

MARKO PERIĆ, Ph.D., Assistant  
Faculty of Tourism and Hospitality Management, Opatija, University of Rijeka, Croatia

## **PUBLIC-PRIVATE PARTNERSHIPS (PPPs) IN CROATIAN TOURISM – POSSIBLE PROBLEMS AND DILEMMAS ON ESTABLISHMENT OF PARTNERSHIP\***

*REVIEW*

Strong expansion of public-private partnership (PPP) in the last fifteen years in the world has not bypassed tourism where many forms of partnership and numerous finished projects can be identified. However, despite the fact that tourism is recognized as a powerful generator of economic activity, Croatian experience in implementing the public-private partnership projects in tourism is still very limited. The aim of this paper is to point to some legal and practical problems that prevent a stronger involvement of private partners, and faster start-up and implementation of partnership projects. Therefore, paper does not refer to problems and risks that mostly occur during the implementation of individual projects, but does refer to some legal arguments and practical problems that slow down or even completely inhibit the start-up of the projects. Paper consists of two chapters. The first chapter examines the legal framework of public-private partnerships in Croatia. In the second chapter, few concrete examples of public-private partnerships in tourism are elaborated. One of the projects is analysed more thoroughly and some of the legal issues are highlighted. Also, some recommendations to accelerate the implementation of the concrete project and other projects that will follow were proposed.

Keywords: public-private partnership (PPP), tourism, Croatia, establishment of partnership

### **INTRODUCTION**

In the last fifteen years in the world different models of public-private partnerships (PPPs) such as PFI, BOT, BOO, BOOT, BLO, DBM etc. have been used in numerous projects of energy supply, transportation, telecommunications, utility services, construction of sports facilities, educational and health institutions and state and local governments.<sup>1</sup>

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<sup>1</sup> Lockwood, S. C., "Public-Private Partnerships in U.S. Highway Finance: ISTEA and Beyond", *Transportation Quarterly*, Vol. 49 (1), 1995, pp. 5-26. ; Haarmeyer, D., Mody, A., Private Capital in Water and Sanitation, *Finance and Development*, Vol. 34 (1), March, 1997, pp. 34-37.; Collin, S. O., "Motives for Public-Private Partnership and Factors for their Persistence – an Inductive Analysis of Four Swedish Cases",

The above trend has not bypassed tourism, where, in addition to the above, some other various forms of partnerships such as strategic alliances, co-operative marketing, value-chain relationship and organization network are also very frequent.<sup>2</sup> A variety of forms of partnership has resulted in numerous finished projects and projects in progress such as project of cruising tourism in Granada (Caribbean), GAT (Guiding Alaska Tourism) Initiative, Master Plan of Tourism Development of Primorsko-goranska County (Croatia), Nepal Tourism Board, Maison de la France, Spa and Wellness tourism sector revitalization project in Hungary, Black Sea Riviera project in the Gulf of Aqaba (Egypt), the tourist center Belek in Antalya (Turkey), the reconstruction of Fort Rinella in Kalkara (Malta), tourists safety improvement in the city centre in Antigua (Guatemala), educational programs and transfer of necessary knowledge and skills in New Zealand, development of Göteborg (Sweden) as a tourist, congress and incentive destination and other.<sup>3</sup> The above projects have brought many positive effects to target groups and tourist destinations and tourism in general.

The Republic of Croatia lags in the implementation of PPP projects in the economy in general, and especially when it comes to tourism and its experiences are quite modest.<sup>4</sup> Therefore, Croatia, while creating its own criteria<sup>5</sup>, is still largely to follow the experiences of other countries. Why is it so when tourism has been recognized as a powerful generator of economic activity and source of income and employment a long time ago?

Examination of the legal framework and certain case studies and interviews done with experts in the field of Croatian tourism and public-private partnerships helped to identify some objective problems that prevent a stronger involvement of

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*Public and Private Sector Partnerships: Fostering Enterprise*, Sheffield Hallam University, Sheffield, 1998, pp. 79-96.; Mayston, D. J., "The Private Finance Initiative in the National Health Service: An Unhealthy Development in New Public Management", *Financial Accountability and Management*, Vol. 15 (3 and 4), August/November, 1999, pp. 249-274.; Mustafa, A., "Public-Private Partnership: An Alternative Institutional Model for Implementing the Private Finance Initiative in the Provision of Transport Infrastructure", *Journal of Project Finance*, Vol. 5 (2), Summer, 1999, pp. 56-71.; Schneider, A. L., "Public-Private Partnerships in the U.S. Prison System", *American Behavioral Scientist*, Vol. 43 (1), September, 1999, pp. 192-208.; Banús, E., Barcenilla, M. C., "Public-Private Co-operation – Spanish Opera Houses: A Case Study", *Public and Private Sector Partnerships: The Enabling Mix*, Sheffield Hallam University, Sheffield, 2000, pp. 95-104.

<sup>2</sup> KPMG Canada, *Co-operation and Partnership in Tourism: A Global Perspective*, World Tourism Organization, Madrid, 2004, p. 2.

<sup>3</sup> WTOBC, *Public-private Sector Cooperation: Enhancing Tourism Competitiveness*, WTO Business Council, Madrid, 2000.; Abreu, C. B., Abreu, C. B., Brasil, M. P. de Sousa, "The Tourism Industry and its Environmental Effect in Brasil", *Public and Private Sector Partnerships: The Enabling Mix*, Sheffield Hallam University, Sheffield, 2000, pp. 1-10; Nadiri, H., Avci, T., "Public-Private Partnerships in Tourism Marketing: an Empirical Analysis of North Cyprus", *Public and Private Sector Partnerships: The Enabling Mix*, Sheffield Hallam University, Sheffield, 2000, pp. 439-450.; KPMG Canada, *Co-operation and Partnership in Tourism: A Global Perspective*, World Tourism Organization, Madrid, 2004.; Perić, M., Dragičević, D., "PPP and Master Plan for Tourist Destination Kvarner – Croatia", paper presented at *11.th International PPP Conference 'Public and Private Sector Partnerships: Enhancing Sustainable Development'*, FEAA-University "Al.I.Cuza" Iași, Rumunjska, 25.-28 May 2005.

<sup>4</sup> Perić, M., Dragičević, D., "PPP and Master Plan for Tourist Destination Kvarner – Croatia", op.cit.; Perić, M., Nikšić, M., "PPP in Croatian Tourism: Chance for Croatian Family Hotels", *Tourism and Hospitality Management*, Vol. 13 (3), 2007, pp. 651-664.; Cetinski, V., M. Perić, Šugar, V., "The European Dimension of Public-Private Partnership and Experiences in Tourism of the Republic of Croatia", *Tourism and Hospitality Management*, Vol. 15 (1), 2009, pp. 85-100.; Perić, M., *Projektni menadžment i javno privatno partnerstvo u turizmu*, Doktorska disertacija, Opatija, Fakultet za menadžment u turizmu i ugostiteljstvu, Opatija, 2009., p. 208.

<sup>5</sup> Perić, M., *Projektni menadžment i javno privatno partnerstvo u turizmu*, op.cit., pp. 222-232.

private partners, and faster start-up and implementation of PPP projects. Therefore, the objects of research are not problems and risks that mostly occur during the implementation of certain projects, such as fear of the public sector not to lose control of the service, the complex financial structure and related financial risks, the potential increase in prices of services, possible reduction of the quality of services, lack of competition, political risk, etc. for which there are many sources of literature<sup>6</sup>, but primarily some legal problems and obstacles that slow or even completely inhibit the start-up of projects.

### **1. LEGAL FRAMEWORK FOR THE ESTABLISHMENT OF PUBLIC-PRIVATE PARTNERSHIPS IN CROATIA**

Croatian modest experiences are certainly favoured by the insufficient legal regulations which define the relevant area. In July 2006 Croatian Parliament proclaimed Guidelines for the application of contractual forms of public-private partnership (PPP) which define public-private partnership, who represents the public partners and forms of its participation in the partnership, determine the procedure of private partners selection and establish control over the selection process.<sup>7</sup> In accordance with the Guidelines, partnership refers to forms of cooperation between public authorities and the worlds of business which aim to ensure the funding, construction, renovation, management or maintenance of an infrastructure or the provision of a service. It is important to note that these Guidelines relate only to the purely contractual form of PPP (PFI and concession models) while the following types of long-term contracts between public sector units and private partners, are not considered as the purely contractual form of PPP or public-private partnership at all:

- traditional service provision contracts where the public sector from the private partner purchases only services, such as maintenance, but no capital investment are made by the private partner;
- outsourcing (for instance agreement on the design and construction of buildings for the public sector);
- new joint-stock company (new legal entity), in which public and private partners jointly hold stocks or shares;
- new joint venture, composed of public and private sector investments, but not registered as a company or as a separate legal entity;
- state guarantees that the Government gives to private companies to support their business activities;
- financial lease contracts (when public sector pays the fee for the use of the privately owned facility),
- partial or complete privatization of public assets.

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<sup>6</sup> Grimsey, D. and Lewis, M. K., "Evaluating the Risks of Public Private Partnerships for Infrastructure Projects", *International Journal of Project Management*, Vol. 20, 2002, pp. 107-118.; Kim, D. K., Kim, C., Lee, T. H., *Public and Private Partnership for Facilitating Tourism Investment in the APEC Region*, APEC Tourism Working Group & Ministry of Culture and Tourism, Republic of Korea, 2005.; Perić, J., Dragičević, D., *Partnerstvo javnog i privatnog sektora*, Fintrade & Tours, Rijeka, 2006.

<sup>7</sup> *Smjernice za primjenu ugovornih oblika javno-privatnog partnerstva (JPP)*, Narodne novine, br. 98/06

The first law that defines the area of public-private partnerships, the Law on public-private partnership<sup>8</sup>, was proclaimed by Croatian Parliament at the end of October 2008. The Law regulates the process of preparing, proposing and approving PPP projects, the rights and obligations of public and private partners and the establishment and jurisdiction of the Agency for Public-Private Partnership.

According to the Law PPP is a long-term partnership between public and private partners that has the following basic features:

- a) the private partner takes over:
  - the responsibility for design, construction and/or reconstruction of public infrastructure, including construction and/or reconstruction of public information and communication systems, and/or building of public interest, accepting one or more responsibilities, such as financing, management and maintenance, in purpose of providing public services (beyond the public partner jurisdiction) to end-users, or to ensure necessary prerequisites to the public partner for the provision of public services beyond its jurisdiction, or
  - the responsibility for provision of public services (beyond the public partner jurisdiction) to end-users, including the management of information and communication systems in the public interest, or provision of public services to end users based on newly built information and communication systems;
- b) in exchange for these responsibilities, the public partner may transfer to the private partner certain real rights and/or grant concession to the private partner and/or pay compensation in money to private partner;
- c) each partner takes responsibility for risks that it may affect on or responsibility is divided, with the goal of optimal risk management throughout the partnership project using, among other things, administrative, technical, financial and innovation capacities of private partners, and promoting the exchange of skills and knowledge between public and private partners.

In the context of the private partner, it is extremely important that private partner may be allowed to perform economic (commercial) activities in parallel with the implementation of a partnership, but only if it is not otherwise possible to provide the necessary level of private partner participation in the project profitability and return on investment. However, the delivery of goods, and a concession for the sole economic use of public goods can not be considered as PPPs at all. Accordingly, the concessions for the sole economic use of maritime domain which allow construction of new premises and conducting of certain business activities in the field of tourism (nautical tourism) are not considered PPPs.

Furthermore, the Law differs purely contractual from institutionalised forms of PPPs which is in accordance with the practice of the European Union.<sup>9</sup> The purely contractual PPP refers to a partnership based solely on contractual links between the different players. Institutionalised PPPs involve the establishment of an entity held jointly by the public partner and the private partner. Relationship between public

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<sup>8</sup> *Zakon o javno-privatnom partnerstvu*, Narodne novine, br. 129/08

<sup>9</sup> Commission of European Communities, *Green Paper on Public – Private Partnerships and Community Law on Public Contracts and Concessions*, Commission of European Communities, Brussels, 2004.

and private partners in such joint company can be based on founding shares of both partners in the newly established company, or on purchasing equity stakes in existing company.

Finally, in 2009 the Agency for public-private partnership issued The Guide for Public-Private Partnership (PPP) "Step by step" which provides guidance, primarily to the public sector, what actions should be taken and what procedures should be followed in order to prepare quality PPP project and to ensure its successful implementation in accordance with the Law on public-private partnership<sup>10</sup>, and the Law on Concessions<sup>11</sup> and Law on Public Procurement<sup>12</sup>, as the other three fundamental Laws, when it comes to applying the PPP model. In other words, the purpose of the Guide is to contribute to more efficient and better quality of proposing and implementing PPP projects.

## **2. CROATIAN EXPERIENCE WITH PPPs IN TOURISM – PROBLEMS IN PRACTICE**

Although tourism in Croatia is recognized as a powerful economic generator<sup>13</sup>, the practical experience in implementing the PPP model in tourism is very limited. Although some experience does exist on a national level in Croatia, various types of PPPs in tourism are considered as being more appropriate for lower levels of managements, such as the regional, local or city level. Some experiences in implementing selected PPP models in tourism will be briefly presented.

### **2.1. Croatian National Tourist Board and Master Plans of Tourism Development for Istria and Primorsko-goranska County**

Croatian National Tourist Board (CNTB) can be mentioned as an example of partnership in marketing and promotion area at the national level. In the cooperation with tourism industry and professionals, it is in charge of promoting Croatian tourism all over the world.<sup>14</sup> On the other hand, local governments and representatives of the tourism industry in the most developed Croatian tourist regions (Istria and Kvarner) are aware of the fact that both private and public sector must participate in the planning of future tourism development if they want this development to meet the interests of all stakeholders. Master Plan of Tourism Development for Istria<sup>15</sup> and Master Plan of Tourism Development for Primorsko-goranska County<sup>16</sup> are initiatives that support

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<sup>10</sup> *Zakon o javno-privatnom partnerstvu*, Narodne novine, br.129/08

<sup>11</sup> *Zakon o koncesijama*, Narodne novine, br. 125/08

<sup>12</sup> *Zakon o javnoj nabavi*, Narodne novine, br. 110/07 and 125/08

<sup>13</sup> WTTC, *Croatia – The Impact of Travel & Tourism on Jobs and the Economy*, 2003.

<sup>14</sup> Perić, M., Dragičević, D., "PPP and Master Plan for Tourist Destination Kvarner – Croatia", op.cit.

<sup>15</sup> THR and Horwath Consulting Zagreb, *Master Plan razvoja turizma (2004.-2012.) - Istria*, Konačni dokument, 2003.

<sup>16</sup> Perić, J., et. al., *Glavni plan razvoja turizma Primorsko-goranske županije*, Fintrade & Tours d.o.o., Sveučilište u Rijeci, Rijeka, 2005.

such thinking. Although today in terms of the applicable Guidelines and Law, these plans can not be defined as PPPs, they are first attempts of partnerships in the area of tourism development planning at regional level and have a strong impact on other similar strategic projects that are intended to be realized in future.

## 2.2. City of Šibenik

With the purpose to develop high quality tourist facilities, tourist attractions and other activities (sports, cultural ...) that could allow year-round tourism, the City of Šibenik plans to realize seven strategically important tourism projects:

1. greenfield project Obonjan Riviera on the island of Obonjan,
2. greenfield project Hotel Šibenik at peninsula Mandalina,
3. Sports complex Šibenik,
4. four city fort (St. Nikola, st. Mihovill, st. Ivan and Šubićevac).

The above projects are intended to be realized through concession or BOT (Build - Operate - Transfer) model of PPP where the public partner grants the private partner a construction right and/or concession for a period of 50 years. The contract grants the private partner the right to the commercial usage of the project site, making him responsible for designing, funding, building and managing the project facilities and will fully bear the market risk. Public sector (City of Šibenik and Republic of Croatia) does not give any financial guarantee for the realization of projects.

Based on the expressed interest of potential private partners, the City of Šibenik decided to start parallel processes of selecting private partners for projects Hotel Šibenik and Obonjan Riviera. The City of Šibenik and private partners signed on August 20, 2007 the Contract on realisation of the Hotel Šibenik project while on March 20, 2008 signed the Contrast on realisation of the Obonjan Riviera project.<sup>17</sup>

It should be pointed out that in terms of the new Law on public-private partnership it is questionable whether it is a PPP model at all. Proposed model is based on concession that would grant the private partner the right to the commercial usage of the project site and to offer commercial (tourism) services on market, while the Law expressly states that concessions for sole economic (commercial) use of public or other goods can not be the subject of PPP.

According to the latest information, Ante Županović City of Šibenik mayor in September 2009 sent the related documentation to State Attorney's Office and USKOK because on suspicion of intentionally harmful signing a contract for the city of Šibenik in case the project Obonjan Riviera. Apparently the contracts made with the City of Šibenik and Orco Group, which was later acquired by Sunčani Hvar, do not contain provisions that were specified in the tender and related documents.<sup>18</sup>

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<sup>17</sup> *Projekt Hotel Šibenik*, available at: [http://www.synergics.hr/hr/index.php?option=com\\_content&task=view&id=76&Itemid=141](http://www.synergics.hr/hr/index.php?option=com_content&task=view&id=76&Itemid=141) (02.09.2008) and *Projekt Obonjan rivijera*, available at: [http://www.synergics.hr/hr/index.php?option=com\\_content&task=view&id=75&Itemid=140](http://www.synergics.hr/hr/index.php?option=com_content&task=view&id=75&Itemid=140) (02.09.2008).

<sup>18</sup> *Ugovor o Obonjanu predan USKOK-u*, available at: [http://www.hrt.hr/index.php?id=48&tx\\_ttnews%5Btt\\_news%5D=47808&tx\\_ttnews%5BbackPid%5D=38&cHash=e8cc128c1](http://www.hrt.hr/index.php?id=48&tx_ttnews%5Btt_news%5D=47808&tx_ttnews%5BbackPid%5D=38&cHash=e8cc128c1) (11.09.2009).

### **2.3. Realization of the Stubičke Spas project – cooperation with the selected private partner**

The Krapina-Zagorje County, in cooperation with the municipality of Stubičke Toplice began in April 2007 the realisation of Stubičke Spas health-tourism project as a PPP model. In the total area of 22 hectares, which includes the area of "Special hospital for medical rehabilitation Stubičke toplice" with the surrounding land, it was planned to build an integrated high quality health-tourism destination that should be leading in this part of Europe.

The project is intended to be realized through the establishment of joint-stock company or joint venture. In newly established company the Krapina-Zagorje County will, respecting the tradition and professional resources in the health field, participate with the value of the land (property of the County) and the initial costs of project preparation, while the chosen private partner will participate with the amount of the total investment for the realization of investment project. The procedure was completed in December 2008 when the contract between the Krapinsko-Zagorska County and private partner Sunce Koncern d.d. was signed.<sup>19</sup>

It should be pointed out that according to the Guidelines for the application of contractual forms of public-private partnership (PPP) proposed joint venture model in which public and private partners jointly hold stocks or shares is not considered as PPP at all, while according to the Law on public-private partnership proposed model is classified as an institutionalised form of PPP.

### **2.4. Brijuni Rivijera project**

Company Brijuni Riviera Ltd. is a development company founded by the Croatian government and the County of Istria in July 2003 with the purpose to develop the BRIJUNI RIVIERA project and to invest and manage with commercial part of the tourist offer of Brijuni islands under the concession framework. The BRIJUNI RIVIERA project was initiated by the County of Istria with the main goal of enhancing and exploiting the potential of the Brijuni Islands and of the coastline. The project is located on the south-western coast of Istria, in separate area of Bale in the north to the City of Pula in the south and occupies a total area of 707 hectares.

From a total of six locations, and considering the degree of preparedness of spatial-planning documents, Brijuni Riviera Ltd. began in 2007 tendering process for the realization of greenfield tourist projects at four locations within the Brijuni Riviera:

- Pineta,
- Hidrobaza,
- Island St. Katarina and Mulimenti, and
- Muzil.

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<sup>19</sup> KRAPINA: Potpisan ugovor o Javno-privatnom partnerstvu za realizaciju "Zdravstveno - turističkog projekta Stubičke Toplice", available at: <http://www.pressexpress.hr/7777/priopcenje> (20.12.2008).

These projects company intends to realize through the selection of private partners who will, according to the BOT model take over responsibility for designing, funding, building and managing the facilities and amenities within the specified projects in accordance with the following principles:

- Brijuni Riviera Ltd. grants the private partner the construction right that will enable him commercial usage of the project site which is majority owned by the Croatian state for a period of 66 years,
- The private partner collects payment for services that he provides on the market within the framework of project management
- For the construction right granted, the private partner will pay to the public partner an appropriately assessed monthly fee,
- When the construction right term expires, the private partner will return the land into the possession of the public sector while facilities will be transferred to the ownership and possession of the public sector

The proposed model provides both partners with certain advantages in terms of funding and key risks. The private partner has no initial costs of land purchase, which means that the private partner does not have to immobilize a substantial part of their own or borrowed funds (credit) at the beginning of the project to purchase land and to pay the price in terms of opportunity cost and interest. In such a way, most of his funds remain to fund the preparation, the construction and equipping of facilities.<sup>20</sup> On the other hand, the private partner pays a periodic fee for the granted construction right which is expected to be covered from the operations of the project itself. Property-law and spatial development and planning risks bears public sector and the risk of obtaining all necessary permits will be jointly shared by the private partner (project documentation) and the public sector (obtaining the permits in the shortest possible time).

So the first round of tendering process was launched in August 2007 and was open to all interested bidders. The aim of the first round was to assess the eligibility of the bidders with regard to their financial capacity and expertise to carry out the projects. Total of 17 bidders gained the right to enter the second round of the tendering process by submitting binding bids. However, until mid 2009 official calls for submission of binding bids for the transfer of construction rights on the relevant sites was not published. There are several reasons for this.

First, it should be noted that it is questionable whether the proposed model could be called BOT model. Specifically, these projects initially involved the transfer of construction rights to the private partners, while the BOT model was originally based on the concession. According to the Law on Concessions<sup>21</sup> and Law on the Maritime Domain, and Sea Ports<sup>22</sup> the concession could be granted for economic use of public or other goods of interest for Croatia (such as maritime domain). The owner of the concession – the *concessionaire* – pays a fixed sum and/or a percentage of revenue to the entity with the ability to assign exclusive rights for an area or facility. On the other hand, according to the Law on Ownership and Other Proprietary Rights the construction right is a really limited right to one's land that entitles its holder to has its own building on the surface of the land or under it, and the owner of the land is obliged

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<sup>20</sup> Perić, M., *Projektni menadžment i javno privatno partnerstvo u turizmu*, op.cit., p. 296.

<sup>21</sup> *Zakon o koncesijama*, Narodne novine, br. 125/08

<sup>22</sup> *Zakon o pomorskom dobru i morskim lukama*, Narodne novine, br. 158/03

to accept that.<sup>23</sup> Who is the bearer of construction right is also the owner of the facilities that belong to that right, but has the rights and obligations of an usufructuary with regard to the land on which the facilities are built. The bearer of construction right is also obliged to pay the monthly fee for the land to the owner of land.

Specific project Island St. Katarina and Mulimenti include the construction of the marina, which directly entails the question of concessions for the use of maritime domain. In fact, the issue of the concession for the use of maritime domain can not be separated from the construction right on nearby land and economic use of it. It is inconceivable that the most suitable private investor is granted with the construction right but do not get a concession for the use of maritime domain at the same time and vice versa.<sup>24</sup> Therefore, Brijuni Riviera Ltd. should ask the Government of the Republic of Croatia for the priority concession and a right to forward such concession to other parties. In this regard, it should be considered to change existing law, because the current situation requires public competition (tender) before granting a concession for economic use of maritime domain. In other words, the government could not directly grants Brijuni Riviera Ltd. a concession for the economic use of maritime domain. This is especially important considering the fact that initial construction right and concession in favour of Brijuni Riviera Ltd. have not yet been established and it can not be known under what conditions it will be established.

In this context, it is logical to observe BOT as integrated model which implies that the private partner could be granted with concession and/or the construction right, depending on whether the public partner owns property that is the subject of interest or it is public good like maritime domain.<sup>25</sup>

Also, the same as in the example of the City of Šibenik, it should be pointed out that in terms of the new Law on public-private partnership it is questionable whether it is a PPP model at all. Proposed model is based on construction right (and concession) that would grant the private partner the right to the commercial usage of the project site, while the Law expressly states that concessions for sole commercial usage of public or other goods can not be the subject of PPP. However, considering the different international experiences on cooperation of public and private sectors in tourism<sup>26</sup>, it is justified to consider proposed model that aims to encourage direct investments in market-oriented projects as one type of PPP.

Related to the problem of distinguishing the constructing right and concession for those project, it should be pointed out that the locations are partly in ownership of Republic of Croatia and local cities and municipalities and partly in private ownership, while boundaries of maritime domain for all locations have not yet been established or

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<sup>23</sup> *Zakon o vlasništvu i drugim stvarnim pravima*, Narodne novine, br. 91/96, 68/98, 137/99, 22/00, 73/00, 129/00, 114/01, 79/06, 141/06, 146/08

<sup>24</sup> Perić, M., *Projektni menadžment i javno privatno partnerstvo u turizmu*, op.cit., p. 297.

<sup>25</sup> *Ibid.*, p. 238.

<sup>26</sup> See: WTOBC, *Public-private Sector Cooperation: Enhancing Tourism Competitiveness*, op.cit.; Abreu, C. B., Abreu, C. B., Brasil, M. P. de Sousa, "The Tourism Industry and its Environmental Effect in Brasil", op.cit., pp. 1-10.; Nadiri, H., Avcı, T., "Public-Private Partnerships in Tourism Marketing: an Empirical Analysis of North Cyprus", op.cit., pp. 439-450.; KPMG Canada, *Co-operation and Partnership in Tourism: A Global Perspective*, op.cit.; Perić, M., Dragičević, D., "PPP and Master Plan for Tourist Destination Kvarner – Croatia", op.cit.

not been established in full.<sup>27</sup> The land that is classified as forest land, in order to be able to build on it, should be previously separated from forest areas. Also, urban planning is not finished yet and there are no master plans for the locations and it is not known what will be allowed to build. This means that the public sector, in accordance with relevant legal mechanisms available to him, is really responsible to solve the underlying legal problems with land owners, and reallocation of land.

Furthermore, the legal framework of construction rights means that none of the facilities can be sold to third parties. To find a private investor interested in high investments during project implementation, it is reasonable to consider that within the project at least one small part of the land could be sold to private partner (ownership transfer). That would allow construction and sell of facilities such as villas and apartments and a faster return on investment.<sup>28</sup>

Finally, considering the total investment required and the fact that after a stipulated period not only facilities but also completely business (market, know-how and operations) is transferred into the possession of the initial owner (the public partner), some preliminary feasibility studies of private partners have shown that the proposed duration of the contractual construction rights or concession (66 years) is too short to get expected return on investment (ROI) and internal rate of return (IRR). Therefore, it is proposed that the period for which the concession is granted has to be bind with the duration of the construction right, and vice versa.<sup>29</sup> As the concessions for the use of maritime domain are granted for a term of 5 to a maximum of 99 years, this opens the possibility that the construction right could be granted for a total of 99, not 66 years.

It can be assumed that the above deficiencies are the main reasons why the realization of this project lasts for more than five years, and still favourable private partners are not selected, and no tender for submission of binding bids is published.

## CONCLUSION

Legal framework that defines PPPs in Croatia is quite narrow, so according to the Law on public-private partnership, concessions for sole commercial usage of public or other goods in the field of tourism can not be the subject of PPP. It follows that proposed BOT models (City of Šibenik, Brijuni Riviera) can not be classified as PPP projects. However, considering the different international experiences on cooperation of public and private sectors in tourism, it is justified to consider proposed market-oriented model as one type of PPP. As for the health-tourism project Stubičke Spas, at a time when it started, in the terms of the Guidelines for the application of contractual forms of public-private partnership (PPP) it could not be considered as PPP while according to the Law it is considered as an institutionalised form of PPP.

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<sup>27</sup> Brijuni Riviera Ltd., *Natječajna dokumentacija, Informacijski memorandum, Javni natječaj za izbor kvalificiranih ponuđača za realizaciju greenfield turističkih projekata na četiri lokacije Brijuni rivijere prema BOT modelu*, 30. srpanj 2007.

<sup>28</sup> Perić, M., *Projektni menadžment i javno privatno partnerstvo u turizmu*, op.cit., p. 240. and 297-298.

<sup>29</sup> Ibid., p. 298.

Detailed analysis of these case studies found out that the issue of concessions (for example, use of maritime domain) can not be separated from the construction right and economic usage of the land. The distinction between concession and construction right depends on the ownership and therefore it is logical to observe the proposed BOT models as integrated models that includes both a concession and/or the construction right. In such cases the duration of the concession should be linked to the duration of the construction right, and vice versa.

The legal framework of proposed BOT models includes the construction rights that prevent sale of newly built facilities to third parties. However, in cases of large investments and below average IRR, it is reasonable for public partner to consider an extension of the agreed period (up to 99 years) or selling a small portion of land which would allow private partner a faster return on investment through building and selling facilities like villas and apartments. In this context, it is worth to remind that after a stipulated period the whole business is transferred into the possession of the owner (the public partner).

It could be concluded that the development and implementation of certain PPP models are determined by social conditions, and above all legal regulations. If partnership of public and private sectors is to be applied completely it is necessary to carry out many of the procedural activities and carefully plan any changes to legislation in accordance with the needs of society. This means accepting some partnership projects as PPPs, although according to the Law they could not be classified as PPPs. Also, without updated Land Registry, defined possessions and ownerships, defined borders of maritime domain etc. faster implementation of PPP projects could not be expected.

For PPPs capable of ensuring faster construction and better management of hospitality and tourism facilities that would have a number of positive effects on tourism and on the economy in general like an impact on raising the general level of quality of hospitality and tourism services, the arrival of growing numbers of satisfied guests and the possibility of year-round hospitality and tourism activities in a specific region, the creation of new jobs in tourism and in related industries, and an increase in the income and standard of living of the inhabitants, these recommendations should be carefully considered and respected case by case.

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