and failure to meet the building deadlines. The possibility of the building risk transmission and project utilization is one of the main reasons for which the local public entity decides to implement PPP projects. The private entity is expected to have the skills and experience required for a more efficient risk management (at lower costs).

Risk Transfer as One of Fundamental PPP Model Elements

Fundamental elements of a PPP model are the clear allocation of responsibility, risk sharing and long partnership life. Adequately shared risk is one of the key critical factors of success of each individual PPP project. In that regard, each project needs to be treated separately and requires decision-making about the degree of the risk transfer for each project individually. Gradation in the degree of the risk transferred from the public to the private partners is presented in the below given diagram in Picture No. 2, which takes as an example possible models of the drinking water supply system.

Picture 2 - PPP Modalities Depending on Gradation in the Degree of Risk Transfer to Private Entity



koristi-prenesi). Kod ove vrste partnerstva, privatni partner finansira, gradi, poseduje i koristi vodovod tokom određenog perioda. Za to vreme krajnjim korisnicima naplaćuje taksu za upotrebu vode. Na kraju ovog perioda, vlasništvo se prenosi na vladu. Ovakav oblik transakcije prenosi značajniji deo rizika na privatnog partnera u poređenju sa prethodnim primerom, jer je u ovom slučaju privatni partner izložen različitim pravnim rizicima, rizicima po životnu sredinu i regulatornim rizicima u toku trajanja privatnog vlasništva.

Poslednji primer na slici br. 2 jeste BOO (*Build-Own-Operate*; izgradi-poseduj-koristi) transakcija. U ovom slučaju privatni partner finansira, gradi, poseduje i zatim koristi vodovod, uz regulatornu kontrolu vlade (drugačije rečeno, povećava se pregled i odobrenje predloženih mera od strane vlasti). Kod ovog tipa JPP rizik koji se prenosi na privatni sektor je povećan do maksimuma (ukoliko, naravno, ne postoji spremnost da se pregovara o potpunom prekidu vladine kontrole, ali, kada je u pitanju voda, to se retko dešava).

Ovaj opis je, svakako, preterano pojednostavljivanje. Postoji još mnogo gradacija alokacije rizika osim ovih pet koji su prikazani, i mnogo načina da se ublaže stvarna izlaganja riziku obe strane. Takođe, kada je u pitanju partnerstvo u izgradnji infrastrukture, postoji obično više od dve strane koje su uključene, ne samo privatni partner i vladina agencija, već i finansijske institucije koje daju kredit privatnom partneru za finansiranje izgradnje vodovoda i tako preuzimaju na sebe elemente rizika.

Ključna stavka jeste činjenica da je transfer rizika ključna odrednica JPP, s tim da je stepen rizika privatnog partnera veći kod onih projekata kod kojih je i ulaganje kapitala veće i kada je veća promena iz predpartnerskog statusa *quo*.

Kod svake transakcije postoji pretpostavka premije rizika. U slučaju da vlada zatraži od privatnog partnera da predloži cenu galona pijaće vode na nivou dvadesetogodišnjeg ugovora, baziranu na projekcijama vlade o konzumaciji vode ali sa garantovanim minimumom kupovine svake godine, partner će izabrati jednu strategiju naplaćivanja. Ako vlada zatraži cenu po galonu, ali bez zagarantovanog minimuma, tako da privatni

partner na sebe preuzima rizik nepredviđenih promena u tražnji, primenjuje se drugačija strategija naplaćivanja. Obim preuzetih rizika koje jedna strana može da predvidi, kontroliše i kojima može da se bavi utiču na veličinu premije rizika. Neadekvatna ili jednostrana raspodela rizika može ugroziti održivost projekata JPP.

Zbog toga je analiza rizika važan korak u strukturiranju JPP. Analiza bi trebalo da uključuje identifikaciju rizika, procenu rizika, alokaciju rizika i ublažavanje rizika. Ciljevi ove analize jesu poboljšanje raspodele rizika, tj. postizanje optimuma između isplativog preuzimanja rizika i verovatnoće pojavljivanja rizičnih događaja.

Modeli finansiranja JPP

U okviru tradicionalnog modela „javne nabavke“, vlast (lokalna, gradska i/ili republička) finansira izgradnju infrastrukture iz budžetskih sredstava ili duga, koju po završetku izgradnje poseduje i koristi. Privatni sektor je odgovoran za projekat samo tokom gradnje. Vlast preuzima rizik mogućeg prekoračenja troškova projekta i odgovornost tokom korišćenja projekta.

Finansiranje projekata JPP je drugačije. Privatni sektor je odgovoran za finansiranje projekta, njegovo održavanje i isporuku povezanih usluga tokom trajanja ugovora. Na ovaj način, vlast može obezbediti javne objekte i/ili usluge bez obaveze finansiranja, što je obaveza privatnog partnera.

Predstavnici privatnog kapitala, tj. sponzori imaju na raspolaganju nekoliko modela finansiranja. Pre nego što u nastavku teksta modeli finansiranja JPP budu predstavljeni, treba objasniti termin sponzora. Sponzor ili investitor je predstavnik privatnog kapitala koji učestvuje u projektu obezbeđujući kapital u maksimalnom iznosu do 50% u zavisnosti od stepena rizika projekta. Sponzor stoji iza projekta svojim znanjem i iskustvom. Može da se pojavi u formi samostalnog pravnog subjekta ili konzorcijuma zaključenog između većeg broja pravnih lica.

Prvi način je da angažovanjem sopstvenih izvora obezbedi u celosti sredstva za finansiranje projekata JPP. U praksi ovaj model finansiranja nema široku primenu jer najveći broj ovih

In the left lower corner of the diagram is seen that the government owns and manages the water supply, and is fully responsible for the same. In the case of non-conscientious behavior, a disastrous breakdown of the equipment or unforeseen water demand, the government bears full financial and legal responsibility for the service. In brief, the government struggles with the water supply risks, meaning that the risk exists but not the transfer thereof.

Usual PPP form is the agreement that involves operation and maintenance. In such an agreement, the private partner who is the signatory of the agreement is fully responsible for the operation and maintenance of the plant, and must keep certain standards concerning the water quality, equipment, etc., and also takes upon the whole risk for the plant operation. The government keeps ownership of the plant and, accordingly, the total capital risk, which can arise in the case of obsolescence of the plant, a change in the demand level or in the environment governing regulation.

Each of the above examples implies operation of the government owned projects. Let's suppose that, nevertheless, a need exists for a new water supply system required to meet the increased demand due to the rise in the number of inhabitants. Numerous local administrations believe that it is hard to finance such venture by using the conventional state financing mechanisms. Even if assets were ensured, that would significantly affect the taxpayers in a very short period of time.

An alternative is a PPP where the private partner assumes the risk of the project implementation. Capital cost saving is one of the chief reasons for the public entity's joining the partnership with representatives of the private capital in infrastructure building. The second reason is the access to the private sector's expertise. One of such partnership forms is the build-transfer-operate (BTO). With this type of modality, the private partner is the one who finances and builds the water supply. Once the construction is over, the private partner transfers the title to the government, which then rents the plant to the partner based on a long-term agreement during the term of which it manages the plant. In this way, the private partner takes the risk of capital and building and, naturally,

the demand fluctuation risk.

Another common form of partnership is BOOT (build-own-operate-transfer). Here, the private partner finances, builds, owns and operates the water supply during a certain period of time in which the users pay a fee for water consumption. At the end of this period, the title is transferred to the government. Such form of transaction transfers a significant portion of risk to the private partner compared with the previous example, because in this case the private partner is exposed to different legal risks, environmental risks and regulatory risks during the life of the private ownership.

The last example in picture No. 2 is the Build-Own-Operate (BOO) transaction. In this case, the private partner finances, builds, owns and then operates the water supply under the government's regulatory control (in other words, the examination and approval of the proposed measures is enhanced by the government). In this PPP model, the risk that is transferred to the private sector is raised to maximum (unless there is readiness, naturally, to negotiate a complete discontinuation of the government's control; however, when water is concerned, this happens rarely).

Needless to say, the above description is an exaggerated simplification. There are numerous other gradations of the risk allocation apart from the five presented here, and a great many ways for alleviation of the real exposure to the risk by both parties. Also, when partnership in the building of infrastructure is concerned, there are usually more than two parties that are involved, not only the private partner and the government agency, but also the financial institutions that grant a loan to the private partner with which to finance the building of the water supply and thus assume the risk elements.

The principal item is the fact that risk transfer is the key PPP determinant; provided, however, that the private partner's risk degree is higher with the projects where capital investment is more sizeable and when the change is greater from the pre-partnership status *quo*.

Assumption of risk premium exists in each transaction. In the case that the government demands that the private entity propose the price of a gallon of drinking water at the level of a twenty-year agreement, based on the government's water

projekata predstavlja kapitalne investicije čija vrednost prevazilazi mogućnost i kapacitet finansiranja jednog pravnog subjekta, tj. zahteva udruživanje sredstava, ne samo zbog ogromne vrednosti projekta, već i zbog podele rizika. Može imati primenu kod projekata manje vrednosti kao što je izgradnja vrtića, škole, manje zdravstvene ustanove itd., i pod uslovom da je predstavnik privatnog kapitala finansijski gigant koji ima dovoljno sopstvenih sredstava da samostalno finansira predviđeni projekat.

Drugi način je projektno finansiranje kod koga treba razlikovati dva modaliteta obezbeđivanja pozajmljenih sredstava: iz dugoročnih kredita banaka i emisijom obveznica tzv. *Project Finance Bonds*.

Što se tiče kredita banaka treba naglasiti da projekte velike vrednosti ne finansira samo jedna banka, već se udružuje sa ostalim bankama u sindikat. Takvi krediti se nazivaju sindicirani krediti. Ovaj modalitet se primenjuje i zbog diverzifikacije rizika. Takođe, treba napraviti razliku između kredita koji predstavljaju prioritetan dug sa aspekta naplate i *mezzanine* kredita čija je otplata subordinirana u odnosu na prioritetan dug jer se njima obezbeđuju finansijska sredstva u kasnijim fazama izvođenja projekta jer je došlo do prekoračenja budžeta. S druge strane, ovi krediti imaju višu kamatnu stopu od prioritetnog duga zbog statusa u prioritetu naplate tj. nose veći rizik za kreditora.

Emisija obveznica kao način prikupljanja eksternih izvora finansiranja je povoljnija u odnosu na kredite banaka jer ima fiksnu kamatnu stopu (bankarski krediti imaju varijabilnu kamatnu stopu vezanu za neku od referentnih kamatnih stopa, kao što su EURIBOR, LIBOR itd) i predstavljaju likvidan oblik ulaganja jer su utržiive, ali to zahteva razvijeno primarno i sekundarno tržište kapitala što nije odlika zemalja u razvoju i Srbije, danas. Tržište tzv. *Project Finance Bonds* je mnogo manje nego bankarsko tržište, ali je u nekim razvijenim zemljama značajno (SAD, Latinska Amerika, Kanada i Velika Britanija). Tražnju za ovim hartijama od vrednosti kreiraju institucionalni investitori kao što su investicioni i penzioni fondovi i osiguravajuća društva.

Projekti JPP mogu biti finansirani i primenom modela strukturnog finansiranja koji podrazumeva primenu sekjuritizacije

kao oblika transformacije finansijske aktive u hartije od vrednosti, što bi kod finansiranja projekata JPP konkretno značilo transformaciju finansijske aktive banke, inicijalno nastale po osnovu odobrenja dugoročnog kredita, u hartije od vrednosti. Na ovaj način finansijska aktiva postaje utržiiva, likvidna i manje rizična. Ovde treba napraviti jasnu razliku između primarne emisije hartija od vrednosti, kao načina da se prikupe eksterni izvori finansiranja kao podmodalitet projektnog finansiranja (Yescombe 2002) i ovog vida transformacije postojeće finansijske aktive banke (na pr. potraživanje banke po osnovu inicijalno odobrenog dugoročnog kredita, sa jasno definisanim planom otplate, postaje osnov za emisiju obveznica). U oba slučaja obveznice su izvor finansiranja, ali u prvom primeru su direktan izvor finansiranja, a u drugom slučaju su finansijski derivat jer je banka dužniku odobrila dugoročni kredit, a zatim po osnovu ovog potraživanja emitovala obveznice tako da su sada imao obveznica indirektno preko banke finansijeri projekta JPP. Zajedničko im je da se u oba slučaja uključuju investicione banke, rejting agencije i institucionalni investitori. Institucionalni investitori (investicioni fondovi, penzioni fondovi i kompanije za životno osiguranje) su subjekti koji kreiraju tražnju za hartijama od vrednosti. Bitno je naglasiti da je u oba slučaja (i kod primarne emisije hartija od vrednosti i kod njihove emisije po osnovu sekjuritizacije) preduslov postojanje razvijenog primarnog i sekundarnog tržište kapitala.

Finansiranje na bazi finansijskog lizinga nema široku primenu kod projekata JPP, ali može da bude primenjeno kao sekundarni (dodatni) oblik finansiranja, i to kod pribavljanja opreme neophodne za funkcionisanje projekata koji predstavljaju kapitalne investicije, dok kod projekata manje vrednosti, kao što je izgradnja vrtića, škola, manjih zdravstvenih ustanova itd., može biti primenjeno kao osnovni oblik finansiranja. Izmenom Zakona o porezu na dodatu vrednost (Službeni glasnik RS br. 84/2004, 86/2004, 61/2005, 61/2007, 93/2012, 108/2013, 6/2014 i 68/2014), u 2013. aktivirano je tržište lizinga nekretnina i od početka 2014. godine izvršene su dve transakcije finansiranja nekretnina putem lizinga u Srbiji. U Evropi je u 2012. godini lizing nekretnina iznosio 7%

consumption projections, but with a guaranteed minimum purchase each year, the partner will choose one type of collection strategy. If the government ask for the price per gallon, but without the guaranteed minimum meaning that the private partner will in that case assume upon himself the risk of unforeseen changes in the demand, a different type of collection strategy will apply. The volume of assumed risks that one side can envisage, control and deal with has a bearing on the size of the risk premium. Inadequate or one-sided risk distribution can endanger a PPP project's sustainability.

The above explains the importance of the risk analysis in structuring a PPP. The analysis would need to include the risk identification, assessment, allocation and mitigation. The goals of this analysis are an improved risk distribution, i.e. achieving the optimum between a cost-effective risk assumption and a probability of emergence of risky events.

Models of PPP Financing

In the conventional "public procurement" model, the government (local, city and/or central) finance the building of infrastructure from budgetary resources or a debt, and once the building is over, it owns and operates the infrastructure project. The private entity is responsible for the project during the building only. The government takes over the risk of possible overrun of the project costs, and responsibility during the project's operation.

Financing of PPP based projects is different. The private entity is responsible for the project funding, its maintenance and delivery of related services during the life of the agreement. In this way, the government can provide for the public projects and/or services without the obligation of financing, which is the obligation of the private entity.

Representatives of the private capital, i.e. the sponsors have at their disposal several models of financing. Before presenting below the PPP financing models, the notion of the "sponsor" needs to be explained. A sponsor or investor is a representative of the private capital who participates in the project by providing maximum 50% of the capital, depending on the risk degree of the project. The sponsor backs the

project with his knowledge and experience. The sponsor may take the form of an independent legal entity or of a consortium concluded among a larger number of legal entities.

The first mode is to provide, by engaging own sources, the entire amount of money necessary to finance a PPP project. This model of financing is not broadly applied in practice because most of these projects are capital investments the value of which exceeds the financing possibility and capacity of one single legal entity. Namely, pooling of assets is required not only because of the enormous value of the project, but also because of risk sharing. It may be applied in the case of smaller value projects, such as the building of a kindergarten, school, a smaller-size health institution, etc., and provided that the representative of the private capital is a financial giant having enough assets that allow independent funding of the envisaged project.

The second mode is the project financing where one needs to distinguish between two modalities of ensuring the borrowed assets: from long-term bank loans and an issue of bonds, the so-called project finance bonds.

As to bank loans, it is worth mentioning that high value projects are not financed by one bank only. Instead, several banks pool and form a syndicate. Such loans are called syndicated loans. This modality is also applied because of the risk diversification. Also, one should differentiate between the loans that represent a priority debt from the recovery point of view and the *mezzanine* loans the repayment of which is subordinate relative to the priority debt, because they provide financial assets in later stages of the project execution due to the overrun of the budget financed costs. On the other hand, these loans have a higher rate of interest than priority debt because of the status in terms of priority of collection, i.e. bear a higher risk for the creditor.

Bond issue as a means for raising external sources of finance is more favorable than bank loans because it has a fixed interest rate (bank loans have a variable interest rate pegged to one of the reference interest rates, such as EURIBOR, LIBOR, etc.), and represent a liquid form of investment because they are marketable. However, this requires a developed primary and secondary capital market which is not a characteristic of the developing countries

ukupnog lizing plasmana, dok je u Hrvatskoj, u istom periodu, dostigao čak 15%.

U članu 49, Zakona o javno privatnom partnerstvu i koncesijama Republike Srbije kaže se da „javni ugovor može biti finansiran od strane privatnog partnera kroz kombinaciju direktnih ulaganja u kapital ili putem zaduženja, uključujući bez ograničenja strukturirano ili projektno finansiranje i sl., obezbeđeno od strane međunarodnih finansijskih institucija, banaka, odnosno trećih lica (u daljem tekstu: finansijeri)“. To znači da su svi gore navedeni oblici finansiranja JPP predviđeni i dozvoljeni Zakonom o javno privatnom partnerstvu i koncesijama ali treba naglasiti da u Srbiji još uvek nije usvojen Zakon o sekjuritizaciji iako je pripremljen nacrt zakona 2008 godine.

Na osnovu činjenice da projektno finansiranje ima najširu primenu u odnosu na sve prethodno navedene metode finansiranja u Srbiji, u ovom radu će ovom metodu biti posvećena posebna pažnja.

Projektno finansiranje

Projektno finansiranje se može definisati kao metod prikupljanja dugoročnih pozajmljenih izvora primenom tzv. finansijskog inženjeringa gde se kreditiranje projekta vrši na osnovu **budućih novčanih tokova** koji će biti generisani nakon izgradnje projekta, tj. njegovom eksploatacijom. Metod se zasniva na detaljnoj oceni rizika izgradnje projekta, poslovnog i tržišnog rizika, kao i na njihovoj alokaciji između sponzora (investitora), zajmodavaca i ostalih učesnika koji se pojavljuju na osnovu ugovornih odnosa i drugih aranžmana (to mogu biti: izvođači radova, dobavljači sirovina, kupci proizvoda i/ili usluga).

Projektno finansiranje je relativno nova finansijska disciplina koja se ubrzano razvila u poslednjih 20 godina. Treba naglasiti da projektno finansiranje nije isto što i finansiranje projekta jer je ključna razlika u načinu procene kreditne sposobnosti. Kod projektnog finansiranja, banka ili neki drugi kreditor odobrava pozajmljena sredstava na bazi budućih novčanih tokova projekta čija izgradnja treba da bude finansirana, a kod klasičnog finansiranja projekta ključni oslonac u odobravanju pozajmljenih izvora jeste kreditna

sposobnost klijenta, tj. sponzora koji stoji iza projekta, odnosno da li poslovanje firme, što se može utvrditi analizom finansijskih izveštaja, stvara dovoljno gotovine za otplatu kredita. U ovom slučaju je takođe bitna i rentabilnost projekta, s tim da se prihod koji će on generisati ne tretira kao primarni otplatni kapacitet kredita koji treba da se odobri.

Kod projektnog finansiranja sagledavanje profitabilnosti i rentabilnosti zasniva se na projekciji novčanih tokova projekta, tj. projekciji prihoda (projektovani novčani prilivi) koji će nastati eksploatacijom projekta i projekciji troškova (projektovani novčani odlivi) koji pored troškova eksplatacije uključuju i troškove finansiranja projekta. Najprecizniji pokazatelji profitabilnosti investicije su neto sadašnja vrednost projekta i interna stopa prinosa obračunata na ukupnu vrednost projekta ili uloženi kapital sponzora. Izračunavanje neto sadašnje vrednosti projekta zasniva se na diskontovanju budućih novčanih tokova primenom diskontne stope koja je obično jednaka stopi prinosa na nerizična ulaganja („risk free rate“). Ako je neto sadašnja vrednost projekta veća od nule, projekat je profitabilan. Ovaj pokazatelj se obično koristi pri izboru najprofitabilnijeg projekta između većeg broja ponuđenih ili kada jedan projekat ima veći broj varijanti pa treba izabrati najbolje rešenje. Metod neto sadašnje vrednosti koristi i naš zakonodavac za izračunavanje ukupne cene projekta, tako što se diskontuju ukupni troškovi projekta u ugovorenom periodu bez poreza na dodatu vrednost. Ovako izračunata cena projekta predstavlja jedan od kriterijuma pri izboru najpovoljnije ponude. Interna stopa prinosa pokazuje prinos projekta tokom njegovog veka upotrebe. To je diskontna stopa pri kojoj je neto sadašnja vrednost projekta jednaka nuli.

Na osnovu činjenice da primena ovog modela finansiranja podrazumeva i visok udeo pozajmljenih sredstava, finansijeri su pored osnovnih pokazatelja profitabilnosti projekta, zainteresovani i za utvrđivanje otplatnog kapaciteta projekta izračunavanjem niza racio pokazatelja od kojih su najvažnija sledeća dva:

- godišnji racio pokrića duga (*Annual Debt Service Cover Ratio* - ADSCR) i
- period povraćaja uloženog kapitala (*Payback Period*).

and the present-day Serbia. The market of the so-called *project finance bonds* is considerably smaller than the banking market, but is of quite a significant size in some more developed countries (the US, Latin America, Canada the UK). The demand for these securities is created by institutional investors such as the investment and pension funds, and insurance companies.

PPP projects can also be financed by application of the structural finance model which implies application of securitization as a form of financial assets transformation into securities, which in the case of PPP project funding would concretely mean transformation of a bank's financial assets, initially generated based on the extension of a long-term loan, into securities. In this way, financial assets become marketable, liquid and less risky. It is worth making here a clear difference between the primary issue of securities, as a means for raising external sources of funding as a sub-modality of the project financing (Yescombe, 2002) and this form of transformation of the existing financial assets of the bank (for example, the bank's claim based on the initially approved long-term loan with the clearly defined repayment schedule becomes a base for the issue of bonds). Bonds are the source of financing in both cases. However, in the first example they are a direct source of financing and in the second are a financial derivative because the bank has approve the long-term loan to the debtor and thereafter, issued bonds on the basis of this claim. The end result is that bondholders are currently the financiers of the PPP project indirectly through the bank. Common characteristic for the parties is that investment banks, rating agencies and institutional investors get involved in both cases. Institutional investors (investment funds, pension funds and life insurance companies) are the entities that create the demand for securities. It is noteworthy that in both cases (in the case of primary issue of securities and their issue based on securitization) the prerequisite is to have a developed primary and secondary capital market in place.

Financing based on the financial lease is not in broad use in PPP projects, but can be applied as a secondary (additional) form of financing at the time of purchase of the equipment necessary to finance the projects that represent capital investments. However, in the case of

smaller value projects, such as the construction of kindergartens, schools, smaller-size health institution, etc., it can be used as a basic form of financing. The amended Law on Value Added Tax ("RS Official Gazette", numbers 84/2004, 86/2004, 61/2005, 61/2007, 93/2012, 108/2013, 6/2014 and 68/2014) in 2013 has activated the market of real estate lease, and since the beginning of 2014 two transactions of real estate direct financing lease have been carried out in Serbia. In Europe, real estate financing lease accounted for 7% of total lease placements, while in Croatia it reached the level of as much as 15% in the same period.

Article 49 of the Law on Public-Private Partnership and Concessions of the Republic of Serbia stipulates that "a public contract may be financed by a private partner through a combination of direct investments in capital or by way of borrowing including, without limitation, a structured or project financing, etc., provided for by international financial institutions, banks and/or third parties (hereinafter: financiers)". This means that all of the above listed forms of PPP financing are envisaged and permitted by the Law on Public-Private Partnership and Concessions. However, it is worth mentioning that the Law on Securitization, although drafted back in 2008, has still not been adopted in Serbia.

Based on the fact that project financing has the broadest application against all of the above mentioned methods of financing in Serbia, special attention will in the present paper be paid to this method.

Project Financing

Project financing can be defined as a method of raising long-term borrowed sources by applying the so-called financial engineering where the project funding is performed based on **future cash flows** that will be generated after the project construction, i.e. by its exploitation. The method is based on a detailed project construction risk assessment, business and market risks, as well as on their allocation among the sponsors (investors), lenders and other participants appearing based on contractual relations and other arrangements (these may be: contractors, raw material

Godišnji racio pokrića duga se obično računa na godišnjoj osnovi i to na bazi projektovanog izveštaja novčanih tokova, tako što stavlja u odnos projektovani operativni novčani tok sa ukupnim iznosom glavnice i pripadajuće kamate koji će biti plaćeni u datoj godini. Na ovaj način se meri otplatni kapacitet projekta, tj. njegova sposobnost da iz generisanih prihoda obezbedi urednu otplatu kredita.

Minimalna zahtevana vrednost ovog racia varira od projekta do projekta, ali bi mogla da se izvrši standardizacija prema grupama projekata na sledeći način (Yescombe, 2002):

- **1.2** za infrastrukturne projekte koji imaju i ugovor o snabdevanju sirovina i ugovor o prodaji usluga i/ili proizvoda i kod kojih ne postoji rizik plasmana usluga i/ili proizvoda, tj. rizik upotrebe projekta (npr. bolnica, škola itd.),
- **1.3** za energetske ili proizvodne pogone gde postoji ugovor o plasmanu proizvoda i/ili usluga,
- **1.4** za infrastrukturne projekte kod kojih postoji rizik upotrebljivosti, kao što su putevi ili masovni transportni projekti (mostovi, tuneli itd.),
- **1.5** za projekte koji se zasivaju na eksploataciju prirodnih resursa, i
- **2** za energetske pogone (elektrane) kod kojih ne postoji ugovor o plasmanu usluga ili bilo koji dokument kojim bi se garantovala cena usluge.

Viši nivo pokrića može biti zahtevan kod projekata sa nestandardnim rizikom ili u zemljama koje se karakterišu visokim rizikom ulaganja.

Period povraćaja uloženog kapitala (*Payback Period*) pokazuje u kom periodu će eksploatacija projekta generisati operativni novčani tok jednak ukupno uloženim sredstvima. Izračunava se tako što se vrednost ukupno uloženih sredstava podeli sa prosečnim godišnjim operativnim novčanim

tokom. Preciznije definisano, period na koji se projektuje novčani tok projekta (mesečno, polugodišnje ili godišnje) će odrediti način izražavanja brzine povraćaja uloženih sredstava, tj. za koliko meseci, polugodišta ili godina će uložena sredstva biti vraćena. Pri evaluaciji projekta i za finansijere i za sponzore bitno je da znaju brzinu povraćaja uloženih sredstava. Pokazatelj perioda povraćaja uloženog kapitala se nikada ne koristi samostalno.

U zavisnosti od rizika, kod projektnog finansiranja, udeo pozajmljenih sredstava je u rasponu od 50% do 90% ukupne vrednosti projekta, kao što sledi:

- 90:10 za infrastrukturni projekat sa ugovorom o projektu bez rizika neiskorišćenosti kapaciteta (npr. javna bolnica ili zatvor),
- 85:15 za projekat elektrane ili prerađivačkog pogona sa ugovorenim plasmanom proizvoda i/ili usluga,
- 80:20 za infrastrukturni projekat sa rizikom nivoa korišćenja kapaciteta (npr. put sa plaćanjem putarine ili projekat masovnog tranzita),
- 70:30 za projekat za eksploataciju prirodnih resursa,
- 50:50 za projekat komercijalne elektrane bez unapred ugovorenog plasmana proizvoda i/ili usluga ili hedžinga cene proizvoda ili usluga.

JPP u Republici Srbiji

Danas u Srbiji postoji ogroman potencijal za primenu modela JPP jer sa jedne strane postoji značajan budžetski deficit, zaduženost države, nezaposlenost i skromne stope privrednog rasta, a sa druge strane sve je veća potreba za izgradnjom nove javne infrastrukture i renoviranjem postojećih objekata. Kao potvrda navedenog u Tabeli 1, u tekstu dole, su prikazani osnovni makroekonomski pokazatelji Republike Srbije u periodu od 2006 do 2013.

suppliers, product and/or service buyers).

Project finance is a relatively new financial discipline that has been developing at accelerated pace over the past 20 years. It is necessary to emphasize that project finance is not the same as project financing because the key difference is in the manner of assessing the credit worthiness. In project finance, a bank or another creditor approves the funds borrowed based on future cash flows of the project the construction of which needs to be financed, while in conventional project financing the credit worthiness of the client, i.e. the sponsor backing the project is the key element supporting the loan approval. This element can be determined by examining the company operation based on the financial statements' analysis, and/or whether such operation will generate enough cash for the loan repayment. In this case, the project's cost effectiveness is also essential, provided, however, that the income it will generate is not treated as primary repayment capacity of the loan to be approved.

In project finance, the awareness of profitability and cost-effectiveness is based on the projection of the project's profitability and cost-effectiveness, i.e. the projections of revenues (projected cash inflows) to be generated by the project exploitation, and the project costs (projected cash outflows) which apart from the exploitation costs also include the costs of the project funding. The most precise profitability indicators of an investment are net present value of the project and internal rate of return calculated on the total value of the project or on the capital invested by sponsors. Calculation of the project's net present value is based on the discounting of future cash flows by applying the discount rate that is usually equal to the rate of return on non-risky investments („risk free rate“). If net present value of the project is higher than zero, the project is profitable. This indicator is usually used when selecting the most profitable among a larger number of offered projects or when one project has several variants among which the best solution is to be found. The present value method is also used by our legislator to calculate the total price of a project: total costs of the project are discounted in the agreed upon period without the value added tax. The project price calculated in this

way is one of the criteria in selecting the most favorable bid. Internal rate of return shows the project's return during its operation life. It is the discount rate at which the project's net present value is equal to zero.

Based on the fact that application of this model of financing also involves a large share of borrowed assets, financiers are also interested, apart from the basic project profitability indicators, in a determination of the project's repayment capacity that is obtained by calculation of a series of ratios. Two most important ratios are:

- annual debt service cover ratio (ADSCR), and
- the period of invested capital return (“payback period”).

Annual debt service cover ratio is usually calculated on a yearly basis on the ground of the projected cash flows report by putting in proportion the operating cash flow and the total amount of the principal and pertaining interest to be paid in a given year. This is the way for measuring the project's repayment capacity, i.e. its ability to ensure a regular loan repayment from generated revenues.

The minimum required value of this ratio varies from one project to another, but standardization could be done by groups of projects in the following way (Yescombe, 2002):

- **1.2** for infrastructure projects having both a raw materials supply contract and service and/or product sales contract and where there is no risk of the service and/or product sale, i.e. no risk of project operation (for example, a hospital, school, etc.),
- **1.3** for energy or manufacturing plants where a contract for the sale of products and/or service exists,
- **1.4** for infrastructure projects, such as roads or massive transport projects (bridges, tunnels, etc.), where availability and demand risk exist,
- **1.5** for projects based on exploitation of natural resources, and
- **2** for electricity generating plants where there is no service sales contract or any document that would guarantee the price of the service.

A higher level of debt cover may be demanded with projects with a non-standard risk or in countries characterized by a high investment risk.

Tabela 1: Osnovni makroekonomski pokazatelji Republike Srbije u periodu od 2006 do 2013

Makroekonomski pokazatelji	2006	2007	2008	2009	2010	2011	2012	2013
Osnovni makroekonomski indikatori	Procentualna promena (ako drugačije nije definisano)							
Realni rast DBP-a*	4.9	5.9	5.4	-3.1	0.6	1.4	-1.0	2.6
Realna neto zarada	11.4	19.5	3.9	0.2	0.7	0.2	1.1	-1.5
Stopa nezaposlenosti	20.9	18.1	13.6	16.1	19.2	23.0	23.9	20.1
Stopa inflacije**	6.6	11.0	8.6	6.6	10.3	7.0	12.2	2.2
Prosečna godišnja stopa inflacije		6.0	12.5	8.2	6.2	11.2	7.3	7.9
Državne finansije i platni i trgovinski bilans	U procentima u odnosu na BDP (ako drugačije nije definisano)							
Konsolidovani fiskalni rezultat	-1.4	-1.9	-2.6	-4.2	-4.5	-4.7	-6.1	-4.7
Javni dug Republike Srbije (spoljni+unutrašnji)	35,9	29,9	28,3	32,8	41,8	45,4	56,2	59,6
Tekući račun platnog bilansa	-9.6	-18.1	-21.2	-5.8	-7.0	-9.9	-11.5	-6.1
Spoljnotrgovinski Bilans	-23.0	-25.9	-27.1	-18.5	-18.0	-18.5	-20.1	-13.4
Devizne rezerve NBS (u milijardama EUR-a)	9.0	9.6	8.2	10.6	10.0	12.1	10.9	11.2
Neto direktne inostrane investicije (u milijardama EUR-a)	3.3	1.8	1.8	1.4	0.9	1.8	0.2	0.6
Indikatori eksterne likvidnosti	(%)							
Devizne rezerve/kratkoročni dug	265.1	250.6	162.6	220.6	193.0	299.6	242.6	289.8
Devizne rezerve/BDP	36.9	32.7	24.2	34.6	33.6	36.1	34.5	32.7
Otplata duga/BDP	10.3	10.3	10.7	12.8	12.0	12.5	13.1	13.4
Otplata duga/izvoz robe i usluga	36.2	37.5	37.5	48.8	37.4	37.5	36.2	32.9
Indikatori eksterne solventnosti	(%)							
Spoljni dug/BDP	58.5	59.0	62.3	72.7	79.0	72.2	80.9	75.2
Kratkoročni dug/BDP	13,9	13,1	14,9	15,7	17,4	12,0	14,2	11,3
Spoljni dug/izvoz robe i usluga	205,7	214,2	219,1	277,0	246,9	216,4	223,0	184,5
Ostali indikatori								
BDP po stanovniku (in EUR)	3,144	3,857	4,444	3,955	3,841	4,335	4,134	4,624
Broj stanovnika (u milionima)	7.41	7.38	7.35	7.32	7.5	7.5	7.2	7.2

* u stalnim cenama prethodne godine
** u odnosu na isti mesec prethodne godine
Izvor: Zvanično objavljeni podaci Narodne Banke Srbije i Republičkog Zavoda za statistiku

Model JPP koji se prvi put pojavljuje u našem pravnom sistemu, predstavlja bolju opciju od dosadašnjih modela finansiranja investicija (npr. zaduživanje u inostranstvu, korišćenje sredstava Nacionalnog investicionog plana, finansiranje od strane javnih preduzeća ili direktno iz budžeta), koji su se pokazali kao neefikasni.

Treba naglasiti da Zakon o javno-privatnom partnerstvu i koncesiji Republike Srbije, koji je donet krajem 2011. godine, predstavlja značajan pomak u odnosu na prethodni zakon jer predviđa mogućnost zaključenja direktnog ugovora između finansijera, javnog i privatnog partnera, a sve u cilju postizanja većeg stepena zaštite uloženih sredstava finansijera. Ovaj zakon je prvi koji uvodi pravni institut „direktnog ugovora“ (*Direct Agreement*) u naše zakonodavstvo koji se inače jako dugo koristi u anglosaksonskom pravu. Takođe, u cilju što kvalitetnijeg obezbeđenja naplate uloženih sredstava finansijera, zakon po prvi put predviđa mogućnost da uz prethodnu saglasnost javnog partnera, privatni partner

može da dodeli, optereti hipotekom, založi bilo koje svoje pravo, odnosno obavezu iz javnog ugovora ili drugu imovinu vezanu za projekat, u korist finansijera, a u cilju obezbeđivanja plaćanja bilo kog nastalog ili budućeg potraživanja u vezi sa izgradnjom i finansiranjem, odnosno refinansiranjem JPP. Upravo ova dva gore navedena unapređenja zakonske regulative obezbeđuju značajno viši stepen zaštite finansijera kao dominantnog ulagača u projektima izgradnje infrastrukture, što je jedan od ključnih faktora za privlačenje stranih investitora jer vrednost ovih projekata značajno prevazilazi finansijske mogućnosti privatnih ulagača i budžetskih sredstava. Pored ovoga Vlada nakon donošenja Zakona nastavlja da ojačava institucionalno okvir za realizaciju JPP pa je doneta Uredba o nadzoru na realizaciji javnih ugovora o javnom privatnom partnerstvu (Službeni Glasnik Republike Srbije br. 47/2013), a Pravilnik o načinu vođenja i sadržini registra javnih ugovora donet je od strane Ministarstva Finansija i Privrede (Službeni Glasnik Republike Srbije br. 57/2013).

The payback period shows the period in which the project’s exploitation will generate the operating cash flows equal to the total of invested assets. It is calculated by dividing the value of the total of invested assets by average annual operating cash flow. More precisely defined, the period for which the project’s cash flow is projected (monthly, semiannual or annual) will determine the mode of expressing the speed of payback of the invested assets, i.e. the number of months, semesters or years in which the invested assets will be paid back. At evaluating a project, it is both for the financiers and sponsors relevant to know how fast the invested assets will be paid back. The ratio of the invested assets payback period is never used alone.

Depending on the risk, the share of borrowed assets with project finance is in the range from 50% to 90% of the total project value, as follows:

- 90:10 for an infrastructure project with the project contract, with no risk of the lack of capacity utilization (for example, a public hospital or a prison),
- 85:15 for a power generating or manufacturing plant project with the contracted sale of

product and/or service sale,

- 80:20 for an infrastructure project involving a risk of the level of capacity utilization (for example, a road with toll payment or a passive transit project),
- 70:30 for a project for exploitation of natural resources,
- 50:50 for a project of a commercial electric power generating plant without a pre-contracted sale of products and/or services or a hedged product/service price.

PPP in the Republic of Serbia

Currently, a huge potential exists in Serbia for the PPP model application in view of the significant budget deficit, the public debt, unemployment and modest economic growth rates, on one side, and the increasing need for the building of a new public infrastructure and renovation of the existing structures, on the other. As a proof of the figures presented in Table 1, the text below provides the basic macroeconomic indicators of the Republic of Serbia in the period between 2006 and 2013.

Table 1 - Basic Macroeconomic Indicators of the Republic of Serbia in 2006-2013

Macroeconomic indicators	2006	2007	2008	2009	2010	2011	2012	2013
Basic macroeconomic indicators	Change in % (if not defined otherwise)							
Real GDP* growth	4.9	5.9	5.4	-3.1	0.6	1.4	-1.0	2.6
Real net profit	11.4	19.5	3.9	0.2	0.7	0.2	1.1	-1.5
Unemployment rate	20.9	18.1	13.6	16.1	19.2	23.0	23.9	20.1
Inflation rate**	6.6	11.0	8.6	6.6	10.3	7.0	12.2	2.2
Average annual inflation rate		6.0	12.5	8.2	6.2	11.2	7.3	7.9
Public finance, balance of payments and balance of trade	In % in relation to GDP (if not defined otherwise)							
Consolidated fiscal result	-1.4	-1.9	-2.6	-4.2	-4.5	-4.7	-6.1	-4.7
Public debt of the Republic of Serbia (external + internal)	35,9	29,9	28,3	32,8	41,8	45,4	56,2	59,6
Balance of payments current account	-9.6	-18.1	-21.2	-5.8	-7.0	-9.9	-11.5	-6.1
Balance of trade	-23.0	-25.9	-27.1	-18.5	-18.0	-18.5	-20.1	-13.4
FX reserves of the NBS (in EUR billion)	9.0	9.6	8.2	10.6	10.0	12.1	10.9	11.2
Net foreign direct investment (in EUR billion)	3.3	1.8	1.8	1.4	0.9	1.8	0.2	0.6
Indicators of external liquidity	(%)							
FX reserves/short-term debt	265.1	250.6	162.6	220.6	193.0	299.6	242.6	289.8
FX reserves/GDP	36.9	32.7	24.2	34.6	33.6	36.1	34.5	32.7
Debt repayment/GDP	10.3	10.3	10.7	12.8	12.0	12.5	13.1	13.4
Debt repayment/ export of goods and services	36.2	37.5	37.5	48.8	37.4	37.5	36.2	32.9
Indicators of external solvency	(%)							
Foreign debt/GDP	58.5	59.0	62.3	72.7	79.0	72.2	80.9	75.2
Short-term debt/GDP	13.9	13.1	14.9	15.7	17.4	12.0	14.2	11.3
Foreign debt/export of goods and services	205,7	214,2	219,1	277,0	246,9	216,4	223,0	184,5
Other indicators								
GDP per capita (in EUR)	3,144	3,857	4,444	3,955	3,841	4,335	4,134	4,624
Population (in million)	7.41	7.38	7.35	7.32	7.5	7.5	7.2	7.2

* in permanent prices in the past year

** in relation to the same month of the past year

Source: Official published data of the National Bank of Serbia and Statistical Office of the Republic of Serbia

Do donošenja Zakona o JPPK, ova oblast bila je uređena mnoštvom pojedinačnih propisa, s tim što ključna pitanja nisu bila regulisana na adekvatan način. Pre ovog zakona, na republičkom nivou bilo je par neuspelih pokušaja JPP zasnovanog na Zakonu o koncesijama, koji je predviđao komplikovanu i dugotrajnu proceduru dodele koncesije. U praksi ovaj institut nije dao željene rezultate - od pet zaključenih ugovora o koncesiji u oblasti rudarstva i izgradnje autoputeva, samo jedan je ostao na snazi - koncesija data multinacionalnoj kompaniji „Rio Tinto“ za eksploataciju i istraživanje bornih ruda, dok su preostala četiri ugovora raskinuta. Brojni potencijalni projekti uopšte nisu realizovani ili su započeti, a nisu okončani (npr. postupak dodele koncesije za deponiju u Vinči obustavljen na neodređeno vreme). Neuspešno su završeni tenderi za koncesije za izgradnju autoputa Horgoš - Požega i terminala za prtljag na Beogradskom aerodromu. Sve u svemu, do sada koncesije i JPP nisu zaživeli na republičkom nivou.

Na lokalnom nivou, investicije privatnog sektora u infrastrukturu vršene su u skladu sa Zakonom o komunalnim delatnostima iz 1997. godine, koji je davao mogućnost da se obavljanje komunalne delatnosti poveri drugom preduzeću. Ovaj zakon predstavlja temelj većine JPP koja funkcionišu na nivou lokalne samouprave u Srbiji, a najviše ih je u sektoru održavanja čistoće, tj. komunalnih usluga i upravljanju otpadom.

Do sada je priliv privatnog kapitala zabeležen najviše u sektorima koji zahtevaju manje investicije (kao što su usluge parkiranja ili upravljanja čvrstim otpadom), jer se vezuje za projekte manje vrednosti (do 40 miliona evra) i posledično nosi i manji rizik ulaganja. Najveće investicije zahtevaju sektori vode i kanalizacije (prema nekim procenama, za Beogradski vodovod i kanalizaciju je potrebno obezbediti investiciju od čak 987 miliona evra). Kod nas još uvek ne postoji značajnija praksa u pogledu projekata JPP, budući da je Zakon o JPP usvojen u novembru 2011. godine.

Najpoznatiji projekat JPP, za sada, sprovodi se u oblasti javnog prevoza u Beogradu (Sistem za naplatu karata i upravljanje vozilima u javnom prevozu u Beogradu - popularni Bus Plus). Iako se formalno ne radi o projektu JPP,

budući da je zasnovan na ugovoru zaključenom pre stupanja na snagu Zakona o JPP, u ovom projektu suštinski je ostvaren partnerski odnos karakterističan za JPP. Naime, Grad Beograd, Direkcija za javni prevoz, zaključila je sa najpovoljnijim ponuđačem na tenderu ugovor o uspostavljanju i obezbeđenju funkcionisanja sistema za naplatu karata i upravljanje vozilima u javnom prevozu, prema kome privatni partner ima obavezu da obezbedi predmetni sistem, obezbedi distribuciju karata i kontrolu njihovog korišćenja u vozilima javnog prevoza, a kao naknadu za to ima pravo na procentualno učešće u prihodu od prodatih karata.

Primena JPP u oblasti resursa i obnovljivih izvora energije omogućena je postojećom zakonskom regulativom i sve je veći broj projekata izgradnje energetske objekata na bazi obnovljivih izvora energije koji je podržan dugoročnim kreditima banaka jer rizik tržišta ne postoji, tj. Elektroprivreda Srbije je u obavezi da otkupi svu električnu energiju proizvedenu primenom obnovljivih izvora energije.

Očekivanja su da će Vladina Komisija za JPP, koja je osnovana u februaru 2012. sa zadatkom da pruža stručnu pomoć pri realizaciji JPP i koncesija, doprineti razvoju ovog koncepta i kod nas. Treba naglasiti da Komisija ima značajnu ulogu u razvoju ovog koncepta u Srbiji danas jer pored pružanja stručne pomoći ona daje i mišljenje na svaki predlog JPP pokrenut od strane nadležnog javnog tela u zavisnosti da li se radi o projektu na republičkom, regionalnom ili lokalnom nivou. Bez pozitivnog mišljenja komisije nijedan predlog JPP ne može biti dalje procesuiran tj. ne može biti pokrenut postupak izbora privatnog partnera ili postupak javne nabavke. Na bazi zvaničnih informacija ove institucije objavljenih na njihovoj internet stranici, Komisija je dala pozitivno mišljenje na ukupno 18 projekata JPP od kojih je samo jedan na republičkom nivou i odnosi se na izgradnju Autoputa E-763 Beograd-Požega, a svi ostali su na lokalnom tj. na nivou gradova i u najvećoj meri se odnose na vršenje različitih poslova iz oblasti komunalne delatnosti (gradski i prigradski prevoz, javni parking, kanalizaciona mreža i sl.).

Na osnovu svega navedenog, može se zaključiti da je ključan faktor uspeha primene JPP u Srbiji postojanje političke volje na

The PPP model that is for the first time appearing in our legal system represents an option better than the hitherto models of investment financing (for example, borrowing abroad, use of the National Investment Plan resources, financing by public enterprises or directly from the budget), which have proved to be inefficient.

It is worth mentioning that the Law on Public-Private Partnership and Concession of the Republic of Serbia, adopted at the close of 2011, accounts for a significant progress relative to the previous law because it envisages a possibility of entering into direct agreement between the financiers, the public and the private partner for the purpose of achieving a higher degree of protection for the assets invested by financiers. This Law is the first that is introducing the legal institute of "direct agreement" in our legislation, the institute that has been for a very long time in use in the Anglo-Saxon law. Also, in order to ensure a best possible collection of the assets invested by financiers, the Law envisages for the first time a possibility for the private partner, based on his prior consent, to award, hypothecate, pledge any of his rights, and/or obligations from the public contract or another property related with the project in favor of the financier, in order to ensure payment of any due or future claim in connection with the PPP building and financing and/or refinancing. The two mentioned improvements of the legal regulation are precisely those that provide for a significantly higher degree of protection of the financier as a dominant investor in infrastructure building projects, which is one of the key factors for attracting foreign investors, because the value of these projects exceeds significantly the financial possibilities of private investors and budget resources. Moreover, after the Law adoption the Government continues to strengthen institutionally the framework for the PPP implementation. In that regard was adopted the Decree on Supervision over Implementation of Public-Private Partnership Agreements ("RS Official Gazette", number 47/2013), while the Rules on the Manner of Keeping and Contents of Public Agreements Register were rendered by the Ministries of Finance and Economy ("RS Official Gazette", number 57/2013).

Prior to adoption of the Law on Public-

Private Partnership and Concessions, this area was regulated by a multitude of individual regulations, whereas the key issues were not regulated adequately. Actually, at the republic level there had been a couple of unsuccessful attempts of PPPs based on the Law on Concessions, which envisaged a complicated and a long time-consuming concession award procedure. This institute did not produce the desired results in practice - out of five concluded agreements in the area of mining and highway building, only one remained in force - the concession granted to the multinational company „Rio Tinto“ for exploitation and research of boron ores, while the remaining four contracts were rescinded. Numerous potential projects have not been implemented at all or have been initiated but never brought to end (for example, the concession award procedure for the town dump in Vinča was suspended for an indefinite time period). Tenders invited for the concessions for Horgoš - Požega highway construction and the construction of the luggage terminal at the Belgrade airport have failed. All in all, concessions and PPPs are yet to take hold at the republic level.

At the local level, the private sector has invested in infrastructure in accordance with the 1997 Law on Utilities, which allowed a possibility of entrusting the performance of utilities to another enterprise. This law represents the foundation of most PPPs operating at the local government level in Serbia, mainly in the areas of cleaning maintenance, i.e. utilities and waste management.

To date, inflow of private capital has been registered most in the sectors that require smaller investments (such as parking services or solid waste management), as they are linked with the smaller value projects (up to EUR 40 million) and, consequently, bear a lower investment risk. Largest investments are required by the water supply and sewerage sectors (according to some estimates, an investment worth as much as EUR 987 million is required for the Belgrade Water Supply and Sewerage Company). Although the Law on PPP was adopted in November 2011, one cannot speak yet about a significant practice existing in Serbia with respect to PPP projects.

The most known PPP project, for the time

najvišem nivou da se ovi projekti iniciraju i sprovedu do kraja jer upravo Država (svi nivoi vlasti) je ta koja daje inicijativu za pokretanje projekata JPP. Struktura do sada odobrenih projekata ukazuje na to da ne postoji adekvatna zainteresovanost Države za projekte JPP na republičkom nivou jer da nije tako ne bi bio samo jedan predložen projekat od ukupno 18. Postavlja se pitanje zašto je tako kad glavni potencijal JPP leži upravo u primeni kod investicija u infrastrukturne projekte jer bi oni imali najjači pozitivan efekat na pokretanje privredne aktivnosti posmatrano i na kratak i na dug rok. Ono što je apsurd jeste da je Država obezbedila institucionalnu i pravnu podršku za primenu ovog koncepta ali nije zainteresovana da ga primeni kod infrastrukturnih projekata. Sa druge strane posmatrano, Država ima aktivniju ulogu kod primene JPP projekata ali na lokalnom nivou vlasti jer od ukupno 18 projekata sa pozitivnim mišljenjem 17 se odnosi na lokalni nivo. Ne može, a da se ne postavi pitanje: da li je ovaj broj projekata dovoljan za period od nepune četiri godine od kako je Zakon o JPPK donet ili se u Srbiji sporim koracima i oprezno kreće sa primenom za nas potpuno novog koncepta u pružanja javnih dobara i usluga? Treba naglasiti da i pored toga što je svim zakonskim i podzakonskim aktima definisano postojanje Registra o javnim ugovorima, isti nije moguće pronaći tako da nikom nije poznato da li su projekti na koje je Komisija za JPP dala pozitivno mišljenje i došli u fazu da se na osnovu njih zaključi javni ugovor sa privatnim partnerom.

Drugi ključan faktor uspeha primene JPP modela je institucionalna i stručna podrška procesu implementacije JPP-a. Pored najvažnije institucionalne podrške koju kontinuirano i aktivno treba da pruža Komisija za JPP, važan doprinos procesu primene JPP-a mogu dati i druge institucije u zemlji, kao što su Nacionalna alijansa za lokalni ekonomski razvoj (NALED), Stalna konferencija gradova i opština (SKGO), Američka agencija za međunarodni razvoj (USAID) i druge čije su aktivnosti usmerene na organizovanje edukacije i razvoj uopšte na nivou lokalne samouprave.

Treći činilac predstavlja bankarski sektor jer u projektima JPP od 50% do 90% kapitala se obezbeđuje iz pozajmljenih izvora. Zato je potrebno da se banke uključe u čitav proces. Nažalost, bankarski sektor nije dovoljno uključen u realizaciju projekata JPP iako postoje svi preduslovi: finansijski kapacitet, obrazovan kadar i iskustvo u relizaciji sličnih projekata ali komercijalnog karaktera. I kod projekata sa komercijalnom upotrebom i kod projekata JPP primenjuje se ista tehnika finansiranja tj. projektno finansiranje.

Zaključak

Na osnovu svega do sada iznetog može se zaključiti da je primena JPP u Republici Srbiji tek u začetku jer se vezuje samo za projekte manje vrednosti, dok se pravi potencijal ovog koncepta ne koristi. Primenom ovog koncepta kod finansiranja kapitalnih investicija u infrastrukturu (mostovi, putevi, tuneli, objekti u vodoprivredi i energetici), država bi iskoristila sve pozitivne efekte koji bi se multiplikovali na celu privredu kroz ubrzanje privrednog rasta, smanjenje stope nezaposlenosti i inflacije, uravnoteženje budžeta i smanjenje javnog duga. Srbija danas ima zakonski okvir i obrazovan kadar i u javnom i u privatnom i u finansijskom sektoru ali nije uspostavljena adekvatna veza između ova tri činioca JPP i nedostaje inicijativa države jer upravo javna tela na različitim nivoima vlasti, od republičke do lokalne, su ta koja pokreću ove projekte. Pored toga, država treba da učini ovaj vid saradnje atraktivnim i za privatni sektor i za finansijere tako što bi obezbedila svoje garancije i/ili obezbedila određene poreske olakšice za sve predstavnike privatnog sektora zainteresovane da se uključe u JPP. Traženje odgovora na pitanje zašto ne postoji inicijativa države može da bude tema nekog drugog rada koji se neće baviti samo ekonomijom već i psihologijom, sociologijom i istorijom jer da bi koncept JPP zaista zaživeo u praksi i imao pozitivne efekte svest našeg društva o privatnoj i javnoj svojini, opštem interesu i odgovornosti kako pojedinca tako i celog društva mora da bude na mnogo višem nivou nego što je danas.

being, is implemented in the area of public transport in Belgrade (the Belgrade Fare Collection and Public Transport Management System - the popular "Bus Plus" tickets). Though, formally, not a PPP project, as it is based on the agreement entered into before the PPP Law became effective, this project is essentially the materialization of the partnership that is characteristic for a PPP. Namely, the City of Belgrade, Public Transport Directorate, concluded with the best bidder at a tender the Agreement Establishing the Fare Collection and Public Transport Management System, according to which the private partner has the obligation to provide for the subject system the distribution of tickets and control of their utilization in the public transport in return for the right to a percentage share in the revenues from sold tickets.

PPP application in the area of resources and renewable sources of energy has been made possible by the existing legal regulations, and there is an increasing number of projects of energy facilities construction based on renewable sources of energy. They are supported by long-term bank loans because the market risk is non-existent, i.e. the Electric Power Industry of Serbia is bound to purchase the entire electric power generated by renewable sources of energy.

The Government's PPP Commission, set up in February 2012 with the task to provide technical assistance in PPP and concession implementation, is expected to also contribute to the development of this concept in Serbia. It is worth noting that the Commission has a significant role in the development of the concept in the present-day Serbia as in addition to rendering the technical assistance it also gives opinion about each proposed PPP launched by the competent public authority, depending on whether a project at republican, regional or local level is concerned. The Commission's positive opinion on a proposed PPP is a prerequisite for further processing because in the absence of such opinion it is not possible to start the procedure of selecting the private partner or that of public procurement. Based on the official information of this institution posted on their web page, the Commission has given positive opinion about a total of 18 PPP projects of which

only one is at the republic level and relates to the construction of the Beograd-Požega E-763 highway, while all others are at the local, i.e. at town levels and relate mostly to the utilities (city and inter-city transport, public parking lots, sewerage network, etc.).

A conclusion that can be drawn from the above is that success of PPPs in Serbia requires the political will at the highest level that would push initiation and full implementation of these projects, because it is precisely the Government (at all levels) that gives the initiative for launching a PPP project. The structure of the projects implemented thus far indicates that there is a lack of adequate interest on the part of the Government in PPP projects at the republic level, as best illustrated by the fact that out of 18 proposed PPP projects only one is at the republic level. The question now is why is it so when the main PPP potential lies primarily in its application to investments in infrastructure projects as they would have the strongest positive effect on the propelling of the economic activity both in the short and long run. Absurdity is that the Government has provided for the institutional and legal support for the application of this concept, but is not interested in its application to infrastructure projects. On the other hand, the Government has a more active role in the PPP projects application at the local level, because out of 18 projects with the positive opinion 17 relate to the local government level. One cannot help asking if this number of projects is sufficient for a period of less than four years since the adoption of the PPP Law or is Serbia moving slowly and cautiously with the application of this fully new, for us, concept in the provision of public goods and services? It is worth noting that despite the fact that all laws and by-laws have envisaged a Register of Public Agreements, the same cannot be found anywhere. Consequently, nobody is aware whether the projects that received the positive opinion of the PPP Commission have come to a stage where a public agreement with the private partner can be concluded on the basis of them.

Another key factor of success of the PPP model application is the institutional and technical support to the process of PPP implementation. Apart from the most important

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institutional support that the PPP Commission needs to provide on a continuous and active basis, significant contribution to the process of PPP application can also be provided by other institutions in the country, such as the National Alliance for Local Economic Development (NALED), Standing Conference of Towns and Municipalities (SKGO), US Agency for International Development (USAID), etc., the activity of which includes organization of education and development in general at the local government level.

The third factor is the banking sector because in PPP projects between 50% and 90% of capital is provided by borrowing. This is the reason why the banks need to get involved in the whole process. Unfortunately, the banking sector is not sufficiently involved in the implementation of PPP projects although all prerequisites are in place therefore: the financial capacity, educated staff and experience in implementing similar projects of commercial nature, though. Both in projects intended for commercial use and in PPP projects the same technique of financing is applied, i.e. the project finance.

Conclusion

General conclusion of all of the above is that PPP application in the Republic of Serbia is only in its initial phase as its application is in the case of small value projects, while the real potential of this concept is not availed of. Application of this concept to capital investments financing

in infrastructure (bridges, roads, tunnels, water supply and power generation facilities) would enable the government to make use of all positive effects that would multiply to the whole economy through an accelerated economic growth, lowering of the rate of unemployment and inflation, balancing of the budget and reduction of the public debt. Currently, Serbia has the legal framework and educated personnel in the private, public and financial sectors; however, an adequate link has not been established among these three PPP factors. Also, the government's initiative is lacking because it is precisely the public entities at different government levels, from the central to the local, which set in motion such projects. Moreover, the government needs to make this form of cooperation attractive both for the private sector and the financiers. It will do so by providing its guarantees and/or by ensuring certain tax incentives for all representatives of the private sector interested in joining the PPP. Seeking answer to the question as to why the government's initiative is non-existent can be a topic of another paper that will deal not only with economics but also with psychology, sociology and history, because for the PPP concept to become truly a reality and produce positive effects requires that the awareness of our society concerning the private and public ownership, general interest and responsibility of both the individuals and the entire society will have to be at a level much higher than it is today.