



Armenia

ASSESSMENT OF THE QUALITY OF THE PPP LEGISLATION AND OF THE EFFECTIVENESS OF ITS IMPLEMENTATION

2011

I- PPP Legislative Framework Assessment (LFA)	Compliance of the PPP legal framework with PFI Guide recommendations¹ and Best Practice		
Core Area		Rating	Assessment
1- PPP Legal Framework	Existence of specific PPP law or a comprehensive set of laws regulating concessions and other forms of PPP and allowing a workable PPP legal framework	4/21	
2-Definitions and Scope of the Law	Existence of a clear definition of the boundaries and scope of application of the concession legal framework (e.g. definition of "PPP", sectors concerned, competent authorities, eligible Private party) limiting the risk of a challenge to the validity of PPP contracts, irrespective of whether the act is specifically targeted at PPP	6/24	
3-Selection of the Private Party	Mandatory application of a fair and transparent tender selection process. Limited exceptions allowing direct negotiations, competitive rules for unsolicited proposals and the possibility to challenge illegal awards.	12/42	
4-Project Agreement	Flexibility with respect to the content of the provisions of the Project agreements which should allow a proper allocation of risks without unnecessary or unrealistic/not bankable/compulsory requirements/interferences from the Contracting Authority (obligations,	10/30	

¹ UNCITRAL *Legislative Guide on Privately Financed Infrastructure Projects*, 2001 (hereinafter the "PFI Guide")

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	tariff, termination, compensation).		
5-Security and Support Issues	Availability of reliable security instruments to contractually secure the assets and cash-flow of the Private Party in favour of lenders, including "step in" rights and the possibility of government financial support, or guarantee of, the Contracting Authority's proper fulfilment of its obligations.	4/21	
6-Settlement of Disputes and Applicable Laws	Possibility to obtain proper remedy for breach under the applicable law through international arbitration and enforcement of arbitral awards.	11/15	
General LFA Rating			
		33/%	Low Compliance
II-Legal Indicators Survey (LIS)	Effectiveness Assessment : How the PPP law works in practice		
Core Area		Rating	Legal Indicator Survey
7- Policy Framework	Existence of a policy framework for public private partnerships	4/24	
8 Institutional Framework	Existence of an institutional framework for public private partnerships	0/18	
9- PPP Law Enforcement	Award and implementation of PPP projects in compliance with the Law	10/24	
General LIS Rating		19,7/%	Very Low/Effectiveness
OVERALL RATING		26,3/%	Very Low Compliance//Effectiveness

Local Expert²: Ameria cjsc, David Sargsyan

² The Local Experts in charge of each country have been consulted for the elaboration of the responses to the Checklist in their capacity of well recognized established law firm in the country but the Local Experts as well as EBRD are in no way responsible for the responses given to any question in this Checklist as the Consultant was free to use any other sources of information for its final determination.

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RATING: Key for assessment of Each Question

✓ ✓ ✓	Yes	3 points
✓ ✓	Yes, with reservations	2 points
✗ ✗	No, with Limited compliance / redeeming features	1 point
✗ ✗ ✗	No	0 point
N/A	Not applicable	0 point/ Not included in total

Key for Assessment of Each Core Area and for Overall Assessment

≥ 90%	Very High Compliance/Effectiveness
≥ 70%-89%	High Compliance/Effectiveness
50%-69%	Medium Compliance/Effectiveness
30%-49%	Low Compliance/Effectiveness
< 30%	Very low Compliance/Effectiveness

TERMINOLOGY

So as to keep answers consistent and avoid ambiguity, we set out below some brief definitions of the terminology used in this questionnaire. Any definition is provided solely to clarify some of the terminology used below. The reader should note that any such definition does not correspond with any given definition under best international practice (which does not provide for any standardised PPP legal definitions recognised worldwide) neither should it be interpreted that we recommend the adoption of such definitions under actual documentation, but they are included in the interests of clarity for the completion of this questionnaire, and we should be grateful if you could adopt such definitions for the purposes of completing the questionnaire.

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- **"Public Private Partnership" - "PPP" or "PPP project"** includes all types of long-term arrangements between public authorities and private institutions, including but not limited to; Concessions, BOT and derived forms, PFI and Institutional PPP. For the purposes of this questionnaire, PPP excludes the sale of public assets or of public company shares which are part of a privatisation process and also excludes public works, services or supply contracts which are subject to public procurement rules.

The following types of Public - Private Partnership Agreements may be adopted by a Contracting Authority for undertaking infrastructure projects. These are solely indicative in nature and the Contracting Authority may seek to adopt a combination of the different contractual arrangements, which incorporate some of their elements or combine elements.

- **"BOT"** - (Build-Operate-and-Transfer)- and derived forms : a contractual arrangement whereby the Private Party undertakes to finance, design, construct under a turnkey risk basis, operate and maintain an Infrastructure project for a specified period after which period the project facilities are transferred to the Granting Authority usually without payment of any compensation.

The Private Party has the right to collect contract or market based tariffs or fees from the users of the infrastructure project, as specified in the PPP agreement, to recover its investment and operating and maintenance expenses for the project. A BOT type of PPP arrangement may provide for all the implementation and operational efficiencies of the private sector, together with new sources of infrastructure capital. Derived forms of BOT contractual arrangements exist such as Build-Own-Operate-and-Transfer (BOOT) similar to the BOT agreement, except that the Private Party owns the Infrastructure project during the specified term before its transfer to the Contracting Authority or its designee, or such as Build-Own-and-Operate (BOO) which is a contractual arrangement similar to the BOT agreement, except that the Private Party owns the Infrastructure project and no transfer of the project to the Contracting Authority or its designee at the end of the fixed period is envisaged. Derived forms incorporating Lease right rather than Ownership or dealing with rehabilitation or extension rather than construction which extend the possible combination which for the purpose of this questionnaire will all be hereafter referred to as BOT for simplification purpose except where legal specificity requires specific treatment.

- **"Concession"**: is an act attributable to the State whereby a Contracting Authority entrusts to a third party the total or partial management of public services for which that authority would normally be responsible and for which the third party assumes all or part of the risk.
- **"PFI"** (Private Finance Initiative) : a form of cooperation and partnership between public authorities and Private Parties which aim to ensure the funding, construction, renovation, management or maintenance of an infrastructure or the provision of service to the infrastructure without the delegation of the public service itself. It is a contractual arrangement whereby the Private Party



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undertakes the financing and the construction of an infrastructure project and after its completion transfer it to the Contracting Authority or its designee. This arrangement may be employed in the construction of a public service facility for which the public service must be operated directly by the contracting authority for whatever reason but the operation and maintenance of the facility remain the responsibility of the Private Party for the entire duration of the PPP agreement. The contracting authority will reimburse the total project investment on the basis of a rent based of an agreed schedule with the payment starting from the date of commencement of operation and pay for the services rendered to the facility on a performance basis.

- **"IPPP"**(Institutional PPP): a structural or corporate form of PPP which provide for the cooperation between public authorities and a Private Party through a joint venture or mix (publid- private shareholding) company in which case all reference to the slection process refers to the selection of the Private Party.

Other definitions:

- The **"Law"** or **"PPP Law"**: a law regulating any form of PPP including but not limited to Concession, BOT, PFI, IPPP and including, for the purpose of this questionnaire, the set of rules applicable to any PPP in the absence of a specific PPP law. The Law for the purpose of this questionnaire also includes any implementing regulation and any form of governmental act regulating PPP.
- **"BOT Law"** : a law regulating a BOT type of PPP in their multiple forms.
- **"Concession Law"**: a law regulating a Concession form of PPP.
- **"Contracting Authority"**: a public authority empowered to award a PPP and enter into Project Agreements
- **"PFI Law"**: a law regulating a PFI form of PPP.
- **"PPP unit"** : specialized institution/agency/ministerial department established to promote and take care of PPP.
- **"Private Party"** : Private Party or other entity in the form of a special purpose company to which a Project Agreement in general has been awarded. [*The word Private party will be used for the sake of this study even in case the PPP regulation allows PPP business partner to be a mix company or even a public entity.*]
- **"Project Agreement"**: an agreement(s) between the Contracting Authority and the Private Party regulating their respective rights and obligations with respect to the PPP project.



REFERENCE TO BEST PRACTICE

- UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects, 2001 (hereinafter the "**PFI Guide**") and UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects, 2003 (UNCITRAL Model Legislative Provisions).
- EC - Commission Interpretative Communication on Concessions Under Community Law dated 12 April 2000; together with additional EU major documents/decision /recommendation on concessions including Directives 2004/18/EC and 2004/17 EC of 31 March 2004; Green Paper on Public Private Partnerships and Community Law on Public Contracts and Concessions dated 30 April 2004; Report on the public consultation on the Green Paper (SEC(2005) 629- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Public-Private Partnerships and Community Law on Public Procurement and Concessions (Brussels, 15.11.2005.COM(2005) 569) European Parliament resolution on public-private partnerships and Community law on public procurement and concessions (2006/2043(INI)); European Commission Guidelines for Successful Public-Private Partnerships (2003).Commission Interpretative Communication Brussels, 05.02.2008 C (2007)6661on the application of Community law on Public Procurement, and Concessions to Institutionalised Public-Private Partnerships (IPPP);
- EBRD Core Principles for a Modern Concessions Law – selection and justification of principles Prepared by the EBRD Legal Transition Team.2005;
- UNIDO Guidelines for Infrastructure Development through Build Operate Transfer (BOT) Projects, 1996 (UNIDO BOT Guidelines); and
- OECD Basic Elements of a Law on Concession Agreements, 1999-2000.



OVERALL ASSESSMENT ARMENIA 2011:

An indirect general policy framework for improving the legal environment and promoting PSP has been identified in Armenia (*Poverty Reduction Strategic Paper*).

Armenia does not have a general concession Law. General laws do not refer to and regulate concessions (apart from the general reference in the *Law on Foreign Investments* providing that concessions are one of the forms of foreign investments).

Two sector-specific laws regulate concessions, in the mining and water sectors. However, such laws do not contain clear definitions and need to be improved regarding the selection procedures (even though the general rule is that concessions are granted based on a tender/auction). In the water sector, the use of a model concession agreement is optional. Recently adopted Republic of Armenia Law “On Railway Transport” contains just specific reference to concession by stating that the concessions shall be regulated under the relevant contract as approved by the government of the Republic of Armenia. Government support and financial securities are defined in the general legislation (*Civil Code, Law on Budgetary System*) and allow, to a certain extent, such elements.

No clear reference is made to international arbitration. In this respect, it should be noted that that international arbitration has been provided in privatisation contracts in Armenia. Thus, despite certain positive features, the general legal framework for PPP needs to be elaborated in Armenia.

While sector laws and regulations are enforced more or less properly, there are some corruption, bureaucracy (insuffisiant governance) and institutional risks to be considered. As of 2008 no new laws or amendments were adopted regarding the PPP/Concession legislation and the regulation of such relations remains at the same effectiveness level in Armenia. However, at this stage, the Government of the Republic of Armenia envisages the elaboration of new general PPP/concession law which will provide legal grounds and general framework for regulation of PPP projects.



ASSESSMENT & LEGAL INDICATOR SURVEY

1. LEGAL FRAMEWORK

1.1 Existence of different forms of PPP legal framework

QUESTION	ANSWER	ARTICLE	COMMENTARY
1. Does the country have a single act dealing specifically with Concessions or a generalised act incorporating the legal framework for PPP, including Concessions?	×××		No such specific act on Concessions or PPP exists in Armenia
2. Does the country have an act that allows BOT or derived forms such as BOOT, BOO or other forms either as part of a specific act or as part of a general PPP Law?	×××		No such specific act allowing BOT and its derived forms exists in Armenia.



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3. Does the country have an act that allows PFI, either as part of a specific act or as part of a general PPP Law?	×××		No such specific act on PFI exists in Armenia
4. If the answer is <i>No</i> to any of the three first questions concerning a specific form of PPP does the Constitution or other general act (ex: the Civil Code, sectoral law) recognise the basic principles of the concerned PPP and regulate its granting?	××		<ul style="list-style-type: none"> • Civil Code, 1/01/1999; • Law on Foreign Investments, 4/08/1994 (Article 4 and 21); • Law on Procurement, 01/01/2005; • Privatization Law, 10/02/1998; <p>No specific reference to concessions, apart from a general reference in the Law on Foreign Investments providing that concessions are one of the forms of foreign investments and concession agreements may be concluded with foreign investors for exploitation of natural renewable and non-renewable resources.</p> <p>The Procurement Law regulates relations regarding the procurement of the products and services by public bodies or communities, or by the public or community enterprises, or by the public, community, Central Bank of the Republic of Armenia, non-profit making enterprises which have 50% or more public or community participation. No specific reference to concessions.</p>

For our general information: Is a new PPP Law or an amendment to the existing Law being prepared, or considered, in the country?



If so, at what stage of the legislative process is such new PPP Law or amendment to the existing Law?

At this stage no new PPP Law or an amendment to the existing Law is being prepared.

1.2 Specificity and integration of PPP the legal framework

<p>5. If the country has a Public Procurement is it clear to what extent the Public Procurement Law apply or not to the granting of a PPP?</p>	<p>× ×</p>		<p>Law on Procurement, 01/01/2005</p> <p>No reference to concessions in the Law on Procurements.</p> <p>Where the services and products procured are paid from the state and/or community budgets or from the capital of the enterprises which have 50% or more public or community participation (in most cases procured for the state and community needs) the Law on Procurement applies.</p>
<p>6. If the country has sectoral laws regulating PPP in specific sectors, is it clear which law is applicable to the granting of PPP for each particular sector?</p>	<p>✓ ✓</p>		<ul style="list-style-type: none"> • The Law on Concession of Subsurface for Purposes of Mineral Prospecting and Mining, enacted 01/04/2003; • The Water Code, enacted 10/10/2002, provides for the possibility of granting concession contracts in the area of water systems or part of



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			<p>it (Article 49 and 53);</p> <ul style="list-style-type: none"> • The Law on Railway Transport, enacted 17/01/2008, states the possibility of the railway transport property transfer under the concession agreement (Article 2). <p>General laws do not specify the sectors regulated. The sector-specific laws define infrastructure and public services they regulate.</p> <p>Given the limited number of texts, the identification of the applicable law should be relatively straightforward.</p>
<p>7. Does the country have a Law allowing the Institutional form of PPP (IPPP) which regulates IPPP participation to PPP?</p>	<p>×××</p>		<p>No specific law exists to this regard.</p>



2. DEFINITIONS AND SCOPE OF THE PPP LAW(S)

2.1 PPP definition³

QUESTION	ANSWER	ARTICLE	COMMENTARY
<p>1. Does the Law define one or several term(s) (<i>i.e.</i> "PPP", "Concession", "BOT", "Partnership" <i>etc. and/or respective agreements</i>) for the arrangements to be regulated by the Law which specify the limits of application of the Law?</p> <p>For our general information,: <i>please provide the given definition(s), if any.</i></p>	<p>× × ×</p>	<p>Article 3 of the Law on Concession of Subsurface for Purposes of Mineral Prospecting and Mining, enacted 01/04/2003</p> <p>Article 21 of the Law on Foreign Investments, 4/08/1994</p>	<p>Isolated definition of the "concession contract" under both laws: "concession contract": contract executed by and between the Republic of Armenia and the holder of a specific license on mine extraction/mining.</p> <p>"concession contracts" contracts executed by and between the Government of the Republic of Armenia or other delegated public body with the foreign investors for exploitation of renewable and non-renewable natural resources.</p>

³ PFI Guide, Consolidated Legislative Recommendations, Recommendation 3 and Commission Interpretative Communication on Concessions Under Community Law dated 12 April 2000; together with additional EU major documents/decision /recommendation on concessions including Directives 2004/18/EC and 2004/17 EC of 31 March 2004; Green Paper on Public Private Partnerships and Community Law on Public Contracts and Concessions dated 30 April 2004; Report on the public consultation on the Green Paper (SEC(2005) 629- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Public-Private Partnerships and Community Law on Public Procurement and Concessions (Brussels, 15.11.2005. COM(2005) 569) European Parliament resolution on public-private partnerships and Community law on public procurement and concessions (2006/2043(INI))



2. Does the Law apply to all contracts entered into that fall under the definition(s) given above, irrespective of the name given to such contract (<i>concession, license, usufruct right, lease, etc.</i>)?	×××		No general concession law.
3. Does the Law make a clear distinction between a PPP agreement (<i>such as a Concession</i>) and a license (<i>i.e. an authorisation to operate by a public authority</i>)?	××		Different definition in the Law on Concession of Subsurface for Purposes of Mineral Prospecting and Mining, enacted 01/04/2003

2.2 Contracting Authority

QUESTION	ANSWER	ARTICLE	COMMENTARY
4. Does the Law identify (<i>or allow clear identification by reference to other laws or regulations</i>) the public authorities ("Contracting Authorities") that are empowered to select projects, prepare for, and award PPPs and enter into Project Agreements ?	××	The Law on Concession of Subsurface for Purposes of Mineral Prospecting and Mining, The Water Code, The Law on	Relevant authority is defined by the Government of the Republic of Armenia, which authorizes a particular public authority to award concessions/execute concessions contracts (e.g. mining regulator, bodies governing the water systems, authorized state body in the railway transport sector).



		Railway Transport	
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For our general information: *If yes, which of the following authorities are identified:*

- *National authorities (e.g.: the government, ministries, and independent agencies);*
- *Regional/state-level authorities;*
- *Local or municipal authorities; or State owned companies?*

2.3 Private Party and Project Company

QUESTION	ANSWER	ARTICLE	COMMENTARY
5. Is it possible for a PPP be awarded to a foreign company, a Private Party or to a domestic company with foreign participation in the share capital and/or management (<i>without discrimination</i>)?	✓ ✓		No discrimination. The only limitation under the laws of the Republic of Armenia (Constitution of the Republic of Armenia) is that only citizens of the Republic of Armenia can own land.

For our general information: *can a PPP be awarded to public entities or to entities jointly owned by private and public entities (IPPP)? Are there restrictions imposed on such contracts?*



2.4 Concerned sectors⁴

QUESTION	ANSWER	ARTICLE	COMMENTARY
6. Does the Law identify (or allow identification by reference to other laws or regulations) the sectors and/or types of infrastructure and/or services in respect of which a PPP may or may not be granted?	×××		No general concession law.
7. Do the list of sectors eligible for PPP correspond to an open-ended one (as opposed to being exhaustive) allowing (or at least not preventing) PPP to be granted in numerous sectors”?	××		Only several sectors are eligible for PPP and the sector laws do not adopt the open-ended principal. No general concession law exists to define the PPP eligible sectors. However, no explicit limitations are envisaged under the Armenian law for PPP to be granted in different sectors.
1. Do the sectors eligible for PPP includes the provision of works and services for the non commercial sector (such as <i>schools, hospitals, prisons, defence and housing....</i>) in addition to the merchant sectors of the economy (<i>energy,</i>	××		The sectors eligible for PPP in Armenia are limited and they include only merchant sectors of the economy.

⁴ For further information on the concerned sectors please refer to: PFI Guide, Consolidated Legislative Recommendations, Recommendation 3 and 4.



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<i>transport, water, oil and gas...)</i>			
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For our general information: Please indicate the restrictions if any imposed by the Law on the sectors eligible for PPP:



3. SELECTION OF THE PRIVATE PARTY⁵

3.1 General Considerations

QUESTION	ANSWER	ARTICLE	COMMENTARY
1. Does the Law require, in principle, the Contracting Authority to select Private Parties through a competitive tender process?	✓ ✓		The general approach provided in the Concession Granting Legislation is that the concessions are granted by tender/auction. This is not the case when license is granted (mainly this applies for mining sector).
2. Is there reference in the Law to the principles of transparency, equal treatment and proportionality?	× × ×		No general concession law.
3. Is there a provision in the Law concerning the publication of information related to the competitive procedures in the country media and in the international media (<i>for large projects</i>)?	× ×		For public procurement. No general concession law.

⁵ For further information on the selection of the Private Party, please refer to: PFI Guide, Consolidated Legislative Recommendations, Recommendations 14 to 39 included.



4. Are there provisions within the Law or any special manual or recommendations governing in detail the selection of the Private Party (<i>i.e.: the pre-selection of bidders, the procedure for requesting proposals or other procedure such as competitive dialogue/two stage procedure</i>)?	×××		No general concession law.
5. Does the Law provide that if the Contracting Authority rejects an applicant at the time of pre-selection or disqualifies a bidder, it must make public the reasons for the decision (<i>or inform the rejected bidder thereof explaining the reasons for rejection</i>)?	××		No general concession law. Sector specific laws contain such requirements in general.

3.2 Award of PPP

QUESTION	ANSWER	ARTICLE	COMMENTARY
6. Does the Law provide that all proposals are ranked solely on the basis of a predefined evaluation criteria set forth in the pre-selection documents/ request for proposals?	××		No general concession law. Sector specific laws contain such requirements in general.
7. Does the Law provide for the publication of a	××		No general concession law. Sector specific laws contain such requirements in general.

Checklist Armenia



notice of the award of the project, identifying the Private Party and including a summary of the essential terms of the project agreement?			
8. Does the Law provide that the Contracting Authority or any other public authority maintain records of key information pertaining to the selection and award proceedings?	XXX		No general concession law. Sector specific laws contain such requirements in general.
9. If the answer to the previous question is <i>Yes</i> , does the Law provide that such record is accessible to the public, or at least to interested parties?	N/A		

3.3 Final negotiations

QUESTION	ANSWER	ARTICLE	COMMENTARY
10. Does the Law contain provisions regulating final negotiations (i.e. post contract award) so that transparency, equal treatment and competition are preserved?	XX		No general concession law. Sector specific laws contain such requirements in general.
11. Does the Law provide that the Contracting	XX		No general concession law. Sector specific laws contain such requirements in general.

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<p>Authority has the authority to terminate negotiations with the invited bidder if it becomes apparent that the bid will not result in an agreement and start negotiations with the second ranked candidate?</p>			
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3.4 PPP Award without competitive procedure

QUESTION	ANSWER	ARTICLE	COMMENTARY
<p>12. Does the Law provide that the Contracting Authority has the authority to award a PPP without a competitive process only in limited/ exceptional circumstances?</p>	<p>✓ ✓</p>	<p>RA Government Decision No. 245-N Attachment point 5 and 26</p> <p>The Law on Concession of Subsurface for Purposes of Mineral Prospecting and Mining</p>	<p>For water management systems, a concession can be granted directly (by Government decision) where the tender or auction was organized, for the stated purposes pursuant to Article 49 of the Water Code, but failed.</p> <p>Mining (subsurface exploitation and mining licenses) concessions are provided through tender for the strategic importance areas, defined by the Government of the Republic of Armenia.</p>



<p>13. Does the Law provide for a procedure, set of rules or principles to be respected when awarding a PPP without a competitive process?</p>	<p>××</p>		<p>No general concession law. Sector specific laws contain such requirements in general.</p>
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For our general information, please specify the conditions which would allow such direct negotiations?



3.5 Special case of unsolicited proposals

QUESTION	ANSWER	ARTICLE	COMMENTARY
14. Does the Law provide for an adequate framework for the Contracting Authority to manage unsolicited proposals/private initiatives (i.e. a proposal relating to the implementation of a PPP that is not submitted in response to a request or solicitation by the Contracting Authority) that ensures transparency and equal treatment and does not distort competition?	×××		

3.6 Review procedures

QUESTION	ANSWER	ARTICLE	COMMENTARY
15. Does the Law allow the bidders who claim to have suffered, or that may suffer loss or injury, to seek review of the Contracting Authority's actions or failure to act?	××		No general concession. The right to appeal is vested under the general legal framework and specific laws on state administration.



4. **PROJECT AGREEMENT**⁶

4.1 **Model or list of provisions**

QUESTION	ANSWER	ARTICLE	COMMENTARY
1. Does the Law give flexibility to the negotiation of most terms of the Project agreement and if it contain (or refer to): (i) a model PPP agreement it is an optional template agreement for guidance only or (ii) a list of mandatory material provisions which must be included in the agreement, the content of such provisions is left for negotiation?	× ×	Water Code Constitution, Law on Foreign Investments	Concession contract provisions have been defined by the Government decision No. 245-N of 30/01/2003. Its use is optional. Payment of relevant compensation, based on a fair-market value, for prior termination of property rights for strategic needs. The Law on Foreign Investments incorporates the "grandfathering clause" providing the protection to foreign investors from adverse legislative changes (for a term of 5 years thereafter, the old law is in effect for the investors affected.)

4.2 **Duration and extension of the Project Agreement**

⁶ For further information on the project agreement definition, please refer to: PFI Guide, Consolidated Legislative Recommendations, Recommendations 12 and 40 to 68 included.



QUESTION	ANSWER	ARTICLE	COMMENTARY
2. Does the Law provide that the duration of the Project Agreement should depend on the length of time taken for the amortisation of the Private Party's investment and an appropriate return on the capital?	×××		No general concession law.
3. Does the Law provide that the renewal or extension of the Project Agreement should be limited and depend on exceptional circumstances (<i>such as Contracting Authority default or an event of force majeure</i>)?	××		No general law on concessions. Regulated under concession agreement.

For our general information, please provide the given minimum and maximum duration (if any)

4.3 Termination of the Project Agreement

QUESTION	ANSWER	ARTICLE	COMMENTARY
4. Does the Law leaves open to the Project Agreement negotiations the list of possible	××		No general concession law. Regulated under the concession agreement.

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ground for termination and the content of to the termination provision ?			
5. If the answer to the previous question is <i>No</i> does the Law provide for a list of grounds of termination which does not affect the balance between the parties rights and obligations (<i>one sided provisions</i>) or the stability of the contractual relation under the Project Agreement (e.g.: <i>too large or non exhaustive list</i>)?	XX		No general concession law. Regulated under the concession agreement, as well as in limited cases by sector laws.
6. Does the Law provide for (<i>or at least does not prevent</i>) compensation of the Private Party for losses incurred as a result for termination on the grounds of public interest for losses incurred as a result of public authority acts?	XX		No general concession law. Regulated under the concession agreement.
7. Does the Law provide for (<i>or at least does not prevent</i>) compensation of the Private Party for all cases of early termination (<i>including in case of serious breach or failure by the Private Party</i>), for fair value after depreciation of the assets financed by the Private Party?	XX		No general concession law. Regulated under the concession agreement.

4.4 Tariff setting, service standards

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QUESTION	ANSWER	ARTICLE	COMMENTARY
8. Does the Law provide clear guidance on all aspects of interaction between the bodies that have the power to award PPP and the bodies that regulate tariffs and service standards?	××		No general concession law. Regulated under the concession agreement, as well as sector law.

4.5 Financial responsibilities of the Private Party and Contracting Authority

QUESTION	ANSWER	ARTICLE	COMMENTARY
9. Does the Law provide that the Private Party can collect tariffs or fees for the use of the facility or its services?	××		No general concession law. Regulated under the concession agreement, as well as sector laws.
10. Does the Law provide for the possibility of fixed and/or consumption-based payments to the Private Party by the Granting Authority or other public authorities (<i>in the case of Power Purchase Agreement, shadow tool or PFI for instance</i>) ?	××		No general concession law. Regulated under the concession agreement, as well as sector laws.



5. SECURITY AND SUPPORT ISSUES⁷

5.1 Security Interests

QUESTION	ANSWER	ARTICLE	COMMENTARY
1. Does the Law provide for (<i>or does not specifically prevent</i>) a Private Party to create security interests over the project assets, rights and proceeds or other valuable guarantees related to the project?	✓ ✓		Security instruments are defined in general legislation such as the Civil Code. The Government can issue guarantees pursuant to the Law on Budgetary System and relevant Government regulated concession agreements.
2. If the answer to the previous question is <i>Yes</i> , does the Law clearly state which types of security can be provided and include some of the most common type of guarantees in project financing (such as those listed in the request for general information below)?	× × ×		Regulated under the Concession Agreement.

For our general information, please can you confirm whether a Private Party may pledge or assign by way of security:

- *the proceeds and receivables arising out of the PPP;*

It depends on PPP projects and concession agreements.

⁷ For further information on support and financial securities, please refer to: PFI Guide, Consolidated Legislative Recommendations, Recommendations 13, 49, 57 and 60.



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- *the assets for which it has rights of use under a project agreement;*

It depends on PPP projects and concession agreements

- *its property;*

The Private Party may freely dispose, possess and use its property, i.e. conclude any agreements towards it.

- *shares of the Project Company;*

It depends on PPP projects and concession agreements.

- *the project agreement; or*

Under the Armenian law, the project agreement itself may not be considered as subject of pledge or guarantee. Meanwhile, some property rights arising out of the project agreement may be subject of pledge, if otherwise is not provided by the agreement.

obtain other valuable guarantees (please specify)?

5.2 Government support

QUESTION	ANSWER	ARTICLE	COMMENTARY
3. Does the Law provide for (<i>or does not specifically prevent</i>) the public authority to provide support to the Contracting Authority and a guarantee for the proper implementation of the PPP by the Contracting Authority?	×××		No general concession law.

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<p>4. Does the Law provide for (<i>or does not specifically prevent</i>) the Public Authority to provide financial or economic support for the implementation of PPP?</p>	<p>×××</p>		<p>No general concession law.</p>
<p>5. If the answer to the previous question is <i>Yes</i>, does the Law clearly state which public authorities may provide such support and which types of support can be provided? (i.e. <i>tax and customs benefits; foreign exchange protection (convertibility and transfer guarantees; subsidies; equity or loan participation)</i>)?</p>	<p>×××</p>		<p>No general concession law.</p>



5.3 Lenders' rights

QUESTION	ANSWER	ARTICLE	COMMENTARY
6. Does the Law provide for the Parties to arrange the financing with reasonable flexibility under the Project Agreement without strict time constraints or other constraints (<i>except with respect to security package and government support</i>)?	XX		No general concession law. Regulated under the concession agreement.
7. Does the Law provide, in the event of the default of the Private Party for the lenders to “ <i>step-in</i> ” or substitute the Private Party with a qualified new Private Party without initiating a new tender process?	XX		No general concession law. Regulated under the concession agreement.



6. SETTLEMENT OF DISPUTES AND APPLICABLE LAWS⁸

6.1 Settlement of disputes

QUESTION	ANSWER	ARTICLE	COMMENTARY
1. Does the Law permit the Contracting Authority to enter into a Project Agreement that is subject to international arbitration?	× ×		Not specified, not forbidden. International arbitration is provided in many privatizations contracts.
2. Has the government of the country ratified the Washington Convention on the Settlement of Investment Disputes (ICSID) (1965)?	✓ ✓ ✓		
3. Has the government of the country ratified the New York Convention on recognition and enforcement of foreign arbitral awards (1958)?	✓ ✓ ✓		

⁸ For further information on the settlement of disputes, please refer to: PFI Guide, Consolidated legislative Recommendations, Recommendations 57, 69 and 71.



6.2 Applicable laws

QUESTION	ANSWER	ARTICLE	COMMENTARY
4. Does the Law permit (<i>or does not prevent</i>) the Contracting Authority) to enter into side agreements to the Project Agreement (such as <i>a direct agreement with the lenders to the project or a support and guarantee agreement in respect of the Project Agreement</i>) that is governed by foreign law.	× ×		Not specified, not forbidden.
5. Has the country ratified any international convention for the protection of foreign investments?	✓ ✓ ✓		Major conventions and international instruments, as required for WTO accession ratified.



II- EFFECTIVENESS ASSESSMENT: HOW THE LAW WORKS IN PRACTICE:

(Please comment based on the previous 2006 effectiveness general assessment)

7. POLICY FRAMEWORK

7.1 Existence of PPP Policy Framework

QUESTION	ANSWER	ARTICLE	COMMENTARY
1. Is there a general/national policy framework (explicit or implicit) for PPPs for infrastructure or public services?	×××		
2. Is there any administrative guidance or printed information edited by the government or the PPP Unit concerning the legal framework for PPP projects in the country?	×××		
3. Is there a municipal/regional policy framework (explicit or implicit) for PPPs in infrastructure or public services?	×××		



7.2 PPP Awareness and Sustainability

4. Is there a national and/or municipal /regional long term programme for PPP promotion and awareness?	×××		
5. Are there PPP training programmes on a national and/or municipal/regional level for public servants and other PPP concerned people?	×××		
6. Are there PPP courses as part of university curriculum or specialist departments and faculties in universities teaching PPP?	××		PPP courses are not included as separate curriculum in universities and may be taught within some other economic and law curriculums (no common practice).



7.3 Obstacle to implementation of PPP Policy

<p>7. Are you of the opinion that there are no social/political obstacles to implementing PPP in the country (e.g. grass roots opposition, policy measures against private sector participation in public infrastructure/services, etc.)?</p>	<p>XX</p>		
<p>8. Are you of the opinion that there are no legal obstacles to implementing PPP in the country (e.g. non-publication of a decree provided under the Law and necessary for such law to become effective, etc.)?</p>	<p>✓ ✓</p>		



For our general information, please describe the existing impediment and obstacles if any with respect to the two previous questions

8. INSTITUTIONAL FRAMEWORK

8.1 Existence and role of PPP Central Units/Agency

QUESTION	ANSWER	ARTICLE	COMMENTARY
1. Is there a specialised institution/agency/ministerial department established to promote PPP and to serve as Central PPP Unit?	XXX		No such special PPP Central Unit exists in Armenia. Generally, such PPP projects are promoted and coordinated by the Government of the Republic of Armenia or by other state bodies depending on PPP sectors.
2. Is such Central PPP Unit composed mainly of specialists recruited from the business community and not exclusively composed of civil servants coming from different public ministries?	XXX		
3. Is the role of such Central PPP Unit comparable to a "task force" assisting in the development of projects in general and not limited to promotion of PPP?	XXX		



4. Is the consent or recommendation of such Central PPP Unit necessary for the development and granting of most PPP projects (<i>except small or local PPP</i>)?	×××		
5. Is one of the roles of the Central PPP Unit to assist in building capacity namely of the public sector with respect to PPP?	×××		

For our general information, please name such establishment and specify its place in public hierarchy, format and key functions (regulatory, operational, know how collecting, etc. or a combination thereof).

8.2 Other institutions concerned by PPP

6. Is there any PPP unit/agency or department of the Central PPP unit either at the municipal or regional level?	N/A		
7. Is there any specific PPP unit department in any ministry (other than the central PPP unit) or at sectoral level?	N/A		
8. Is there either a specific "one stop shop" for PPP authorisations and formalities or a "one stop	N/A		



<i>shop</i> " which services are available to the sponsors of PPP project as well as other investors?			
9. Is the division of power between different public authorities involved in the PPP granting process simple and coordinated?	N/A		

9. PPP LAW ENFORCEMENT

9.1 Effectiveness of PPP enforcement and compliance with the Law

QUESTION	ANSWER	ARTICLE	COMMENTARY
1. Have any PPP projects in any form ever been awarded in the country on the basis of the Law discussed above? (<i>with or without specific reference to the Law</i>)	✓ ✓	The Law on Concession of Subsurface for Purposes of Mineral Prospecting and Mining The Law on Railway Transport	Concession agreements on mining recourses. Agreement on concession of railway transport system. PPP in the water and energy sector through management contract.
2. Have such PPP projects, if any, been awarded generally following a transparent competitive selection procedure (<i>and only through direct</i>	✓ ✓		Not all PPP projects were awarded in result of competitive selection procedure.

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<i>negotiation under exceptional legal circumstances as may be provided by the Law)?</i>			
3. Have any PPP projects or similar long term agreements (<i>falling under the definition of PPP under this questionnaire</i>) been awarded on any legal basis different from the Law since the Law has been in force?	✓ ✓		Agreement on Cession of Zvartnots International Airport (which contains certain elements of BOT) was concluded by and between Government of the Republic of Armenia and Corporacion America S.A. on December 17, 2001. Pursuant to this Agreement Corporacion America S.A. has acquired the right to renew, modernise the infrastructures of the airport, to improve the operation level of the airport and the quality of its services. At the moment of this Concession Agreement conclusion no general or sector concession was elaborated and served as a legal ground for its conclusion.

For our general information, please give example of legal instruments, or reasons used, to bypass the Law and establish a PPP.

As such legal instruments might be considered MoU, Government Decision.

9.2 Statistics on PPP implementation under the Law

4. Have most of the awarded PPP projects been successfully implemented and put into operation	✓ ✓		No general concession law exists to verify the compliance of the implemented PPP projects to the concession legal
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in compliance with the Law?			requirements. All these PPP projects are mainly regulated by the concession agreements.
5. Has a PPP project ever been awarded and implemented in the country at the local /regional /municipal level in compliance with the Law?	×××		
6. Have PPP project ever been awarded in the country in the non merchant sector (<i>such as Hospital, School, prisons</i>) and not exclusively in the merchant sector (<i>energy, water, transport</i>)?	✓✓		In 2010 construction of cable car line near Tatev Monastery in Syunik Province, Armenia, refers to tourism sector.

For our general information:

- Approximately how many PPP projects are presently in operation (figure or order of magnitude) in the country and in what sectors have PPP projects been awarded (energy, water, education, health for example)?
 1. Concession of Zvartnots International Airport (Transport Sector);
 2. Concession of Armenian Railways (Transport Sector);
 3. Trust Management of Armenian Water Sector (Water Sector).

- Please give some examples of the most significant project awarded:
 1. Concession of Zvartnots International Airport concluded on December 17, 2001 by and between Armenian Government and Corporation America S.A. Company;



2. Concession of Armenian Railway concluded on January 21, 2008 by and between Armenian Ministry of Transport and South Caucasus Railways Company.

- under which legal form have such PPP projects been awarded (Concession, BOT, PFI, other):

There is no specific form, but most PPP projects fall under BOT form (for example, Concession of Zvartnots International Airport and Concession of Armenian Railways).

- have such PPP project been granted by (i) central, (ii) sub-sovereign/regional (if applicable) or (iii) municipal government as Contracting Authority;

(i) Such PPP projects were granted by the Armenian Government or by relevant Ministries or public bodies authorized by the Government of the Republic of Armenia.

- when did PPP begin to be awarded in the country: (i) in the last 10 years or before; (ii) in the last 5 years; or (iii) within the past few years only; and

(i) On December 17, 2001, the Concession of Zvartnots International Airport was awarded.

- *please give examples of any PPP projects awarded but not implemented (or not implemented under a PPP form)*

No such PPP projects exist

- are there any PPP/Project Agreements in discussion?

No such PPP projects exist

9.3 Challenge of PPP

7. Are you of the opinion that there is a reasonable	✓ ✓		No general concession law.
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<p>chance for an unsuccessful bidder to successfully challenge in the country a PPP awarded under conditions contrary to the Law?</p>		<p>Constitution,</p> <p>Law on Administrative Procedure, 31/12/2004</p> <p>RA Government Decision No. 245-N Attachment point 5 and 26 (Article 25)</p>	<p>The court protection right is recognized equally for all persons /including foreign entities/ under the Armenian Constitution.</p> <p>The persons may claim the actions, non-actions, as well as the acts adopted by the administrative body pursuant administrative (i.e. to bring claim at superior administrative level) and court procedures.</p> <p>The bidder participants may contest the results of the bid in compliance with the procedures established under the Armenian laws.</p>
<p>8. If the answer to the previous question is <i>Yes</i>, are you of the opinion that there is a reasonable chance for the plaintiff to get some compensation or for such action to result in the cancellation of the award?</p>	<p>✓ ✓ ✓</p>	<p>Civil Code (Article 18)</p> <p>Law on Administrative Procedure, 31/12/2004 (Article 95-108)</p>	<p>Damages caused as result of illegal actions (or non-actions) of state bodies, local self-government bodies or officials of these bodies, including the promulgation of an act of a state body or a local self-government bodies that does not correspond to law, are subject to compensation by the state or local community.</p> <p>The damaged caused by the administrative body shall be compensated. The compensation is provided in case the actions and act of the administrative body are considered to be illegal, by except the cases specified under the law. The compensation shall be provided by elimination of caused negative consequences or by</p>



			<p>pecuniary refund. According to administrative procedures the person may contest the actions and acts of the administrative bodies pursuant administrative or court procedures.</p> <p>In any case, the bidder may bring a claim to competent court, which shall decide on existence of grounds for award cancellation i.e. illegal actions, promulgations of illegal acts, as well as whether damage was caused to the bidder and if the damage was caused than in what amount.</p>
9. Have PPP project been implemented by the parties most generally without serious claims/arbitration by either Party concerning the performance of the Project Agreements under the Law?	N/A		
10. If any Project Agreement has been terminated prior to the end of the contractual period by the Contracting Authority, has fair compensation been paid to the Private Party in compliance with the Law?	N/A		No PPP project premature termination cases exist.

For our general information, can you provide any examples of a successful legal challenge in the courts or otherwise of a PPP award in the country based on the PPP Law? Please describe the matter and, if known, the outcome of such matter.

No such legal challenge cases are available.

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