

PPP: A WIN-WIN SITUATION FOR THE PUBLIC AND PRIVATE SECTORS

Public-Private Partnerships have become an effective way for Government to raise finances for large infrastructural projects, especially considering the current situation of most public coffers. BUSINESS AGENDA speaks to TOMASZ KORCZYNSKI about how Malta can learn from Poland's experience when it comes to the management of Public-Private Partnerships (PPPs).



"The current economic and financial instability is just one of the many reasons why governments are increasingly looking towards Public-Private Partnerships," states Tomasz Korczynski, Senior Associate of Wierzbowski Eversheds in Poland. "I think that in the current situation, PPPs may even reach more of their potential and prove how this business solution is really a sustainable and efficient one, no matter the economic climate."

Mr Korczynski should certainly know what he is talking about. As an attorney at law at Wierzbowski Eversheds, he specialises in commercial, business law and PPPs, and has over 10 years experience in providing legal advice to public and private entities, both in his native Poland as well as on an international level.

However, while Mr Korczynski certainly believes that PPPs offer a number of benefits to all parties involved, he explains that it is essential that PPPs are managed extremely well and from a holistic

perspective. "PPPs are not just about a business deal between Government and a private service supplier," he states.

"The partnership must provide some form of benefit to the general public and to society as a whole. In this respect, it is absolutely essential that the legal framework that enables PPPs to function in the first place is conducive towards this type of business plan," explains Mr Korczynski.

"In Poland, PPPs are a relatively new way of managing large projects and we have been through a number of upheavals when it came to implementing PPPs. The first legal Act that catered for PPPs in Poland was passed in 2005 and was replaced by the new Act just three years later, in 2008," he explains.

"I believe that Malta is now in the same position that Poland was in just a few short years ago and as such, both the public and private sector in Malta could learn from the Polish experience," Mr Korczynski observes.

He continues to explain that one of the main challenges that Poland had was a lack of transparency and trust. "The perception that the Government's public procurement practices left much to be desired, had a negative impact on PPPs," Mr Korczynski explains. "However, with the implementation of a clear legal framework that governed PPPs, the situation has improved considerably."

He maintains that while PPPs should have a clearly established framework in order to ensure transparency and improve trust between those involved, the legal Act that was implemented in Poland in 2005 was almost too rigid.

"In hindsight, we learned that while legislation is needed to ensure easy, clear and fair procedures, it should not stifle the development of PPPs... and this is almost what happened in Poland," he explains. "In fact, it was previously too restrictive as it actually defined what projects could and could not be carried out as a PPP. But we are

currently working on yet another revision as there are still too many provisions within the current Act that can render a PPP inefficient."

According to Mr Korczynski, another issue that parties interested in embarking on a PPP should be aware of is the question of risk division. "Initially, private companies in Poland that were exploring the possibility of becoming involved in a PPP tended to be unwilling to accept the fact that the venture included an element of risk," he explains.

"But the fact of the matter is that PPPs are a way of doing business. Businesses need to take some risk and the reward is their profits. That formula does not change just because the other partner is the Government," he states.

Mr Korczynski continues to explain that the reward for the private partner is opportunity and profits – but this means that the project needs to be managed effectively and efficiently. This formula also means that society on the whole will stand

to gain from high quality projects as substandard products or services would in the long run jeopardise the project or have a negative effect on profits.

In conclusion, Mr Korczynski expresses his belief that while Poland is still in the process of perfecting the way in which its PPPs are managed, Malta can still learn from its experience and avoid certain mistakes.

He explains that, primarily, it would be essential to build a relationship based on trust and transparency. Secondly, the legal framework needs to be conducive towards PPPs – so it should be there to provide a framework and recourse to prosecution, if necessary, but it should not stifle potential and growth. Thirdly, the division of risk must be balanced enough to offer a strong enough incentive for both Government as well as the private sector to opt for this way of doing business.

"PPPs have enormous potential and this business format can be used within practically any sector – healthcare, sports industry, transportation, education and even correctional facilities. With careful planning and the right legal framework, Malta can stand to benefit tremendously from investing in PPPs, but the future will tell to what extent this potential will be realised," Mr Korczynski concludes.

Mr Korczynski was a key-note speaker at a Conference on Public Private Partnerships jointly-organised by MBB and MEUSAC.



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