

SERBIA: ENERGY

ESCO Legal Framework – Potential for PPPs in Sustainable Urban Development?

The Law on Efficient Use of Energy (*Zakon o efikasnom korišćenju energije*, Official Gazette of Serbia no. 25/2013) (the “**Energy Efficiency Law**”), adopted by the Serbian Parliament on 15 March 2013, brings foundation for the development of the ESCO (energy service company) industry in Serbia. The legislation is based in the *EU Directive 2006/32/EC*. Taking into account the fact that this Directive has been recently replaced by *EU Directive 2012/27/EU* and the *conclusions* of the Permanent High Level Group, one may expect amendments to the Energy Efficiency Law to align it with the latest EU Directive in this area.

The Energy Efficiency Law defines energy services as services which, under normal circumstances, result in verifiable and measurable or assessable increase in the energy efficiency of building, technical system, production process, public and private services and/or savings of primary energy. ESCOs are defined as companies registered for delivery of energy services which assume a certain degree of financial risk in so doing, because the payment for the services delivered is based (either wholly or in part) on the achievement of energy efficiency improvements and on the meeting of the other agreed performance criteria. The law foresees ESCO, third party and energy-user financing schemes.

Delivery of energy services is supposed to be governed by the Energy Services Agreement between ESCO and the energy user. Mandatory elements of the Energy Service Agreement include, inter alia, efficiency criteria, measures for increasing the energy efficiency, financing of the project, fee for the provided energy services etc.

Delivery of energy services to the public sector in Serbia under the Energy Service Agreement regime is not expected to kick-off before March 2014, which is the deadline set by the Energy Efficiency Law for enactment by the relevant ministry of a standard form and structure of the Energy Services Agreement.

The interface between the Energy Efficiency Law and the Law on Public Private Partnerships and Concessions (“PPP Law”) remains somewhat uncertain since the Energy Efficiency Law does not specifically prescribe for the possibility of structuring energy services arrangements as public-private partnerships. However, energy services are covered by the definition of PPP in the PPP Law. Therefore, PPP arrangement should be possible but still remains to be tested.

Belgrade

Dobracina 38
11 000 Belgrade, Serbia
Tel: (+381 11) 3284 212
Fax: (+381 11) 3284 213
E-mail: office@bdklegal.com

Podgorica

Bulevar Džordža Vašingtona 51
81 000 Podgorica, Montenegro
Tel: (+382 20) 230 396
Fax: (+382 20) 230 396
E-mail: office.cg@bdklegal.com

Banja Luka

Gunduliceva 6, 78 000 Banja Luka
Republika Srpska, Bosnia & Hercegovina
Tel: (+387 51) 250 641
Fax: (+387 51) 250 642
E-mail: office.banjaluka@bdklegal.com