

## **SERBIA: PPPs**

### **Corporate JV's with municipalities declared illegal**

The Constitutional Court of Serbia recently published the Ruling<sup>1</sup> declaring the formation of a JV company between one Serbian municipality and a private investor contrary to law. According to the Ruling, Serbian municipalities are only permitted to set-up 100% state-owned companies for performance of municipal services or to delegate performance of such services to a fully private entity, but are not entitled to set-up joint venture companies with private investors for performance of municipal services.

The foothold for the Ruling was found in Article 32 of the Law on Local Self-Governance<sup>2</sup> which lists the competences of municipalities and specifically mentions establishment of public companies, i.e. 100% state-owned company. Even though Article 7 of the same law permits the municipalities to set-up companies (without explicitly restricting this to „public company“ form) and the wording of Article 32 that was relied upon in the Ruling does not clearly suggest that the list of municipal competencies is exhaustive (on the contrary, the list is followed by a „catch-all phrase“ permitting municipalities to perform „other activities in accordance with the law and municipal by-laws“), the Constitutional Court based the Ruling on interpretation that Article 32 of the Law on Local Self-Governance does not permit local municipalities to do anything that is outside the activities specifically enumerated therein.

Apart from being a threat to further existence of already established JVs in various sectors ranging from waste management to public parking and outdoor marketing, the Ruling is yet another sign that Serbia does not have a reliable legal framework for public-private partnerships and badly needs adequate PPP legislation.

The Ruling does not affect arrangements for performance of municipal services by private sector which do not involve equity participation of municipalities in private companies.

<sup>1</sup> Case n.140/2009 ("Official Gazette RS", n.52/2010)

<sup>2</sup> Zakon o lokalnoj samoupravi ("Official Gazette RS", n.129/2007)

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