

**LAW**

**No. 125/2013**

**ON CONCESSIONS AND PUBLIC PRIVATE PARTNERSHIP<sup>1</sup>**

*(Amended by Law no. 88/2014, published in the Official Journal no. 126/2014)*

*(Amended by Law No. 77/2015, published in Official Journal No. 132/2015)*

*(Amended by Law No. 50/2019, published in Official Journal No. 126/2019)*

**Pursuant to Articles 78 and 83, Paragraph 1 of the Constitution, upon the proposal of the  
Council of Ministers**

**THE PARLIAMENT**

**OF**

**THE REPUBLIC OF ALBANIA**

**DECIDED:**

1. This Law shall approximate the 2004/18/EC Directive of the European Parliament and of the Council of March 31<sup>st</sup> 2004 regarding the coordination of procurement procedures for the award of public works contracts, public supply contracts and public service contracts, CELEX number 32004L0018, Official Gazette of the European Union, L Series, no. 134, date 30.4.2004, page 114-240.

**CHAPTER I**

**GENERAL PROVISIONS**

**Article 1**

**Purpose of the law**

The purpose of this law shall be to establish a constructive and sustainable framework in order to encourage, attract and facilitate investments, which are carried out as concessions/public private partnerships.

**Article 2**

**Objective of the law**

This law shall regulate the contracting authorities powers to enter into concession/public private partnership agreements for investments based on concession/public private partnership, procedures for the award of such contracts, such as signing of contracts, contracts termination and amendments to concession/public private partnership agreements, issues regarding financial regulations and support in relation to concessions/public private partnerships, the policy of such concessions and the authority to implement them, as well as other issues related to concessions/public private partnerships.

**Article 3**

**Definitions**

The terms used in this Law shall have the meaning as hereunder provided:

1. “Concession” means the public works concession or the public services concession.
2. “Public works concession” means an agreement of pecuniary interest, which is concluded in writing between the contracting authority and one or more economic operators, the object of which consists in the execution of works, where the remuneration for works to be performed is composed of the right to use the works that constitute the object of the contract, or of this right jointly with the payment.
3. “Public services concession” means an agreement of pecuniary interest, which is concluded in writing between the contracting authority and one or more economic operators, the object which consist in the delivery of services, where the compensation for services to be delivered is composed of the right to use the services that constitute the object of the contract, or of this right jointly with the payment.
4. “Mixed concession” is a concession, the object which consists in the performance and the delivery of services identified as a public works concession, or a public services concession and where the decisive element to determine whether such a contract is a public works concession or a public service concession includes the fact whether or not the work to be performed constitutes the main objective of the contract, or whether or not the work is just a characteristic thing of the public work that constitutes the object of the contract.
5. “The right to use the works and /or services” has the following meaning:
  - a) The right to generate incomes in compliance with the concession contract; as well as,
  - b) The transfer to the concessionaire of a considerable part of the operational risk, which relates to the object of a public works concession or of a public service concession. The concessionaire will be deemed to have undertaken a considerable part of the operational risk if the directly or indirectly provided financial support fails to guarantee that it will achieve the return of the investment, or the covering of costs arising from the management of works and/or services, which are part of the concession object. The operational risk means the risk related to the use of works or the provision of services or the risk related to the availability of the immovable infrastructure, which is developed or used for the provision of services to end users, in compliance with the concession contract.
6. “Communication in writing” means any expression, which is composed of words or numbers that can be read, copied and communicated including also the information that is transmitted and saved by electronic means.
7. “Works completion” means the design and the delivery of a work by whichever mean concurrent with the object of the concession and with requirements as specified by the contracting authority.
8. “Work” means the object, which is the outcome of the construction or civil engineering works taken as a whole that is sufficient in per se to fulfill an economic or technical function.
9. “Service delivery” means the provision or the performance of public services that corresponds with the concession object and with requirements as specified by the contracting authority.
10. “Concession object” means public works and/or public services provided in accordance with a concession agreement in any of the legal sectors listed in this law.

11. “Concessionaire” means the economic operator or the Special purpose vehicle, with which the contracting authority has signed a concession contract.
12. “Special purpose vehicle (SPV)” means the following:<sup>2</sup>
  - a) A private legal person with the main office in the Republic of Albania, which is established upon the request of the contracting authority by the economic operator that is selected as the most successful tenderer, with which the contract is concluded.
  - b) A form of the public private partnership consisting of the establishment of a joint entity between the public and private partner, which delivers works or services under a concession/public private partnership contract and where the private partner has also an active participation in the concession/PPP contract management in addition to the contribution in equity or in assets. Simple equity contributions of private investors into state-owned enterprises don’t constitute a SPV.
13. “Projects” means a series of intertwined activities, which are undertaken in a certain manner, the aim of which is to achieve clear objectives within a specified period of time and within a defined financial framework.
14. “Facility” means the result of the construction or the result of an existing public infrastructure under possession, which is used or owned by the concessionaire/private partner or a public infrastructure, which will be build pursuant to the concession contract/public private partnership and, which may be delivered to the benefit of the public or to a part of the public.
15. “Unsolicited proposal” means the proposal to undertake concession projects, which hasn’t been made in response to a request of the contracting authority, in the frame of a competitive selection procedure.
16. “Financial support” means the type of monetary or non-monetary support and/or the financing provided by the public sector including, but not limited to, the subsidies, financial guarantees or others, equity contributions and transfer of the ownership rights.
17. “Value for money” is a term used to determine if the contracting authority has received maximum potential incomes from works or services awarded as a concession/public private partnership. This term is not limited to the amount of the value for money of works/services, but includes also the quality assessment, costs and usage of resources, compliance with the contract goal and objective, the time and the possibility to determine if all these combined elements represent the best economic value.
18. “Contractor” means every natural or legal person, public entity or group of persons and/or institutions, which respectively offer to the market the delivery of works and/or of works and services.
19. “Economic operator” means the contractor, the entrepreneur of works or services.
20. “Winner award procedure” means the open, restricted or negotiated procedure, which is regulated by the Public Procurement Law, and which is carried out by the contracting authority in order to award a concession/public private partnership.

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<sup>2</sup> Amended by Law no. 77/2015 “On some amendments and additions to Law no. 125/2013 “On Concessions and Public Private Partnership”, as amended.

21. “Tender documents” means the documents, which the contracting authority puts at the disposal of the candidates and potential tenderers as a basis for preparing their tenders.
22. “Concession contract” means a contract, which is signed by the contracting authority, on one hand, and the economic operator, which is selected as the most successful tenderer or the special purposes entity (SPV) established by the said economic operator, on the other. It’s a contract, which contains provisions that regulate the rights and obligations related to the awarded concession.
23. “Public private partnership contract” means a public works contract or a public service contract, which meets the conditions that define it as a public private partnership, as provided for in this Law, and which is concluded between the contracting authority, on one hand, and the economic operator selected as the most successful tenderer, on the other.
24. “Authorized signatory” means a person authorized by the contracting authority to sign the concession /public private partnership contract.

Except when otherwise regulated differently by this Law, the meaning of terms as set out in the Public Procurement Law shall apply to this Law accordingly.

#### **Article 4**

##### **Scope of implementation of concessions/public private partnerships**

1. Concessions/public private partnerships may be awarded to carry out works, and/or to provide services in the following sectors and for the following purposes:
  - a) Transport (railway system, railway transportation, ports, airports, roads, tunnels, bridges, parking lots, public transports);
  - b) Generation and distribution of the electric power and the heating power;
  - c) Generation and distribution of water, wastewater treatment, collection, distribution and management, irrigation, drainage, cleaning of channels and dams;
  - ç) Waste management including their collection, treatment, transfer and disposal;
  - d) Telecommunication;
  - dh) Science and education ;
  - e) Tourism, recreation and hospitality;
  - ë) Culture and sports;
  - f) Health;
  - g) Social services;
  - gj) Prisons and judicial infrastructure;
  - h) Land and forest rehabilitation ;
  - i) Industrial parks, mines and similar infrastructure toward business sustenance;
  - j) Housing;
  - k) Public administration buildings, information technology and database infrastructure;
  - l) Distribution of natural gas;
  - ll) Rehabilitation, as well as urban and suburban development;
  - m) Public lighting in the territory of the local administrative units;<sup>3</sup>
  - n) Agriculture.<sup>4</sup>

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<sup>3</sup> Added by Law no. 88/2014 “On some additions and amendments to Law no. 125/2013 “On Concessions and Private Public Partnership”.

2. The Council of Ministers shall make a decision upon the proposal of line ministries or upon the proposals, which the latter receive from the authorities of the local governmental units or from the central bodies of concessions/public private partnerships policies, on concessions/public private partnerships to be implemented in other sectors.
3. The Council of Ministers may award, in particular cases, concessions to local or international economic operators at the symbolic price of Euro 1.

## **Article 5**

### **Exemptions**

1. This law shall apply to concessions/public private partnerships in the following cases:
  - a) Concessions/public private partnership are below the lower monetary threshold;
  - b) Their accomplishment should be accompanied by special security measures, in compliance with the laws, regulations or administrative provision in force or when such a thing is required by the protection of fundamental state interests;
  - c) Purchasing or renting immovable property or rights related to such property by whichever financial means. Nonetheless, financial service contracts of whichever form, which are signed simultaneously, prior or after the purchase or the rental contract shall be subject to this Law;
  - ç) Purchasing, developing, producing or co-producing program or advertisement materials, which are earmarked by broadcasters for broadcasting, or for the publication in media and contracts for the airtime;
  - d) In the case of concessions, which are subject to different regulations, and which are awarded under special procedural rules of international organizations;
  - dh) Arbitration and reconciliation services;
  - e) Financial services in relation to the issuance, sale, acquisition or the transfer of securities or other financial instruments, in particular, transactions of contracting authorities in order to collect money or capital;
  - ë) All services mentioned in the procedures of awarding sector contracts in the Public Procurement Law;
  - f) Air transport services;
  - g) Concessions/public private partnerships, which are subject to different regulations, and which have been awarded under the international agreements, which the Republic of Albania has concluded with one or more countries, signed under the Treaty for the Functioning of the European Union, and which include works, supplies or services, which are intended for common implementation or use of projects by signatory countries;
  - gj) Concessions/public private partnerships, to the extent that this Law conflicts with a state obligation, which is based, or derives from an agreement with one or several other countries or with an international organization, the provisions of this agreement shall prevail. Otherwise, procedures and principles of awarding a concession/public private partnership shall be regulated by this Law in all other aspects,;
  - h) Public service concessions as awarded by a contracting authority to another contracting authority or to an association of contracting authorities on the basis of an exclusive right that they enjoy, under the legislation in force;

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<sup>4</sup> Added by Law no. 77/2015 “On some amendments and additions to Law no. 125/2013 “On Concessions and Public Private Partnership”, as amended.

- i) Construction and utilization of renewable energy sources under the provisions of Law no. 138/2013 “On renewable energy sources”, except hydropower plants with installed capacity over 2 MW<sup>5</sup>.
  - j) **Repealed**<sup>6</sup>.
2. Cases exempted pursuant to Paragraph 1 of this Article shall be regulated by the provisions of other laws or bylaws.

## **Article 6**

### **Licenses and permits**

This law shall not apply to licenses and administrative permits, which are provided to economic operators, contracting authorities, contracting entities and other private or public sector bodies.

## **Article 7<sup>7</sup>**

### **Concessions of Hydropower Plants**

#### **(Repealed)**

## **Article 8**

### **Public Private Partnership**

1. Public private partnership shall mean a form of a long-term cooperation, which is regulated by contract, between the contracting authority, that is the public partner, and one or more economic operators, that is the private partner, where:
- a) The private partner shall undertake the obligation to deliver public services to service user within the jurisdiction of the public partner and/or the obligation to provide the necessary preconditions to the public partner in order to deliver public services to service users and/or activities within its jurisdiction;
  - b) In order to fulfill the obligations set out in Subparagraph “a” of this Paragraph, the private partner may undertake the following:
    - i. The obligation to finance, design, construct and/or to reconstruct/to renovate the public infrastructure building, to operate and to maintain the public infrastructure building, which is newly constructed and/or reconstructed/refurbished;
    - ii. The obligation to use, operate and maintain an existing building of the public infrastructure;
    - iii. Any combination of the aforementioned obligations, as long as the aim of the combination of these obligations is to fulfill objectives, which are set forth in Subparagraph “a” of this Paragraph;
  - c) In frame of undertaking the obligations provided for in Subparagraphs “a” and “b” this Paragraph, the private partner shall usually undertake various levels and spread of risks,

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<sup>5</sup> Amended by Law no. 77/2015 “On some amendments and additions to Law no. 125/2013 “On Concessions and Public Private Partnership”, as amended.

<sup>6</sup> Repealed by Law no. 50/2019 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”

<sup>7</sup> Repealed by Law no. 77/2015 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”.

- which are related to financing, construction, the demand and/or the availability, and other ones such as the operation, management, maintenance and technical risks depending on the form of the public private partnership and depending on the definition, case by case;
- ç) As a rule, every partner shall undertake the responsibility for the risk cases that fall under its sphere of influence, or the responsibility shall be shared regarding the lifetime of the public private partnership;
  - d) The private partner shall be mainly, but not exclusively, remunerated and in compliance with the contract:
    - i. By means of entitling it to the right of utilizing the public works and/or the public service, mainly with the aim of levying fees or payments to end users and consumers, or this right jointly with the financial support;
    - ii. By means of regular direct payments made by or in the name of the public partner usually related to the availability of the building and/or the delivered service;
    - iii. By means of other forms of financial support including the transfer of material rights and other real rights;
    - iv. A combination of the tools described above;
  - dh) The public partner shall make it possible for the private partner to perform the commercial activities as set out in the contract along with obligations, which derive from Subparagraphs “a” and “b” of this Paragraph, if this ensures the necessary level of the cost efficiency of the private participation and the reasonable investment return, as well as a better value for money.
- 2. Besides requirements set out in this Article, the public private partnership may include the establishment of a special purposes vehicle (SPV) with mixed capital, which shall be jointly owned by the public and the private partner. If capital contributions of the public partner are such that their value or influence eliminate the necessary transfer of natural main risks of the project to the private partner, as provided by this Law, such a contract or undertaking shall not be considered a public private partnership (PPP).
  - 3. Public procurement contracts, which fail to fulfill the conditions of this Article, shall not be considered a public private partnership. Such conditions imply, but are not limited only to, the contract duration, the transfer of main natural risks and the remuneration instruments.
  - 4. A public private partnership may be accomplished in one of the following forms depending on the remuneration means, as well as the sharing of natural risks:
    - a) A public works concession;
    - b) A public services concession;
    - c) A public works contract;
    - ç) A public services contract.
  - 5. The Council of Ministers shall approve a strategic policy paper to determine the primary sectors for investments based on the public private partnership, the preferred forms of public private partnership and other issues, which are related to the general policy framework on concessions and public private partnerships in the Republic of Albania.

## **Article 9**

### **Main Principles**

The procedure of awarding concessions/public private partnerships shall be implemented in compliance with the principles of transparency, non-discrimination, proportionality, efficiency, equal treatment, reciprocity and legal certainty.

**Article 9/1**  
**Ministry responsible for the economy<sup>8</sup>**

The Ministry responsible for the economy shall be the responsible institution that shall guide and harmonize activities for the development of concessions/PPPs.

**Article 10**  
**Ministry responsible for the finances**

1. The authority of the ministry responsible for finances regarding concessions/public private partnerships shall be exercised under the provisions of special articles of this Law.
2. The ministry responsible for finances shall assesses and approve in advance all concession/(PPP) projects in addition to any changes or transfers thereof in terms of fiscal, individual or group implications on budget spending, budget deficit, public debt stability and eventual contingent liabilities. If the contracting authority has failed to award an economic operator within two (2) years of receiving the approval from the ministry responsible for finances, it will then submit once again the revised feasibility study for approval.
3. Contracting authorities shall be obliged to submit the concession/PPP contract to the ministry responsible for finance for evaluation, in compliance with the criteria set out in Paragraph 2 of this Article, prior to signing it with the awarded economic operator.<sup>9</sup>
4. The contracting authorities shall submit to the minister responsible for finances, whenever it's required, but not less than three times a year, summary reports of the monitoring of the implementation of the concession/PPP contracts with the relevant arguments and explanations. The form, content and time limits of the monitoring reports shall be determined by a special guideline of the minister responsible for finance.
5. Based on the monitoring reports as specified in Paragraph 4 of this Article, the ministry responsible for finance may recommend to contracting authorities to take measures to improve the performance of delivering public services and works, subject to such contracts, as well as to minimize or to eliminate direct and indirect risks affecting the state budget.
6. The contracting authorities shall, within the first half of each year, submit to the ministry responsible for finance the annual financial statements of the preceding year of the concession companies, which shall be audited and confirmed by the tax authorities.
7. The minister responsible for finances shall draft a summary annual report on the progress of the active concession/PPP contracts, as an Annex to the Annual Budget Execution Report, in compliance with the legislation in force on the budget system management.

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<sup>8</sup> Added by Law no. 77/2015 "On some amendments and additions to Law no. 125/2013 "On Concessions and Private Public Partnership".

<sup>9</sup> Amended by Law no. 50/2019 "On some amendments and additions to Law no. 125/2013 "On Concessions and Private Public Partnership".



8. The Council of Ministers shall adopt the rules about the evaluation and approval of projects under Paragraph 2 of this Article.<sup>10</sup>

## **Article 11**

### **Public Procurement Agency<sup>11</sup>**

The Public Procurement Agency shall carry out the following duties:

- a) Monitor compliance with the concession/PPP competitive procedures under public procurement legislation after the contract is signed and in the event of violations of this law and bylaws, which are issued pursuant to it, it shall impose fines or propose taking of administrative actions;
- b) Under the provisions of the Public Procurement Law, it shall exclude an economic operator from the award of public contracts.<sup>12</sup>
- c) Publish standard tender documents.

## **Article 12<sup>13</sup>**

### **Concessions Treatment Agency (ATRAKO)<sup>14</sup>**

1. The Concession Treatment Agency (ATRAKO) shall be under the subordination of the minister responsible for the economy in order to encourage and assist the contracting authorities in the preparation and negotiation of the concessions/private public partnerships.
2. The Concession Treatment Agency (ATRAKO) shall assist the contracting authorities in order to carry out the following:
  - a) Draft the feasibility study;
  - b) Draft the competitive procedure documents and the evaluation criteria;
  - c) Evaluate the proposals and determine the best tenderer;
  - d) Negotiate and sign the concession contract;
  - e) Monitor the concession contracts;
3. The Concession Treatment Agency (ATRAKO) shall also:
  - a) Propose to the minister in charge of the economy the amendment of concessions/public private partnerships legislation, as well as guidelines to implement the provisions of this law;
  - b) Monitor, analyze and study the current European and global trends, knowledge and experience in the field of concessions/private public partnerships;
  - c) Cooperate with the Public Procurement Agency to draft and publish standard concession/PPP documents.

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<sup>10</sup> Added by Law no. 50/2019 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”.

<sup>11</sup> Amended by Law no. 77/2015 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”.

<sup>12</sup> Amended by Law no. 50/2019 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”.

<sup>13</sup> Amended by Law no. 77/2015 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”.

<sup>14</sup> Amended by Law no. 50/2019 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”.

- ç) Propose for approval to the Concession/Public Private Partnership Projects Selection Committee the requests of the contracting authorities for support with specialized expertise when designing the feasibility studies of the concession/Public Private Partnership projects;
- d) Propose for approval to the Concession/Public Private Partnership Projects Selection Committee the requests of the ministry responsible for finance for support with specialized expertise to conduct the review of the feasibility studies of concession/PPP projects;
- dh) Propose for approval to the Concession/ Public Private Partnership Projects Selection Committee the requests of the contracting authorities for support with specialized expertise to conduct the review of the unsolicited proposals;
- (e) Conduct the procedures of selecting external consultants in compliance with public procurement procedures.

3/1. The Concessions Treatment Agency shall generate incomes from services it shall provide and from domestic or foreign donors.<sup>15</sup>

4. The manner of organization and functioning, the procedures and the fee rates of services to be provided by the Concessions Treatment Agency shall be determined upon a Decision of the Council of Ministers.<sup>16</sup>

## **Article 12/1**

### **Concession/ Public Private Partnership Projects Selection Committee**

1. To select the concession/public private partnership projects, which will be supported by specialized expertise when drafting the feasibility study and/or when conducting their review, a Concession/ Public Private Partnership Projects Selection Committee shall be established as a collegial administrative body, which shall be chaired by the minister responsible for the economy and it shall be composed of the following members:
  - a) The minister responsible for finances;
  - b) The minister responsible for infrastructure;
  - c) The minister responsible for energy and industry;
  - ç) The minister responsible for urban development;
  - d) The Minister responsible for the environment.
2. The Committee shall invite, on a case-by-case basis, non-voting representatives from the academia, as well as the heads of the contracting authorities, which have the object of the concession/ public private partnership project as their jurisdiction, to justify their request.
3. The Committee shall examine and approve the requests of the contracting authorities for support with specialized expertise to draft the feasibility study of possible concession/ public private partnership projects.

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<sup>15</sup> Added by Law no. 50/2019 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”.

<sup>16</sup> Amended by Law no. 50/2019 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”.

4. The Council of Ministers shall adopt upon a Decision the rulebook regarding its functioning and the criteria of evaluating the requests of the contracting authorities for support with specialized expertise to draft the feasibility study of potential concession/ public private partnership projects.
5. The Concession Treatment Agency, which provides all the support necessary for the proper conducting of the meetings, shall perform the role of the Secretariat for the Committee.<sup>17</sup>

### **Article 13**

#### **Contracting Authorities**

1. Contracting authorities shall be the entities, to which this Law confers the powers to undertake a procedure of awarding a concessions/public private partnership.
2. Contracting authorities shall be the following:<sup>18</sup>
  - a) Line ministries;
  - b) The Local Governmental Units;
3. When the object of a concession/public private partnership contract constitutes the jurisdiction of more than one contracting authority, the Council of Ministers shall determine upon a Decision the contracting authority/contracting authorities, as appropriate.<sup>19</sup>

### **Article 14**

#### **Concession/Public Private Partnership Registry**

1. The Concession/Public Private Partnership Registry shall be an electronic database of all concession contracts and public private partnership contracts, which shall be awarded in the Republic of Albania.
2. The Concession/Public Private Partnership Registry shall be established and maintained by the Concessions Treatment Agency (ATRAKO) under the legal provisions in force.<sup>20</sup>
3. The Council of Ministers shall approve the rules about the content and the format of the Concession/Public Private Partnership Registry.

### **Article 15**

#### **Confidentiality**

The provisions of the Public Procurement Law regarding confidentiality shall also apply to the concessions/public private partnerships regulated by this Law.

## **CHAPTER II**

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<sup>17</sup> Added by Law no. 50/2019 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”.

<sup>18</sup> Amended by Law no. 77/2015 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”.

<sup>19</sup> Added by Law no. 77/2015 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”.

<sup>20</sup> Amended by Law no. 77/2015 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”.

## ACTIONS TO AWARD A CONCESSION/PUBLIC PRIVATE PARTNERSHIP<sup>21</sup>

### Article 16<sup>22</sup>

#### **Actions to award a concession/public private partnership**

1. Actions to award a public private concession/partnership shall be deemed all activities, which shall be undertaken pursuant to this Law starting from the identification of the projects up to the monitoring phase of the contract.
2. The contracting authority may hire external consultants to provide expert support to prepare and award concession/public private partnership projects.
- 2/1. In case the contracting authority seeks support with specialized expertise to draft the feasibility study and/or to review the concession/public private partnership projects, it shall address the Concession Treatment Agency with a reasoned request. The request should contain explanations about the compliance, the need and the profitable elements of this concession/ public private partnership project, as well as references to appropriate expertise. In any case, for projects worth over EUR 100, 000, 000, the contracting authorities shall address the Concessions/ Public Private Partnerships Projects Selection Committee for expert support.<sup>23</sup>
3. The Council of Ministers shall approve more detailed rules pursuant to Paragraph 3 of this Article.<sup>24</sup>

### Article 17

#### **Identification of potential concessions/public private partnership projects**

1. The contracting authority shall identify and evaluate the potential concession/public private partnership projects within its jurisdiction;
2. The contracting authority shall be informed and may examine potential concession/public private partnerships projects as identified or proposed by the following:
  - a) The Office of the Prime Minister;
  - b) Other contracting authorities of the same administrative hierarchy, local or central governmental units;
  - c) National and international financial and development institutions;
  - ç) National and international scientific organizations;
  - d) Economic operators through unsolicited proposals only for the delivery of works and/or services at ports, airports, for the generation and distribution of electricity, heat energy and natural gas distribution.<sup>25</sup>
3. Repealed.<sup>26</sup>

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<sup>21</sup> Amended by Law no. 77/2015 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”.

<sup>22</sup> Amended by Law no. 77/2015 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”.

<sup>23</sup> Added by Law no. 50/2019 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”.

<sup>24</sup> Amended by Law no. 50/2019 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”.

<sup>25</sup> Amended by Law no. 50/2019 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”.

4. Repealed.<sup>27</sup>

**Article 18<sup>28</sup>**

**Concession/Public Private Partnership Commission**

1. To examine and award a concession/public private partnership, the contracting authority shall establish the Concession/Public Private Partnership Commission in coordination with the **Concessions Treatment Agency (ATRAKO)**.
2. The Commission members should have a lawyer, economist and technical profession background and other backgrounds from the respective fields, depending on the object and characteristics of the concession/public private partnership.
3. The number of Concession/Public Private Partnership Commission shall be odd, but not less than 5 members, where no less than two of the members shall be from the **Concession Treatment Agency (ATRAKO)**. A single Commission may be appointed for concession/public private partnership projects, the object of which is similar in nature.
4. Members of the Concession/Public Private Partnership Commission should not have any direct or indirect personal interest in any of the activities, which constitute a conflict of interest vis-à-vis the fulfillment of their duties as members of the Concession/Public Private Partnership Commission. They should confirm this by means of signing a declaration, which shall guarantee that they have no conflict of interest, as provided for by Law no. 9367, dated 07 April 2005, "On the Prevention of Conflict of Interest when Exercising Public Functions", as amended.
5. The Concession/Public Private Partnership Commission shall carry out the following tasks:
  - a) Draft the feasibility study regarding the concession/public private partnership, determine the applicable procedure of awarding the concession/public private partnership and draft the tender documentation;
  - b) Review and evaluate the accepted tenders and/or the requests for participation, which have been submitted;
  - c) Draft the proposal regarding the selection of the successful tender or the proposal of the decision to interrupt the procurement procedure, as well as the respective explanations;
  - ç) Perform all other activities, which are requested for the implementation of the concession/public private partnership procedure under the regulations in force.
6. The Concession/Public Private Partnership Commission shall write down the minutes in order to document its work and the minutes should be signed by all members of the Commission.

**Article 19**

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<sup>26</sup> Repealed by Law no. 50/2019 "On some amendments and additions to Law no. 125/2013 "On Concessions and Private Public Partnership".

<sup>27</sup> Repealed by Law no. 50/2019 "On some amendments and additions to Law no. 125/2013 "On Concessions and Private Public Partnership".

<sup>28</sup> Amended by Law no. 77/2015 "On some amendments and additions to Law no. 125/2013 "On Concessions and Private Public Partnership".

### **The feasibility study of the concession/public private partnership**

1. The feasibility study of the concession/public private partnership shall be drafted by the commission of the award of the concession/public private partnership within 60 working days of the establishment of this Commission. This deadline may be extended due to the complexity of the project with no more than 30 working days.<sup>29</sup>
2. The feasibility study shall include, in particular, the following:
  - a) The operational summary and a general description of the project;
  - b) Technical, financial, economic and legal analysis;
  - c) Environmental studies and implications in the nature;
  - ç) Accompanying annexes, requested additions, conclusions and recommendations.
3. The feasibility study shall take into consideration, in particular, the following: the public interest, the environmental impact and the environmental protection, the sustainability, the project financial viability, the value for money indicators, the harmonization of the project with national and strategic sector objectives, direct and indirect financial risks and impacts on the central budget and on the budget of local government, the necessary financial support, the technical and commercial feasibility, as well as market interest and the capacity to attract interested economic operators and financial supporters.
4. Repealed.<sup>30</sup>
5. The feasibility study of the concession/public private partnership or the summarized analysis of the concession award shall contain the following:
  - a) Defining of the type and the object of the concession/public private partnership;
  - b) Assessment of direct financial risks and the impact on the central and local government budget;
  - c) The contract estimated value;
  - ç) Assessments regarding the selection and the award criteria of the concession/public private partnership;
  - d) The proposed duration of the contract, as well as any other necessary information regarding the preparation of the tender documents.
6. Prior to the announcement of the concession/public private partnership award procedure, the contracting authorities shall submit the feasibility study, as well as any further amendments thereto, to the ministry responsible for the finances. The Ministry responsible for finance shall evaluate and approve the study in accordance with the criteria set out in Article 10, Paragraph 2 of the Law.
7. For the purposes of applying Paragraph 6 of this Article, the contracting authority shall submit the feasibility study of the facility and draft contract to the ministry responsible for the finances.<sup>31</sup>

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<sup>29</sup> Amended by Law no. 77/2015 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”.

<sup>30</sup> Repealed by Law no. 88/2014 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”.

**Article 20**  
**Calculation of the concession/public private partnership value**

1. The contracting authority shall calculate the estimated value of the concession/public private partnership as a total value of the object of the concession/public private partnership, including all eventual changes and options of the concession/public private partnership contract without Value Added Tax.
2. The estimated concession value shall be calculated based on the data, which the respective feasibility study or the concise analysis of awarding the concession contains.
3. The estimated value of the public private partnership shall be calculated under the provisions of the public procurement legislation.

**Article 21**  
**Tender documents**

1. Tender documents shall be drafted and handled by the contracting authority in compliance with the respective provisions of this Law.<sup>32</sup>
2. Without prejudice to Paragraph 1 of this Article, tender documents regarding the procedure of awarding the concession/public private partnership may include additional information, as provided for in the bylaws.

**CHAPTER III**  
**CONCESSIONS/PUBLIC PRIVATE PARTNERSHIPS AWARDING**  
**PROCEDURE**

**Article 22<sup>33</sup>**  
**Concessions/public private partnerships awarding procedure**

1. The concessions/public private partnerships awarding procedure shall begin with the publication of the contract notice and it shall end with the publication of the winner notice, or with the decision to interrupt the procedure of the contract award.
2. The procedure of awarding concessions/public private partnerships with a value over the lower monetary threshold shall be conducted in compliance with the relevant provisions of the public procurement law, as long as it isn't otherwise provided for in this Law.
3. When awarding concessions/public private partnerships, the contracting authority may use the open procedure, restricted procedure or the negotiated procedure with prior publication of contract notice. To continue the winner selection process, at least, one valid tender should be accepted.
4. When awarding public works concessions, the time limit for the submission of tenders shall be not less than 30 days of the date of publication of the contract notice.

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<sup>31</sup> Added by Law no. 50/2019 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”.

<sup>32</sup> Amended by Law no. 77/2015 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”, as amended.

<sup>33</sup> Amended by Law no. 77/2015 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”, as amended.



## **Article 23<sup>34</sup>**

### **Evaluation criteria of concession contract award**

1. The evaluation criteria of the concession/PPP contract award shall be as follows:

The most economically advantageous tender based on various criteria related to the object of the concerned concession/PPP such as, for example, quality, which includes technical merits, aesthetic, functional and environmental characteristics, running costs, effectiveness cost, provision of services after the delivery of the products and technical assistance, delivery date and shipment period or works completion date, service price for final beneficiaries, concession fee rate;

2. The concession award committee shall specify in the tender documents and in the contract notice the relative weights that it shall provide to each of the criteria selected to determine the most economically advantageous tender. These weights may be expressed by predicting a range with a maximum appropriate spread. Where this is not possible due to justified reasons, the contracting authority shall indicate the criteria in the contract notice by a descending order of importance.
3. <sup>35</sup>Repealed.
4. If any other law, which regulates concessions, provides for a lower concession fee, which the concessionaire is obliged to pay, than the contracting authority shall declare this fee rate in the tender documents as the fee rate to be included by the tenderers in their tenders.
5. The contract award criteria shall not be discriminatory and they should be in proportion with the concession object.

## **Article 24**

### **Concession contract notice**

1. The contracting authority shall notify its aim to award a concession through a notice.
2. The contract notice should include, at least, the following information:
  - a) Name, address, telephone number, fax number and e-mail address of the contracting authority;
  - b) Type, entity and object of the concession;
  - c) Location of the concessionaire activity to be undertaken;
  - ç) Duration of the concession contract;
  - d) Estimated value of the concession contract;
  - dh) Deadline for the submission of tenders;
  - e) Address, to which the tenders shall be submitted;
  - ë) Language/languages and the writing/writings, in which the tenders should be drafted;
  - f) Time and place of the public opening of tender;
  - g) Criteria for the exclusion of tenderers;

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<sup>34</sup> Amended by Law no. 77/2015 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”, as amended.

<sup>35</sup> Repealed by Law no. 77/2015 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”, as amended.



- g) Criteria in relation to the legal standing and the suitability to pursue the professional activity, the technical and professional capacities, as well as the evidences and data, through which an economic operator confirms the fulfillment of such requirements;
  - h) Type and the value of the bid bond to be submitted by the tenderers;
  - i) Contract award criteria;
  - j) Name and address of the body responsible for the evaluation procedure, as well as the data regarding deadlines about the request review.
3. The parties interested in the competitive procedure shall have the right to request the amendment or correction of standard competition procedure documents. This request should be filed by 10 days of the day of the publication of the contract notice. In the event that the competitive procedure documents are amended or corrected, the deadline for submission of tenders may be extended accordingly, but not more than 10 days.<sup>36</sup>
  4. The contract notice shall be published in a standard form.
  5. The content of the standard form shall be determined upon a Decision of the Council of Ministers.
  6. The contract notice shall be published electronically in the electronic procurement platform and in the Public Procurement Bulletin.
  7. The Public Procurement Law shall apply accordingly to all the issues regarding the contract notice, which are not regulated by this Law and bylaws pursuant to it.

## **Article 25**

### **Unsolicited proposals**

1. The contracting authority shall be authorized to review and accept unsolicited proposals only for the execution of works and/or the provision of services at ports, airports, for the generation and distribution of electricity, heat energy and natural gas distribution, in compliance with the procedures set forth in this article, provided that these proposals shall not relate to a project, for which the selection procedures have been initiated or published.
2. If the unsolicited proposal is deemed as admissible after the preliminary evaluation, then the contracting authority may undertake the necessary preparatory actions to award the concession/public private partnership. Unsolicited proposals, accompanied by minimal study, will not be accepted.<sup>37</sup>
3. If the concession/public private partnership award procedure, which has started based on a unsolicited proposal, is finalized with the signing of the contract, the contracting authority shall compensate the expenses that the proponent has made to draft the feasibility study, only if the unsolicited proponent isn't the winning tenderer.
4. The amount of compensation for the unsolicited proposal may not exceed 1% of the investment value. The determined value of the compensation will be published in the tender documents and will be paid by the winning tenderer before signing the contract.

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<sup>36</sup> Amended by Law no. 77/2015 "On some amendments and additions to Law no. 125/2013 "On Concessions and Private Public Partnership", as amended.

<sup>37</sup> Amended by Law no. 50/2019 "On some amendments and additions to Law no. 125/2013 "On Concessions and Private Public Partnership".

5. The Council of Ministers shall lay down the rules of assessing the eligibility, content and the manner of handling the unsolicited proposals and the method of calculating the amount of compensation.
6. A bonus shall be provided to the proponent, for the technical and/or financial result achieved during the competitive procedure up to a maximum of 10% of the total points of the competition.<sup>38</sup>
7. The Council of Ministers shall lay down the rules for assessing the eligibility, content and handling of unsolicited proposals.<sup>39</sup>

## CHAPTER IV CONCESSION/PUBLIC PRIVATE PARTNERSHIP CONTRACT

### Article 26 Signing of the contract

1. The contracting authority may not sign the contract prior to the expiration of the standstill period, which has been set forth pursuant to the relevant provisions of the Public Procurement Law.
2. Signing of the contract prior to the termination of the classification notice deadline or prior to the completion of the administrative review shall render it absolutely invalid.
3. The contracting authority shall invite the most successful tenderer to sign the contract following the publication of the winner notice in the Public Notices Bulletin.<sup>40</sup>
4. Repealed.<sup>41</sup>
- 4/1 After negotiating the contract with the awarded operator and prior to signing it, the contracting authority shall submit the draft contract for final evaluation to the ministry responsible for finances, under the criteria set out in Article 10, Paragraph 2 of the Law.<sup>42</sup>
5. The contract shall be drafted in writing and it shall be signed by the person authorized by the contracting authority and the tenderer, which is selected as the most successful one.
6. When the tenderer, which is selected as the most successful one in compliance with the tender documents and upon the contract award decision and the selected tender, is obliged to establish a Special purpose vehicle (SPV), which is regulated under the legislation in force, as a company with its main office in the Republic of Albania with the note “Concessionaire Company” before the name and has “the Concession contract object” as its object, then the contracting authority shall sign the contract with the authorized person of the company in question.

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<sup>38</sup> Added by Law no. 50/2019 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”.

<sup>39</sup> Amended by Law no. 77/2015 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”, as amended.

<sup>40</sup> Amended by Law no. 50/2019 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”.

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<sup>42</sup> Added by Law no. 50/2019 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”.

7. Following the completion of the registration of the concessionary company under the legislation in force, the contracting authority shall submit a copy of the contract and the registration extract to the Ministry of Finances.
8. If the tenderer, which is selected as the most successful, withdraws from signing the contract or fails to submit in due time the guarantees and the instruments as provided for by Article 28 of this Law, then the contracting authority may make a new decision on the contract award to offer the signing of the contract to the following best listed tenderer.
9. After being signed by the parties and only after receiving the final evaluation from the ministry responsible for finances, as provided for under Paragraph 4/1 of this Article, the concession/public private procurement contracts, which have financial backing, and which undertake fiscal risks, shall be submitted for approval to the Council of Ministers. The types and nature of potential fiscal risks shall be determined upon a Decision of the Council of Ministers.<sup>43</sup>

## **Article 27**

### **Contract content**

1. The contract shall define the rights and obligations of the contracting authority and those of the concessionaire/private partner under the provisions of this Law and the legislation in force in the Republic of Albania.
2. Contract issues, which are not regulated in this Law, shall be subject to the Civil Code provisions.
3. The contract should be drafted in compliance with the tender documents, with the information that is included in the contract notice, with the selected tender and with the contract award notice.
4. The contracting authority shall be entitled to sign agreements and/or additional contracts and/or conditional contracts, in addition to the contract under this Law, under the tender documents, under the concession award decision and under the selected tender. In this case, the contracting authority shall notify in advance the Ministry of Finances.
5. Agreements and/or additional contracts and/or conditional contracts as set out in Paragraph 4 of this Article shall be considered those ones, which shall be signed, in particular, to ensure the necessary funding to implement the contract.
6. The concession/public private partnership contract shall regulate, under the tender documents, under the concession award decision and under the selected tender, all cases related to the ownership of immovable properties and other properties, which form the object of the concession/public private partnership contract and the ownership of immovable or movable properties, which are created on basis of the concession/public private partnership contract in the course of its duration or after its completion.

## **Article 28**

### **Contract execution guarantees**

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<sup>43</sup> Added by Law no. 50/2019 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”.

1. Prior to the signing or the entry into force of the contract, the contracting authority shall receive from the most successful bidder the required guarantees regarding the contract execution and the security instruments as a compensation for the damage that may be caused as a consequence of the failure of the concessionaires/private partners to fulfill the obligations provided for in the contract (promise for payment, bank guarantee, corporate guarantee, bill of exchange, etc.). The contract bond shall be up to 5% of the contract value and it shall be set out in the tender documents. This measure may be proportionally reduced during the contract execution, while during the terms of the contract it may in no case be less than 25% of the initial value of the bond.<sup>44</sup>
2. Guarantees and security instruments shall be deposited at the contracting authority, which shall be obliged to save them throughout the entire term of the contract.
3. The contracting authority shall periodically verify the validity of the security instruments.
4. Under Paragraph 3 of this Article and in case that the security instrument is not valid, the contracting authority shall ask without delay the concessionaire/private partner to submit a new security instrument.

## **Article 29**

### **Concession fee**

1. If determined in the feasibility study, the concessionaire shall pay a monetary compensation for the concession to the amount and according to the approach as set out in the concession contract. The exemption from payment of this fee shall be made only for cases of concessions applied in the field of health<sup>45</sup> and in the field of sport.<sup>46</sup>
2. The concession fee shall be paid under the rules determined by the Minister of Finances for the revenue collection on behalf of the State Budget.
3. The rate and the time limits of the payment of the concession fee shall be determined in proportion to the concession object, the estimated value of the concession contract, the duration of the contract, risks and costs undertaken by the concessionaire and the expected profit, as well as the equipment level and the value of the property provided by the contracting authority in compliance with the concession contract.
4. The concession contract may determine the modification of the rate and/or the calculation approach and the payment of the concession fee within a defined period of time, throughout the entire duration of the concession contract, in accordance with the tender documentation and with the contract award decision.
5. The concession fees shall be part of the revenues of State Budget of the Republic of Albania and/or the revenues of the Local Government Units budgets.
6. When the concession fee fails to be paid under the provisions of this Article, the contracting authority shall notify the minister responsible for finances, whose order on fee collection

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<sup>44</sup> Amended by Law no. 50/2019 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”.

<sup>45</sup> Added by Law no. 88/2014 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”.

<sup>46</sup> Added by Law no. 50/2019 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”.

constitutes an executive title for the second level banks where the bank account of the concession company, which becomes subject to execution by the court bailiff.<sup>47</sup>

### **Article 30**

#### **The term of the concession contract/public private partnership**

1. The concession contract/public private partnership contract shall be signed for a definite term.
2. The contracting authority shall define in the feasibility study of the concession contract/public private partnership the term of the contract in such manner that its duration shall not narrow down the competition more than it is necessary in order to ensure a real return of the investment amount of the concessionaires/private partners and a reasonable investment return rate taking into consideration costs and risks undertaken by the concessionaire/private partner during the duration of contract.
3. The concession contract/public private partnership may not be concluded for a period longer than 35 years.
4. The term, for which the concession/private partnership is awarded, shall start as of the date of the entry into force of the contract.
5. The term of the contract may be extended if necessary due to contract amendments as provided of in Articles 31, 32 and 33 of this Law.

### **Article 31**

#### **Amendment of the concession/public private partnership contract**

1. Contracts provided for by this Law may be amended by adding an annex to the contract under the condition that such possibility has to be provided in the tender documents and in the contract.
2. Amendments to the contract may be made by the contracting authority and the concessionaire/private partner.
3. Amendments to the contract may be made upon the initiative of both contracting parties particularly in the following cases:
  - a) When the national security and the country's defense, the environment the nature and the health of people are endangered;
  - b) When the contract object is lost or when there is an objective impossibility to use it, in the case of force majeure;
  - c) During the amendments of the legal framework;
  - d) In other cases leading to the changing of the real or legal situation regarding the use of the facility, or the provision of services, or the completion of the contract.
4. Amendments to the substantial conditions of the contract, which are not provided for in the tender documentation and/or in the contract itself, shall require the implementation of a new procedure to award the concession/public private partnership contract.

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<sup>47</sup> Added by Law no. 50/2019 "On some amendments and additions to Law no. 125/2013 "On Concessions and Private Public Partnership".

5. Without prejudice to provisions of Articles 32 and 33 of this Law, the term “substantial conditions” shall refer particularly to the conditions that, had they had been included in the initial contract notice or in the tender documentation, they would have made it possible for tenders to deliver a substantially different tender, as well as if amendments would have exceeded the object of the contract in such manner that such amendments would include services that were not initially covered.
6. The contracting authority shall requests the prior approval of the ministry responsible for the finances for all planned contract amendments, which it shall deem to be compliant with the criteria, which are laid down in Article 10, Paragraph 2 of the Law.
7. The contracting authorities shall send to the Council of Ministers for approval any amendment of the concession/PPP contract, which has financial backing and undertakes fiscal risks, only after obtaining the prior approval of the ministry responsible for finance as provided for in Paragraph 6 of this Article.<sup>48</sup>

### **Article 32**

#### **Transfer of the concession contract/public private partnership contract**

1. Under the provisions of this Article and upon the prior written consent of the contracting authority, the concession contract/public private partnership contract may be transferred to a third person that fulfils the eligibility requirements as set out in the tender documents on basis of which the contract had been initially awarded, except when such requests refer to conditions that are no longer necessary for the contract implementation due to the fact that such mentioned obligations and requirements have already been fulfilled or are being fulfilled by the previous concessionaire/private partner.
2. The transfer of the concession contract shall not affect the quality and shall not deteriorate the continuity of the execution and completion of the contract.
3. When the concessionaire/private partner is a Special purpose vehicle (SPV), then the change of ownership rights or the management of the Special purpose vehicle (SPV) as a result of the capital or business shares transfer may not be applied without the approval of the contracting authority and the Ministry of Finances, except when this is an outcome of the regular trading of shares in a regulated stock market.
4. For all planned contract transfers the contracting authority shall request the prior approval of the ministry responsible for the finances, which shall evaluate them in compliance with the criteria set forth in Article 10, Paragraph 2 of the Law.
5. The contracting authorities shall send to the Council of Ministers for approval any transfer of the concession/public private partnership contract, which has financial backing and undertakes fiscal risks, only after obtaining the prior approval of the ministry responsible for finance as provided for in Paragraph 4 of this Article.<sup>49</sup>

### **Article 33**

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<sup>48</sup> Amended by Law no. 50/2019 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”.

<sup>49</sup> Amended by Law no. 50/2019 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”.

### **Rules of awarding additional works and services to concessionaires/private partners**

1. The contracting authority may award to the concessionaire without performing a new procedure additional works and/or services, which are not included in the main contract, but which become necessary due to unpredicted circumstances to deliver the work or the service described in that contract, which the contracting authority has awarded to the concessionaire under the condition that the contract should be awarded to the concessionaire, which delivers the works or services that are the object contract, in the event that:
  - a) Such works or additional services may not be technically or economically separated from the main contract without causing major difficulties to the concessionaire; or
  - b) Although they may be separated from the execution of the main contract, these works and services are indispensable for its completion.
2. The value of the contract, which is awarded for works or services, may not exceed 30 per cent of the value of the main concession contract.
3. The provisions of the Public Procurement Law shall apply accordingly to the award of additional works or services to economic operators, which act as private partners in cases of public private partnerships that are delivered as works or public services contracts.
4. The contracting authority shall notify the Ministry of Finances for each award of additional works or services that shall be made under this Article.

### **Article 34 Subcontracting**

1. The contracting authorities may:
  - a) Ask the concessionaire to subcontract to third parties contracts that represent at minimum 30 per cent of the total value of the concession contract, providing, at the same time, a possibility for the tenderers to increase this percentage, while this minimum percentage shall be specified in the concession contract.
  - b) Ask the tenderers to provide in their tenders the percentage of the total contract value that they intend to subcontract to third parties.
2. The respective Public Procurement Law provisions shall apply accordingly to subcontract public private partnerships, which are delivered as public works contracts or public services contracts.

### **Article 35**

#### **Rules in force about the works contracts, which the concessionaires of the public works subcontract to third parties**

1. These rules shall apply to the public works of concessionaires, which shall not be contracting authorities under this Law.
2. When a concessionaire subcontracts to third parties contracts with an estimated value over 700,000,000 Albanian Leks without VAT, the concessionaire shall apply the following rules:
  - a) The concessionaire shall be obliged to publish the contract notice in the Public Procurement Bulletin in a standard format in order to subcontract the works contract to third parties;

- b) The time limit to submit the participation requests shall be determined by the concessionaire and it should not be shorter than 37 days of the publication date of the contract notice;
- c) The final time limit to submit the participation requests shall be determined by the concessionaire while it shouldn't be shorter than 40 days of the publication date of the contract notice, meaning from the sending of invitations to submit tenders;
- ç) Except for the provision of Subparagraphs "b" and "c" of this Paragraph, in case when the participation request and tenders have been submitted by electronic means, the Public Procurement Law shall apply accordingly even in order to shorten the time limits set out in Paragraphs 2 and 3 of this Article;
- d) Time limits regarding the submission of participation requests and tenders shall be postponed in such a manner where all the interested economic operators may obtain all the necessary information, in the following cases:
  - i. If the tender documentation and all additional information have failed to be provided within the set time limits;
  - ii. If the field visit and the information about the construction site and about all the documentation necessary fails to be provided for the drafting of tenders;
- 3. The value of contracts mentioned in Paragraph 2 of this Article shall be calculated under the provisions of this Law.
- 4. Consortiums of companies, which shall be established to win the concession and companies affiliated to them shall not be considered third parties.
- 5. "Affiliated company" shall mean any other company related to the concessionaire by way of ownership, control and joint management. It may be established in one of the following manners, in which:
  - a) The concessionaire may have a direct or indirect dominant influence on the company;
  - b) The company may exercise a direct or indirect dominant influence over the concessionaire.
- 6. The dominant influence of a company shall be assumed to exist when this company, directly or indirectly, in relation with another company:
  - a) Owns the majority of the company's subscribed capital;
  - b) Controls the majority of votes attached to shares issued by the company; or
  - c) May appoint more than half of the company administrative managerial or supervisory bodies.
- 7. The exhaustive list of such companies shall be included in the request for concession. The concessionaire shall inform the contracting authority about any latter changes of the relations between companies.

### **Article 36**

#### **Termination of the concession/public private partnership contract**

- 1. Except when otherwise provided for in the contract, the contracting authority may terminate the contract when:



- a) It may prove that the concessionaire/public private partnership may fail to fulfill its obligations due to insolvency, serious breaches or other issues, which hinder or fail to allow the continuation of the contract in compliance with the technical standards and the other accepted standards;
  - b) The concessionaire/public private partnership fails to provide the project financing within 12 months of the signing or the entry into force of the contract;
2. Except cases when it's otherwise provided for in the contract, each party shall be entitled to terminate the contract when:
  - a) Fulfillment of obligations becomes impossible due to circumstances of either party;
  - b) There are serious breaches by the other party and that this party may not recover such breach within the time limit and in the manner provided for in the contract.
3. Parties shall also be entitled to terminate the contract upon mutual understanding.
4. Under this Article, the contracting authority shall inform the Ministry of Finances prior to the termination of the contract about all known circumstances, which lead to and create the conditions for the contract termination, as well as it shall request the opinion of the Ministry of Finances.

## **CHAPTER V** **FINANCIAL ISSUES AND RELATED ISSUES**

### **Article 37** **Ownership relations**

1. In cases when a concession/public private partnership includes the use of the property under the ownership of a person who is not part of the contract award procedure, the ownership relations associated with such property should be handled in compliance with the legislation in force in order to avoid hindering of the execution of project during the contracted period.
2. If the Republic of Albania is the owner of an immovable property, which is included in the completion of a concession/public private partnership, or if the concession/public private partnership incorporates the use of public goods, then the contracting authority shall resolve all ownership relationships under the legislation in force in order to avoid hindering of the execution of project during the contracted period.

### **Article 38** **Property right**

1. Facilities, which are built under a concession/public private partnership contract, including additions and improvements, shall remain under the ownership of the contracting authority except when otherwise provided for in the contract.
2. The contracting authority should foresee in the tender documents the conditions, on basis of which ownership rights provided for in Paragraph 1 of this Article are regulated.
3. After the contract termination, the concession/public private partner should hand over the facilities build under the contract, no matter whether or not those are entirely or partially constructed, reconstructed, maintained, refurbished or improved according to conditions and the manner set out in the contract, except when otherwise provided for by this Law.

4. All issues, including conditions regarding ownership rights and the required quality standards, shall be subject to analysis of the respective concession/public private partnership feasibility study for that contract and they shall be defined in the tender documentation, as well as in the contract itself.

### **Article 39** **Special purpose entities (SPV)**

1. The contracting authority may request in the tender documents that the economic operator, which is selected as the most successful one, establishes a legal entity with its main office in the Republic of Albania, which shall sign the contract.
2. The Special purpose vehicle may participate only in the implementation of a concession/public private partnership contract, for which it has been established.
3. In the case, which is set out in Paragraph 1 of this Article, the form of the legal entity, the minimum capital amount, obligations of the most successful tenderer regarding its establishment, as well as the other relations between the most successful tenderer, the Special purpose vehicle and the contracting authority shall be determined in the tender documents.

### **Article 40** **Security interests**

1. The concessionaire/private partners may secure its rights against payment of any kind, which is received or expected to be received by it pursuant to the implementation of a concession/public private partnership contract, or related to it, without prejudice to its right vis-à-vis any other part of its property. This security may not be created without the consent of the contracting authority and it may be carried out only in favor of financial institutions to secure the claims of such institutions, based on the loan contract.
2. Under Paragraph 1 of this Article, the claims of the financial institution shall be related only to the financial instruments, which are obtained for the purposes of the execution of concession/public private partnership contract, and they shall not include any other claims that financial institutions raise against the concessionaire/private partner for other purposes.

### **Article 41** **Stabilization provision**

1. The contracting authority may enter in the name of the state into a binding commitment, which shall have the effect of providing the suitable guarantees in favor of the concessionaire/private partner, with which it shall defend itself against the financial consequences of the legislation to enter into force after the beginning of the concession/public private partnership contract, which shall be subject to the following limitations:
  - a) Financial consequences should be clearly and accurately determined;
  - b) The commitment shall end with the termination of the concession agreement;
  - c) The nature of the legislation should be determined.
2. Such a binding commitment shall be approved upon a Decision of the Council of Ministers, at the request of the contracting authority.

**Article 42**  
**Repealed<sup>50</sup>**

**CHAPTER VI**  
**ADMINISTRATIVE REVIEW**

**Article 43<sup>51</sup>**  
**Administrative review procedure**

1. Any economic operator, which has or has had an interest in a competitive procedure and where it has been damaged or is at risk of being damaged by the decision-making of the contracting authority of the concession/public private partnership, for which it claims that it has been taken against this Law, shall have the right to file an appeal with the Public Procurement Commission.
2. In the case of complaints against the tender procedure documents, the economic operators shall have the right to complain within 10 days of the day following the publication of the contract notice in the official website of the Public Procurement Agency.
3. In the case of appeals against the final evaluation/classification decision, the economic operators shall have the right to appeal within 10 days of the next day when the appellant has been informed or should have been informed.
4. A written copy of the complaint shall be also sent to the contracting authority. Upon receipt of the appeal in writing, the contracting authority shall suspend the continuation of the competitive procedure until the appeal shall be fully examined, including also a decision to be made by the Public Procurement Commission.
5. The appeal to the Public Procurement Commission shall be filed in writing, in conformity with the relevant form, indicating the name and address of the appellant, reference to the specific procedure and legislation where the appellant alleges that the violations have been committed, together with the relevant documentation and evidence, for which the appellant thinks that they support its appeal.
6. The Public Procurement Commission shall respond in writing within ten (10) days of the filing of the complaint. When the Public Procurement Commission requests information from the contracting authority in order to review of the complaint, then the Public Procurement Commission shall respond in writing no later than in twenty (20) days.
7. The administrative review procedure and decision-making of the Public Procurement Commission at the conclusion of the review of the appeal shall be made under the relevant provisions of public procurement legislation.
8. The appellant shall have the right challenge the decision of the Public Procurement Commission to the relevant court, which examines administrative disputes. Appeal to the

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<sup>50</sup> Repealed by Law no. 50/2019 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”.

<sup>51</sup> Amended by Law no. 77/2015 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”, as amended.

court shall not suspend competitive procedures, contract signing or the fulfillment of obligations between the parties.

**Article 44**  
**Obligation to cooperate**

1. The refusal of the civil servant, the official or the contracting authority to provide information or to present the documentation related to the procedure, which has to do with the procedure under administrative investigation, shall constitute the grounds for the Public Procurement Commission, the Ministry of Finances or the Public Procurement Agency to seek taking of disciplinary actions against the liable persons.

**Article 45**  
**Administrative contraventions**

1. When the infringement of the provisions of this Law by responsible persons fails to constitute a criminal offence, it shall constitute an administrative contravention and it shall be penalized with a fine ranging from 50,000 Albanian Leks up to 1,000,000 Albanian Leks. The penalty shall be imposed by the Public Procurement Agency.
2. The Minister of Finances, the Public Procurement Agency or the Public Procurement Commission may propose, as appropriate, to the head of the contracting authority to take disciplinary action against the liable persons.

**Article 45**  
**Dispute resolution**

1. The concession/public private partnership contract shall be regulated by the laws of the Republic of Albania.
2. The concessionaire/private partner, its shareholders and its other business associates shall be free to choose the law that regulates their mutual business relations.
3. Any dispute between the contracting authority and the concessionaire/private partner shall be resolved through the dispute resolution mechanisms mutually agreed by parties in the concession/public private partnership contract including the international arbitration proceedings. In any case, the Albanian law in force shall be the applicable one.<sup>52</sup>
4. The concessionaire/private partner, its shareholders and its other business associates shall be free to choose the appropriate mechanisms to resolve the disputes between them.

**CHAPTER VII**  
**TRANSITORY AND FINAL PROVISIONS**

**Article 47**  
**Repeals**

**Law no. 9663 dated 18 December 2006 “On concessions”, as amended, shall be repealed.**

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<sup>52</sup> Amended by Law no. 77/2015 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”, as amended.

**Article 48**  
**Implementation of provisions**

Provisions of the Law no. 9663 dated 18 December 2006 “On concessions”, as amended, shall apply to concession award procedures and review procedures, which have already started, as well as to contracts concluded prior to the entry into force of this Law.

**Article 49**  
**Regulations about the implementation of the law**

The Council of Ministers shall approve within a time limit of three months of the entry into force of this Law the bylaws pursuant to Paragraphs 2 and 3 of Article 4, Paragraph 2 of Article 5, Paragraph 2 of Article 7, Paragraph 3 of Article 8, Paragraph 3 of Article 14, Paragraph 5 of Article 16, Paragraph 2 of Article 21, Paragraph 5 of Article 24, Paragraph 7 of Article 25, Paragraph 3 of Article 42, as well as other bylaws pursuant to this Law.

**Article 50**  
**Signed concession contracts**

This law shall not apply to concession contracts, which have been signed prior to the entry into force of this Law, except for provisions, which regulate the concessions/public private partnerships registry, which should be regulated within six months of the entry into force of this Law.

**Article 51<sup>53</sup>**

**Repealed**

**Article 52**  
**Entry into force**

This Law shall enter into force 15 days after the publication in the Official Journal.

Approved on 25 April 2013

Promulgated upon Decree no. 8149, dated 02 May 2013, of the President of the Republic of Albania, Bujar Nishani.

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<sup>53</sup> Repealed by Law no. 77/2015 “On some amendments and additions to Law no. 125/2013 “On Concessions and Private Public Partnership”, as amended.