



REPUBLIC OF ALBANIA

The Assembly

LAW

No.125/2013

ON

Concessions and Public Private Partnership

Pursuant to Articles 78 and 83, Paragraph 1 of the Constitution, upon the proposal of the Council of Ministers, the Assembly of the Republic of Albania hereby

DECDIDED:

CHAPTER I

GENERAL PROVISIONS

Objective of the Law

Article 1

The objective of this Law is to establish a favorable and stable framework for promoting, attracting and facilitating investments, which are realized as public private concessions/partnerships.

Scope of the Law

Article 2

This Law regulates the powers of Contracting Authorities to enter into Concession/PPP agreements, for Concession/PPP based investments, procedures for the award of such contracts **such as** concluding, termination and changes to Concession/PPP agreements, issues pertaining to financial arrangements and support in relation to Concessions/PPPs, the policy of these Concession/PPP and the authority to enforce them, as well as other issues relating to Concessions/PPPs.

Article 3

Definitions

In the sense of this Law, the following terms shall have the meaning as hereunder described:

1. “**Concession**”, is a form of private public partnership agreement between the Contracting Authority and the economic operator.
2. “**Public Works Concession**”, is an agreement for pecuniary interest concluded in writing between a Contracting Authority and one or more economic operators, the subject of which is the execution of works, where the remuneration for the works to be carried out shall consist either in the right to exploit the works that are the subject of the contract or in that right together with payment;
3. “**Public Service Concession**”, is an agreement for pecuniary interest concluded in writing between a Contracting Authority and one or more economic operators, the subject of which is the provision of services, where the remuneration for the services to be provided consists either in the right to exploit the services that are the subject of the contract or in that right together with payment;
4. “**Mixed Concession**”, is a concession, the subject matter of which is both the provision of works and services and which shall be identified as either a public works concession or a public service concession and where the decisive element of determining if such a contract is a public works concession or a public service concession shall be whether the work to be carried out is the main subject of the contract, or whether the work is merely incidental to the public service that is the subject matter of the contract.
5. “**Right to exploit works and/or services**” shall have the following meaning:
 - right to generate revenues, pursuant to the partnership contract; and,
 - The transfer to the private partner of a significant part of operational risk related to the subject of a public works or public service concession. It shall be deemed that the private partner has assumed a significant part of the operational risk if the financial support provided directly or indirectly, does not guarantee that it shall get a return on the investment or cover the costs resulting from the management of works and/or services which are the subject of the concession. Operational risk means the risk related to the use of works or provision of services or the risk related to the availability of the infrastructure facility built or used to provide services to the final beneficiaries in accordance with the concession contract.
6. “**Written communication**”, any expression consisting of words or figures which can be read, reproduced and communicated including information which is transmitted and stored by electronic means.
7. “**Execution of works**”, the design and execution by whatever means of a work corresponding to subject matter of concession and to the requirements specified by the contracting authority.
8. “**Work**”, the facility, which is the outcome of building or civil engineering works taken as a whole and, which is sufficient in itself to fulfill an economic or technical function.
9. “**Provision of services**”, provision or execution of public service corresponding to subject matter of concession and to the requirements specified by the Contracting Authority.

10. “**Subject matter of concession**”, public works and/or public services provided under a Concession Agreement in any of the eligible sectors listed by this Law.
11. “**Concessionaire**”, the economic operator or SPV with whom the Contracting Authority signed a concession contract.
12. “**Special Purpose Vehicle (SPV)**”, a private legal entity with its main office in the Republic of Albania, which is established upon the request of the Contracting authority by the economic operator selected as most successful tenderer and, with which the contract shall be signed thereof.
13. “**Project**”, a series of interconnected activities undertaken in a certain order for the purpose of achieving clear objectives within a specified time period and within a specified financial framework.
14. “**Facility**”, a result of construction or an existing public infrastructure in possession, used or owned by the concessionaire/private partner or, a public infrastructure that shall be realized pursuant to the concession/PPP contract and which may be provided for the benefit of members of the public or any section of the public.
15. “**Unsolicited proposal**”, the proposal to undertake concession projects, which has not resulted as a response to a request, as made by the contracting authority in the frame of a competitive selection procedure.
16. “**Financial support**”, the kind of monetary or non-monetary support and/or funding awarded by the public sector, including but not limited to subsidies, financial or other guarantees, capital contributions and transfer of ownership rights.
17. “**Value for Money**”, a term, which is used to determine whether the Contracting Authority has received maximum possible gains from goods or works/services, which are granted by concession/public private partnership. This term is not limited to the measure of monetary value of goods or works/services, but also includes the assessment of the quality, cost and utilization of resources, compliance with the purpose and objective of the contract, time and possibility to decide whether all these elements combined constitute best economic value.
18. “**Contractor**”, any natural or legal person or public entity or group of such persons and/or bodies which offers on the market, respectively, the execution of works and/or a work, and services.
19. “**Economic operator**”, the contractor, the undertaker of works or services.
20. “**Award procedure**”, open, restricted or negotiated procedure, as regulated by the Public Procurement Law, carried out by the Contracting Authority in order to award a concession/PPP
21. “**Tender documents**”, the documents which the Contracting Authority makes available to potential candidates and tenderers as a basis for the preparation of their tenders.
22. “**Concession contract**”, a contract signed between the Contracting Authority on the one side and economic operator selected as most successful tenderer or Special Purpose Vehicle (SPV) established by the said economic operator, a contract, which contains stipulations regulating mutual rights and obligations relating to the awarded concession.

23. “**Public Private Partnership contract**” means a public works contract or a public service contract, which fulfills the conditions which designate it as a Public Private Partnership, as stipulated in this law and, which is signed between the Contracting Authority on the one side and economic operator selected as most successful tenderer.

24. “Authorized signatory” shall be a person authorized by the Contracting Authority to conclude concession/PPP contract

Unless otherwise regulated by this Law, the meaning of the terms defined in the Law on Public Procurement shall apply to this Law accordingly.

Article 4

Area of the implementation of Public Private Partnerships

1. Concessions/PPPs may be awarded for the realization of works and/or provision of services in and for the following sectors and purposes:

- a) Transport (railway system, rail transport, ports, airports, roads, tunnels, bridges, parking, public transport);
- b) Generation and distribution of electricity and heating energy;
- c) Production and distribution of water, treatment, collection distribution and administration of waste water, irrigation, drainage, cleaning of canals and dams;
- ç) Waste management, including their collection, transfer, treatment and disposal;
- d) Telecommunication;
- dh) Science and Education;
- e) Tourism, Leisure and hospitality;
- ë) Culture and Sports
- f) Health;
- g) Social services
- gj) Prison and judicial infrastructure;
- h) Rehabilitation of land and forests,
- i) Industrial parks, mines and similar business support infrastructure
- j) Housing
- k) Public administration facilities, IT and data base infrastructure;
- l) Natural gas distribution;
- m) Urban and suburban rehabilitation and development
- n) Agriculture

2. Council of Ministers, upon the proposal of the line ministries or, upon proposals, which they receive from local government units or central bodies of Concessions/PPPs policies shall decide on the Concessions/PPPs to be implemented in other sectors.

Article 5

Exemptions

1. This Law shall not apply to concessions/PPP in the following cases:

a) Under the low monetary threshold;

b) When their performance must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force, or when the protection of the State's essential interests so require;

c) For the acquisition or rental, by whatever financial means, of immovable property or concerning rights thereon. Nevertheless, financial service contracts concluded at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to the Law;

ç) The acquisition, development, production or co-production of program material or commercials intended for broadcasting by broadcasters or publication in the media, and contracts for broadcasting time;

d) Concessions, which are subject to different rules and are awarded pursuant to special procedural rules of international organizations;

dh) For arbitration and conciliation services;

e) For financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, in particular transactions by contracting authorities to raise money or capital;

ë);

f) For air transport services;

g) Concessions/PPPs, which are subject to different rules and are awarded in accordance with international agreements, which the Republic of Albania concluded with one or several other states, signed in accordance with the Treaty on the Functioning of the European Union, and which include works, supplies or services intended for joint implementation or use of the projects by the signatory countries;

gj) Concessions/PPPs, which to the extent that this Law conflicts with an obligation of the State under, or arising out of, an agreement with one or more other states or with an international organization, the provisions of that agreement shall prevail. In all other respects, award procedures and principles shall be governed by this Law;

h) Public service concessions awarded by a Contracting Authority to another Contracting Authority, or to an association of Contracting Authorities, on the basis of an exclusive right which they enjoy pursuant to the legislation in force;

i);

2. The excluded cases, under Paragraph 1 of this Article, shall be regulated by other legal provisions or implementing regulations.

Article 6 **Licenses and permits**

1. This Law shall not apply to licenses and administrative permits awarded to economic operators, Contracting Authorities, Contracting Entities of any other private or public sector bodies.

Article 8

Public Private Partnerships

1. Public Private Partnerships shall imply a form of a contractually regulated long-term cooperation between the Contracting Authority i.e. Public Partner and one or more economic operators i.e. Private Partner, where:

- (a) private partner assumes the obligation to provide public services to end users within the area of public partner competence and/or the obligation to ensure the public partner necessary preconditions for the provision of public services to end users and/or activities within its area of competence;
- (b) for the purpose of fulfilling the obligations of subparagraph a) of this paragraph, the private partner may take over the following:
 - the obligation to finance, design, construct or/and reconstruct/renovate public infrastructure facility, operate and maintain a newly constructed or/and reconstructed/renovated public infrastructure facility,
 - the obligation to use, operate and maintain an existing public infrastructure facility,
 - any combination of the above mentioned obligations as long as the combination of those obligations is for the purpose of fulfillment of objectives set in item a) of this paragraph;
- (c) in taking over the obligations from items a) and b) of this paragraph, the private partner usually assumes different level and scope of risks associated with financing, construction, demand and/or availability, and other such as operation, management, maintenance and technical risks, depending on the form of public private partnership and subject to case-by-case determination;
- (ç) Each partner usually, for the duration of the public private partnership, assumes the responsibility for risk events that are under his sphere of influence or the responsibility is shared,
- (d) Private partner is remunerated primarily but not exclusively and in accordance to the contract;
 - By being awarded the right to exploit public works and/or public service, primarily to the effect of charging tariffs or fees from end users and customers, or in that right together with financial support.
 - Through regular direct payments paid by or on behalf of public partner, usually relating to availability of the facility and/or service provided.
 - Other forms of financial support including transfer of material and other real rights.
 - A combination of described means.
- (dh) the public partner may also enable the private partner to perform certain contractually defined commercial economic activities alongside the obligations from item a) and b) of this paragraph, if that ensures the necessary level of cost-efficiency of private participation and reasonable return on investment as well as better value-for-money.

2. Public private partnership may, in addition to the requirements set out by this article, involve the establishment of a mixed capital SPV held jointly by the public and private partner. If public partner's capital contributions are such that their value or effect eliminate the necessary transfer of key inherent project risks to the private partner, as regulated by this Law, such a contract or venture will not be considered a PPP.
3. Public procurement contracts not fulfilling the conditions from this Article shall not be considered a PPP. Such conditions imply but are not limited to the duration of the contract, transfer of key inherent risks and means of remuneration.
4. Depending on the means of remuneration as well as allocation of key inherent risks, a public private partnership can be realized either as:
 - a) Public works concession, or
 - b) Public service concession or
 - c) Public works contract, or
 - d) Public service contract.
5. The Council of Ministers shall adopt a strategic policy document establishing priority sectors for PPP based investments, preferable forms of PPPs and other issues relating to general policy framework for concessions and PPPs in the Republic of Albania.

Article 9

Basic Principles

The procedure for awarding concessions/PPP shall be implemented in accordance with the principles of transparency, non-discrimination, proportionality, efficiency, equal treatment, mutual recognition **and legal certainty**.

Article 10

Ministry of Finance

1. The authority of the Minister of Finance regarding concessions/public private partnership shall be exercised under stipulations as laid down in the special articles of this law.
2. When concessional fee is not paid in accordance with the provisions of Article 29 of this Law, the contracting authority shall notify the Minister of Finance, whose order on the collection of the fee shall be an executive title for second level commercial banks where the Concession Company has the bank account and this will be executed by the court bailiff.
3. All contracting authorities shall submit within the first half of each year to the Ministry of Finance annual financial statements of the prior year for the concession companies, which will be added to the national registry.

Article 11

Public Procurement Agency

The Public Procurement Agency shall carry out the following duties:

- a) Coordinate its work with the unit for concessions/PPP for the preparation of draft proposals for the amendment of legislation in the field of concessions/private public partnerships, and of instructions for the implementation of the provisions of this law;

- b) Monitor compliance with the competitive procedures for concessions/PPPs pursuant to the legislation on public procurements and in case of violations of this law and bylaws, issued for its implementation, it shall impose fines or propose administrative measures to be taken;
- c) Exclude an economic operator from the procedure of concessions/private and public partnerships;
- d) Draw up and publish the standard bid documents.

Article 12

Unit of Public and Private Partnerships/Concessions

1. The Unit of Public and Private Partnerships/Concessions is an auxiliary and advisory body for the contracting authorities, at the relevant ministry for the economy, to promote and assist the contracting authorities in the preparation, assessment and negotiation of the concessions/ Public Private Partnerships.
2. The Unit of Public and Private Partnerships/Concessions shall coordinate its work with the Contracting Authorities for:
 - a) Preparation of feasibility studies;
 - b) Preparation of competitive procedure and evaluation criteria documents;
 - c) Proposal evaluation and determination of best offer;
 - d) Negotiations and conclusion of concession contract;
 - e) Contracting of specialized experts in the domestic or international market, when deemed necessary and at the request of the contracting authority;
 - f) Monitoring of the concession contracts.
3. The unit for Public and Private Partnerships/Concessions shall also:
 - a) Propose to the relevant minister for the economy amendments to legislation in the field of concessions/public private partnerships, as well as instructions for the implementation of the provisions of this law;
 - b) Monitor, analyze, and study the current European and global trends, knowledge and experience in the field of concessions/public private partnerships;
 - c) Cooperate with the APP for drafting and publication of standard documents for concessions/PPP.

Article 13

Contracting authorities

1. Contracting authorities are shall be the bodies, to which the law grants the authorities to undertake a procedure for awarding concessions / public private partnerships.
2. The Contracting Authorities are:
 - a) The line ministries;
 - b) The local governing units.

Article 14
Concession / Public Private Partnerships Register

1. Concessions / Public Private Partnership Register shall be an electronic database of all concession contracts and public private partnership as awarded in Albania.
2. Registry of concessions/private public partnerships is created and kept by the Unit for concessions/public private partnerships, in line with the legal provisions in force.
3. The Council of Ministers shall adopt the rules on the content and form of the Concession / Public Private Partnerships Register.

Article 15
Confidentiality

Provisions of Public Procurement Law regulating confidentiality shall be applied accordingly to concessions/PPPs regulated by this Law.

CHAPTER II

CHAPTER II

ACTIONS FOR GRANTING OF CONCESSIONS/PRIVATE PUBLIC PARTNERSHPS

Article 16

Actions for granting of concession/public private partnership

1. The actions for granting of a concession/private public partnership shall be all the activities carried out from the phase of project identification up to contract monitoring, pursuant to this law.
2. The actions for granting of a concession/PPP shall be carried out by the Commission on granting of concessions/PPP and shall imply, particularly, the following:
 - a) Identification of potential projects of concessions/public private partnerships and the preparation of the feasibility study of a concession/private public partnership;
 - b) An estimate of approximate concession/private public partnership investment;
 - c) Preparation of competitive procedure documents;
 - d) Bid evaluation;
 - e) Negotiation of contract with the winning bidder.
3. The Unit for Private Public Partnerships/Concessions, when it deems necessary, shall involve external advisors/consultants, in order to have expert support in the drafting, granting and implementation of concession/private public partnership projects.

4. The Council of Ministers shall adopt more detailed rules, pursuant to paragraphs 2 and 3 of this Article.

Article 17

Submission of applications for concessions/private public partnerships

1. The contracting Authority shall be informed of and may consider potential projects for concessions/private public partnerships proposed by:
 - a) Prime Minister's Office;
 - b) Other contracting authorities of the same administrative hierarchy, the central or local governing units;
 - c) Local and international financial and development institutions and organizations;
 - ç) The local and international scientific organizations;
 - d) Economic operators through unsolicited proposals.

Article 18

Award Commission

Commission for concessions/private public partnerships

1. The contracting authority, in coordination with the Unit for Concessions/PPPs, shall set up the commission for concessions/private public partnerships for the identification, examination and granting of concessions/private public partnerships.
2. The Commission members need to be professionals with legal, economic and technical backgrounds and professionals from other relevant fields, depending on the subject and characteristics of concession/private public partnership.
3. The number of members of the commission for granting concessions/private public partnerships shall be an odd number, but it should have not less than five members. For projects of concessions/private public partnerships with subjects of similar nature, a single commission may be appointed.
4. The members of commission for granting concessions/private public partnerships may not have direct or indirect personal stakes in any of the activities that might constitute a conflict of interest in the performance of their duties as members of this commission for granting concessions/private public partnerships, something that they will have to confirm in writing with the signing of a statement, guaranteeing the absence of such a conflict of interest.
5. The commission for granting concessions/private public partnerships shall perform the following duties:
 - a) Identify solicited or unsolicited projects for concessions/ PPP;
 - b) Draft feasibility studies on concessions/private and public partnerships, lay down the applicable procedure for granting of concessions/private public partnerships and prepare the tender documentation;
 - c) Examine and evaluate the admitted offers and/or applications for

- participation in tender submitted;
 - c) Draft the proposal for selection of the successful offer, or the proposal for the decision to interrupt the procurement procedure, as well as prepare the relevant explanation for that;
7. The commission for granting concessions/private public partnerships shall keep records on its work, which need to be signed by all its members.

Article 19

Concession/PPP Feasibility Study

1.

The feasibility study on concessions/private and public partnerships shall be prepared by the commission for granting concessions/private public partnerships within 60 days from the establishment of such a commission. This deadline may be postponed for reasons of project complexity with not more than 30 days.

2. Feasibility study shall in particular consist of the following;

- a) Operational summary, general project description;
- b) Technical, financial, economic and legal analysis;
- c) Environmental study and nature implications,
- ç) Accompanying annexes, required addendums, conclusion and recommendations

3. Feasibility study shall in particular take into account public interest, environmental impact and protection, viability and bankability of the project, value for money indicators, alignment of project with national and sector strategic objectives, direct and in-direct financial risks and impacts on central and local government budget, financial support needed, technical and commercial feasibility as well as market interest and ability to attract interested economic operators and financial backers.

4. In the case of a concession, the value of which is less than 300,000,000 Albanian Leks net of VAT the Contracting Authority may, instead of the concession feasibility study, prepare a summarized concession award analysis where he is obliged to apply only the basic principles governing the preparation of the feasibility study in accordance to this Article.

5. The concession/PPP feasibility study or summarized concession award analysis shall always contain the following:

- a) Definition of the type and object of the concession/PPP,
- b) Estimated direct financial risks and impact on central and local government budget,
- c) The estimated contract value,
- ç) Considerations with regard to selection and award criteria of the concession/PPP,
- d) The proposed duration of the contract, as well as any other information necessary for the preparation of tender documentation.

Article 20

Concession value calculation

Calculation of the value of the concession/private public partnership

1. The contracting authority shall calculate the estimated value of the concession/private public partnership as a value of the capital investment and the start up costs, without the VAT value.
2. The Council of Ministers shall lay down the rules for the calculation of this value, pursuant to paragraph 1 of this Article.

Article 21 **Tender Documents**

1. The tender documents shall be drawn up and dealt with by the contracting authority, pursuant to the relevant provisions of this law.
2. Without prejudice to paragraph 1 of this Article, tender documents in the procedure for the award of concession and public contracts constituting PPP, may include additional information in accordance to the provisions as laid down in the bylaws.

CHAPTER III

PROCEDURE FOR THE AWARD OF CONCESSIONS/PPPs

Article 22

Concession/Private Public Partnership Procedure

1. The procedure for granting concessions/private public partnerships shall begin with the publication of the contract notice and conclude with the publication of the contract award notice or with the decision to interrupt the procedure for awarding the contract.
2. The procedure for granting concessions/private public partnerships, with a value above the low monetary threshold, shall be implemented in compliance with the relevant provisions of the procurement law, unless otherwise provided for under this law.
3. When granting concessions/ private public partnerships, the contracting authority may use the open procedure, the limited procedure, or the negotiation procedure, with preliminary announcement of the contract award notice. For the selection process to continue there should be at least one valid offer.
4. When concessions for public works are given; the deadline for submission of offers is not less than 45 days from the date of publication of the contract award notice.

Article 23

Evaluation criteria for awarding of concession/PPP contract

1. The Evaluation criteria for awarding of concession/PPP contract are as follows:

The most economically viable offer based on various criteria, related to the subject of the said concession /PPP, like for example, the quality, which includes the technical merits, the aesthetic, functional and environmental characteristics, the management costs, the cost effectiveness, the provision of services after the delivery of products and the technical assistance, the date of delivery and the period of delivery or the period of the conclusion of works, the price of service for the end users, the amount of concession fee;

2. The Evaluation criteria for awarding of concessions shall specify in the tender documents and in the notification of contract, the relative coefficients, which it gives to each of the selected criteria before deciding on the most economically viable offer. Such coefficients may be expressed by foreseeing the most suitable range. When this is not possible, for justified reasons, the contracting authority shall indicate in the contract award notice the criteria according to a top down order of importance.

4. If any other legislative act regulating concessions lays down the lowest concession fee which the concessionaire is obliged to pay, the Contracting Authority shall state this amount in the tender documents as the amount which the tenderers must include in their tenders.

5. Contract award criteria must not be discriminating in any way and must be associated with the subject of concession.

Article 24

Concession Contract Notice

1. Notwithstanding Article 18 of this Law, Contracting Authority shall make known its intention to award a concession by way of a notice.

2. Concession Contract Notice must include at least the following data:

- a) Name, address, telephone number, fax number and the address of electronic mail of the Contracting Authority;
- b) Type, subject and scope of concession;
- c) Location of concession activity to be undertaken;
- ç) Concession contract duration;
- d) Estimated value concession contract;
- dh) Deadline for submitting the tenders;
- e) Address to which the tenders must be sent;
- ë) Language/languages and writing/writings in which the tenders must be drafted;
- f) Time and place of public opening of tenders;
- g) Criteria for exclusion of tenderers;
- gj) Criteria with regard to legal standing and suitability to pursue the professional activity, technical and professional ability as well as the evidence and data by which an economic operator proves the fulfillment of such requirements;
- h) Type and value of tender guarantee that the tenderers must submit;
- i) Contract award criteria;

j) Name and address of the body responsible for review procedure as well as the data on deadlines for lodging the application for review.

3. The interested parties in the competitive procedure are entitled to request the change or correction of the standard documents of the competitive procedure. Such a request needs to be filed not later than five days prior to the expiration of the deadline for the submission of offers. When the competitive procedure documents are changed or corrected, the final deadline for the submission of offers may be postponed, depending on the circumstances, but not for more than 10 days.

4. Contract notice shall be published on a standard form.

5. The content and form of standard forms shall be determined upon a Decision of the Council of Ministers.

6. Contract notice shall be published electronically in the electronic platform of procurement and in the Public Procurement Bulletin.

7. To all contract notice issues not regulated by this Law and the bylaws pursuant to it, the Public procurement Law shall apply accordingly.

Article 25

Unsolicited proposals

1. The Contracting Authority shall be authorized to review and accept unsolicited proposals pursuant to the procedures set forth in this article, provided that such proposals do not relate to a project, for which selection procedures have been initiated or announced.

2.

The contracting authority shall set up the commission for concessions/PPPs for identification, examination and granting of concessions/private public partnerships, pursuant to Article 18 of this law, which shall carry out the actions envisioned in Article 16 of this law

3.

5. Reimbursement from paragraph 4 shall be provided only if the proponent is not the winning tenderer.

6

The proposer is given a bonus for the technical and/or financial score received during the competitive procedure, up to a maximum of 10 % of the total score of the competition.

7.

The Council of Ministers shall lay down the rules for the assessment of eligibility, contents and treatment of unsolicited proposals and for all other relevant issues.

CHAPTER IV

CONCESSION/PPP CONTRACT

Article 26

Conclusion of the Contract

1. Contracting Authority may not conclude the contract prior to expiry of the standstill period set out in accordance to relevant provisions of the Public procurement Law.
2. Conclusion of the contract prior to the expiry of the classification notice deadline or, before the administrative review is completed shall make the contract absolutely invalid.
 2. 3. The contracting authority shall invite the successful bidder for negotiation and conclusion of the contract not later than 10 days from the date of expiration of the complaint period, described in paragraph 1 of this Article.
4. The time limit set in paragraph 3 of this Article may be extended in justifiable cases laid down in the tender documents.
5. Contract shall be drawn up in writing and signed by the authorized person of the Contracting Authority and the tenderer selected as the most successful.
6. When the selected most successful tenderer, in accordance with the tender documents, the contract award decision and the selected tender, is obliged to establish a special purpose vehicle (SPV), which shall be regulated under the legislation in force, as a company with its seat in the Republic of Albania with the note before the name "Concession Company" and with the subject matter "The scope of the concession contract, the contracting authority shall sign the contract with the person authorized by the company in question.
7. Upon completion the registration of the concession company under the legislation in force, the Contracting Authority shall send a copy of the contract and of the extract of the registration to Ministry of Finance.
8. If the selected most successful tenderer withdraws from the conclusion of the contract or fails to submit in the fixed time limit the guarantees and instruments referred to in Article 28 of this Act, Contracting Authority may adopt a new contract award decision and offer the signing of the contract to the next best ranked tenderer.

Article 27

Contract Contents

1. Contract shall specify the rights and obligations of the Contracting Authority and concessionaire/private partner in accordance with provisions of this Law and other applicable positive regulations of Republic of Albania
2. Contract matters not regulated by this Law shall be subject to the provisions of the Civil Code.

3. Contract must be drawn up in accordance with the tender documents, the information contained in the contract notice, selected tender and the contract award notice.
4. Apart from the contract, the Contracting Authority shall have the right, in accordance with this Law, the tender documents, the concession award decision and the selected tender, to conclude additional and/or tie-in contracts and/or agreements, in which case Contracting Authority shall beforehand notify Ministry of Finance.
5. Additional and/or tie-in contracts and/or agreements referred to in paragraph 4 of this Article shall in particular be deemed those which are concluded to secure the financing required for the performance of the contract.
6. Concession/PPP contract shall also regulate, in accordance to the tender documentation, the concession award decision and the selected tender, all matters that are related to ownership of immovable property and other property that is subject of the concession/PPP contract, and ownership of immovable property and other property that emerges based on the concession/PPP contract, for its duration as well as after its termination.

Article 28

Contract Performance Guarantees

1. Contracting Authority shall prior to signing or entry into force of the contract, collect from the most successful tenderer, the required contract performance guarantees and/or security instruments as compensation for damage that may be inflicted as a result of concessionaires/private partner's failure to fulfill obligations assumed by the contract (promissory notes, bank guarantees, corporate guarantees, bills of exchange, etc.), as these were determined by the tender documentation and/or decision on the selection of most successful tender.
2. Guarantees and security instruments shall be deposited in appropriate place with Contracting Authority who shall be obliged to keep those throughout the duration of the contract.
3. Contracting Authority shall regularly verify the validity of security instruments.
4. Pursuant to paragraph 3 hereof, and in case the enclosed security instrument is not valid, Contracting Authority shall without delay request the concessionaire/private partner to submit a new security instrument.

Article 29

Concession fee

1. If defined in the feasibility study, the concessionaire shall pay a pecuniary compensation for concession in the amount and in a manner stipulated in the concession contract.
2. The concession fee shall be paid under the rules as defined by the minister of finance on the collection of state budget revenues.
3. The amount and method of payment of the concession fee shall be determined in respect to the subject of concession, estimated value of the concession contract, contract duration, risks and costs

that the concessionaire assumes and expected profit as well as level of equipment and value of the property awarded under the concession contract by the Contracting Authority.

4. Concession contract may define variability of the amount and/or method of calculation and payment of the concession fee within a particular time period, throughout the concession contract duration period, in compliance with tender documentation and the contract award decision.

5. Concession fees shall constitute the revenue of state budget of the Republic of Albania and/or the budgets of local government bodies.

Article 30

Term of the concession/PPP contract

1. Concession/PPP contract shall be concluded for a fixed period.

2. Contracting Authority shall determine in the concession/PPP feasibility study the term of the contract in such a manner that its duration does not restrict competition more than necessary in order to ensure amortization of the real value of concessionaire's/private partners investment and a reasonable rate of return on investment, taking into account the costs and risks assumed by the concessionaire/private partner for the duration of the contract.

3. Concession/PPP contract may not initially be concluded for a period longer than 35 years.

4. The time limit, for which the concession is awarded, shall run from the date of entry into force of the contract.

5. Contract duration term may be extended if necessary due to changes of the contract as stated in Articles **31**, **32** and **33** of this Law.

Article 31

Modification to the Concession/PPP Contract

1. Contracts stipulated by this Law may be amended by concluding an Annex to the contract, provided that this possibility is envisaged in the tender documentation and contract itself.

2. Modifications to the contract shall be concluded by the Contracting authority and the concessionaire/public partner.

3. Modifications to the contract may be concluded upon initiative of either contractual side particularly in the following cases:

- a) Endangering the national security and defense of the country, endangering the environment, the nature and the human health;
- b) Collapse of the facility that is subject to the contract, or when there is an objective impossibility for its usage, in case of Force Majeure;
- c) During change of legal framework;
- ç) Other cases leading to change in the factual or legal basis for using the facility or provision of services, or in the contract performance.

4. Changes to the essential terms of the contract not provided for in the tender documentation and/or contract itself shall require implementation of a new concession/PPP award procedure.
5. Without infringing upon the provisions of Article 32 and 33 of this Law, the term “essential terms” shall particularly refer to such conditions which, had they been included in the initial contract notice or in the tender documentation, would have made it possible for the tenderers to submit an essentially different tender, as well as had the changes surpassed the scope of the contract to that extent that these changes would have encompassed the services not initially covered.
6. Contracting Authority shall request a prior approval from the Ministry of Finance for all planned modifications, which effect or create the risk of direct or indirect affect on the budget of the Contracting Authority, state budget or budget of other government or local bodies or, which in any way change the financial support as defined by this Law
7. Contracting Authority shall in no later than 20 days notify Public Procurement Agency of any modifications to the contract made in accordance to this Article,

Article 32

Transfer of Concession/PPP Contract

1. In accordance to the provisions of this Article, upon written prior consent by the Contracting Authority, the concession/PPP contract may be transferred to a third person which fulfils the suitability requirements set out in the tender documentation, on the basis of which the contract was initially awarded, unless those requirements refer to conditions that are no longer necessary for the fulfillment of the contract, due to the fact that the obligations those requirements referred to have already being consumed or executed by the previous concessionaire/private partner.
2. Transfer of the concession contract shall not demine the quality and deteriorate continuity of contract execution and performance.
3. When concessionaire/private partner is a special purpose vehicle a change in the SPV’s ownership or management rights, as a result of the transfer of stocks or businesses shares, cannot be implemented without the approval of the Contracting Authority and Ministry of Finance, unless this is a result of regular stock trade on a regulated capital market.
4. Contracting Authority shall request a prior approval from the Ministry of Finance for all planned transfers of the contract, which in any way or manner effect or create the risk of effecting state budget or budget of other government or local bodies or, which in any way change the financial support as defined by this Law.
5. Contracting Authority shall notify the Ministry of Finance of transfers of the contract made in accordance to this Article.

Article 33

Rules for Awarding Additional Works and Services to Concessionaires/Private Partners

1. Contracting Authority may, without conducting a new award procedure, award concessionaire additional works and/or services, which were not included in the basic contract but which have, due to unforeseen circumstances, become necessary for the performance of the work or service described therein, which the Contracting Authority has awarded to the concessionaire, on condition that the award is made to the concessionaire performing subject matter works or service when:
 - a) When such additional works or services cannot be technically or economically separated from the basic contract without major inconvenience to the concessionaire, or
 - b) When such works or services, although separable from the performance of the basic contract, are necessary for its completion.
2. The value of contracts awarded for additional works or services cannot exceed 30 % of the value of the basic concession contract.
3. Awarding of additional works or services to economic operators acting as private partners, in PPPs realized as public works or service contracts, relevant provisions of Public Procurement Law shall apply accordingly.
4. Contracting Authority shall notify Ministry of Finance of any award of additional works or services made in accordance to this Article.

Article 34 **Subcontracting**

1. Contracting Authority may:
 - a) Require the concessionaire to award contracts representing minimum 30% of the total value of the concession contract to third parties, at the same time providing a possibility to the tenderers to increase this percentage, this minimum percentage being specified in the concession contract, or
 - b) Request from the tenderers to indicate in their tenders the percentage of the total value of the contract, which they plan to assign to third parties.
2. To subcontract PPPs realized as public works or public service contracts relevant provisions of Public Procurement Law shall apply accordingly.

Article 35 **Rules Applicable to the Works Contracts Awarded to Third Parties by Public Works Concessionaires**

1. These rules shall apply to public works concessionaires, which are not contracting authorities pursuant to the Public Procurement Law.
2. When a concessionaire awards works contracts to third parties of an estimated value over 700.000.000 Albanian Leks excluding Value Added Tax (VAT), he/she shall apply the following rules:

a) Concessionaire shall compulsorily publish a contract notice in the Public Procurement Bulletin on the intent to award works contract to third parties in a standard form;

b) The deadline for submitting the requests to participate shall be set out by the concessionaire and must not be shorter than 37 (thirty seven) days as of the day of publishing the contract notice;

c) The deadline for submitting the tenders shall be set out by the concessionaire and must not be shorter than 40 (forty) days as of the day of publishing the contract notice, i.e. from submitting the invitations to submit tenders;

ç) By exception of items b) and c), in case when the request to participate and the tenders are submitted via electronic means, Public Procurement Law shall accordingly be applied for shortening there stated deadlines stated in paragraphs 2 and 3 of this Article.

d) Deadlines for submitting requests to participate and tenders shall be extended in a manner in which all interested economic operators can obtain all information necessary, in the following cases:

- If the tender documentation and all additional information are not provided in the envisaged deadlines;
- If visit and insight on the construction location and of the place where all documents necessary for preparing the tenders are located are not provided.

3. The value of contracts referred to in paragraph 2 of this Article shall be calculated in accordance with the provisions of this law.

4. Groups of undertakings, which have been formed to obtain the concession or, undertakings related to them shall not be considered third parties.

5. "Related undertaking" shall mean any other undertaking, which is related to the concessionaire through joint ownership, control and management. It may be realized in one of the following forms where:

a) The concessionaire can exert a dominant influence, whether directly or indirectly on the undertaking;

b) The undertaking may exert a dominant influence, directly or indirectly, on the concessionaire.

6. A dominant influence on the part of an undertaking is presumed when, directly or indirectly in relation to another undertaking, it:

a) Holds a majority of the undertaking's subscribed capital;

b) Controls a majority of the votes attached to the shares issued by the undertaking; or

c) Can appoint more than half of the undertaking's administrative, management or supervisory body.

7. The exhaustive list of such undertakings shall be included in the application for the concession. Concessionaire shall inform Contracting Authority on any subsequent changes in the relationship between the undertakings.

Article 36

Termination of the Concession/PPP Contract

1. Unless otherwise provided for in the contract, the Contracting Authority may terminate the contract when:

- a) It may be proved that the concessionaire/private partner can no longer perform its obligations, owing to insolvency, serious breach or other cases, which hinder or do not allow the continuation of the contract in accordance to technical and other standards agreed;
- b) concessionaire/private partner fails to ensure the financing of the project within 12 months as of signing or of coming into force of the contract.

2. Either party shall, unless otherwise provided for in the contract, have the right to terminate the contract when:

- a) Performance of its obligations is rendered impossible because of circumstances of either party;
- b) There is serious breach by the other party, and that party fails to rectify such breach within the time period and in the manner established in the contract.

3. The parties shall also have the right to terminate the contract upon mutual consent.

4. Prior to contract being terminated in accordance to this Article, Contracting Authority shall inform Ministry of Finance on all known circumstances leading to and giving ground for termination and shall request its opinion.

CHAPTER V

FINANCIAL AND RELATED ISSUES

Article 37

Property Relations

1. In case a concession/PPP contract involves use of property owned by a person that is not involved in the contract award procedure, the property relations associated with such property must be resolved in a manner conducive to unhindered performance of the project during the contracted period.

2. If the Republic of Albania is the owner of the immovable property involved in the execution of a Concession/PPP contract, or if the concession/PPP involves use of public goods, the Contracting Authority shall resolve any unresolved property relations in a manner conducive to unhindered performance of the project during the contracted period.

Article 38

Ownership Right

1. Facilities constructed under a concession/PPP contract, including the additions and improvements shall be owned by the Contracting Authority, unless otherwise provided for in the contract.
2. In the tender documentation the Contracting Authority should envisage the conditions, under which the ownership rights from paragraph 1 of this Article shall be regulated.
3. Following the termination of the contract, the concessionaire/private partner shall be obliged to return, i.e. to transfer the ownership of the facilities constructed under the contract, regardless whether they have been entirely or partially constructed, reconstructed, preserved, equipped or improved, under conditions and in a manner as set out in the contract, unless otherwise stipulated by this Law.
4. All the issues, including conditions relating to ownership rights, as well as required quality standards, shall be a subject to analysis of the concession/PPP feasibility study for that contract and set out in the tender documentation, as well as in the contract itself.

Article 39 Special Purpose Vehicle

1. Contracting Authority may require in tender documentation that the economic operator selected as most successful tenderer has to found a legal entity with a seat in the Republic of Albania, which shall conclude the subject matter contract.
2. SPV may participate only in the realization of a concession/PPP contract for which it has been founded.
3. In the case as defined in paragraph 1 of this Article the tender documentation shall determine the form of the legal entity, the minimum amount of equity, the obligations of the most successful tenderer regarding its founding, as well as other relations between the most successful tenderer, SPV and Contracting Authority.

Article 40 Security interests

1. The Concessionaire/Private Partner may create security over its rights to any payments of any kind received or receivable by it pursuant to or in connection with a Concession/PPP contract without prejudice to its right to create security over any other part of its property. Such security may not be created without consent of the Contracting Authority and can be made only in favor of financial institutions to secure the claims of these institutions on the basis of the loan contract.
2. Claims of financial institution under paragraph 1 of this Article may relate solely to financial instruments acquired for the purposes of the concession/PPP contract execution, and shall not include any other claims that financial institutions have towards concessionaire/private partner on any other grounds.

Article 41
Stabilization Clause

1. Contracting Authority may enter into a binding commitment on behalf of the State, which shall have the effect of providing appropriate assurances in favor of the Concessionaire/Private partner that it will be protected against the financial consequences of legislation which becomes effective after Concession/PPP contract comes into force, subject to the following limitations:-

- a) The financial consequences must be clearly and precisely described;
- b) The commitment shall terminate upon the termination of the Concession Agreement;
- c) The nature of the legislation must be described.

2. Such binding commitment shall be approved by the Council of Ministers upon the Contracting Authority's request

Article 42
Financial support

1. Project requiring financial support, as determined by the feasibility study, shall require a prior approval by the Ministry of Finance with regard to fiscal affordability, sustainability and feasibility, i.e. immediate and contingent fiscal impacts and risks.

3. For the purpose of implementation of paragraph 1 of this Article Contracting authority shall be obliged to submit subject matter feasibility study and contract draft to the Ministry of Finance.

3. Council of Ministers shall adopt a regulation governing the manner of conduct and approval criteria for project described under paragraph 1 of this Article.

CHAPTER VI

ADMINISTRATIVE REVIEW

Article 43

Administrative Review Procedure

1. Every economic operator, who has had or has a stake in a competitive procedure and is harmed or is likely to be harmed by the decision of the contracting authority of the concession/PPP, which he claims to have been made in contravention to this law, has the right to appeal it with the Public Procurement Commission.
2. In the case of complaints against competitive procedure documents, economic operators have the right to appeal it within 10 days from the next day of the publication of the contract award notice in the official site of the Public Procurement Agency.
3. In case of complaints against the decision of final evaluation/classification, economic operators have the right to appeal it within 10 days from the next day when the complainant was informed or should have been informed thereof.

4. A written copy of the complaint is mandatory to be sent for information to the contracting authority. Upon receipt of the written complaint, the contracting authority shall suspend the continuation of the competitive procedure until the full review of the complaint, including also the issuance of a decision by the Commission for the Public Procurement (KPP).
5. The complaint to the Public Procurement Commission is made in writing, based on the relevant form, where it is written the name and address of the complainant, the reference to the specific procedure and the legal basis, for which the complainant claims there have been violations, accompanying it with the relevant documentation and evidence that he thinks appropriate to base his complaint.
6. The Public Procurement Commission shall reply in writing within 10 days from the date of the filing of the complaint. When during the examination of the complaint, information is needed from the contracting authority, the KPP shall reply in writing not later than in 20 days.
7. The procedure for administrative review and the decision by the KPP in conclusion of the examination of the complaint shall be followed in line with the relevant provisions of the legislation on public procurement.
8. The complainant has the right to appeal the decision of the Public Procurement Commission with the relevant court examining the administrative disputes. The complaint with the court shall not suspend the competitive procedures, the conclusion of the contract or the fulfillment of obligations among parties.

Article 44

Obligation to cooperate

Refusal of the civil servants, official or the contracting authority to give information or to submit documentation relating to procedure under administrative investigation shall be a reason for the Public Procurement Commission or the Public Procurement Agency to seek imposing of disciplinary sanctions against the persons responsible.

Article 45

Administrative Violations

1. Violation of the law by those responsible, if not a criminal offense, it is an administrative offenses and it shall be penalized by a fine of 50,000 up to 1,000,000 Albanian Leks. The fine shall be imposed by the Public Procurement Agency.
2. Minister of Finance, Public Procurement Agency or the Public Procurement Commission, where appropriate, may propose to the contracting authority manager disciplinary action against those responsible.

Article 46

Settlement of disputes

1. The concession/PPP contract shall be governed by the laws of the Republic of Albania.

2. The concessionaire/private partner, its shareholders and other business partners shall be free to choose the law governing their mutual business relations.

3. Any disputes between the contracting authority and the concessionary/ private public partner shall be settled through dispute resolution mechanisms, recognized by the parties in the concession/private public partnership, including the procedure of international arbitration. In any case, the applicable law shall be the Albanian law in force.

4. The concessionaire/private partner, its shareholders and other business partners shall be free to choose the appropriate mechanisms for settling disputes among themselves.

CHAPTER VII

CHAPTER VII

TRANSITIONAL AND FINAL PROVISIONS

Article 47

Repeal

The Law No. 9663, dated 18.12.2006 “On concessions” as amended, shall be repealed.

Article 48

Application of Provisions

The provisions from the Law No. 9663, dated 18.12.2006 “On concessions” as amended shall apply to the award as well as to review procedures initiated prior to the commencement of application of this Law, as well as to contracts concluded prior to the entry into force of this Law.

Article 49

Regulations on Enforcement of the Law

Council of Ministers, within a period of three months of the entry into force of this law, shall adopt bylaws pursuant to Paragraphs 2and3of Article4; Paragraph 2 ofArticle5; Paragraph 2 ofArticle7;Paragraph 3 of Article 8;Paragraph 3 of Article 14; Paragraph 5 of Article16;Paragraph 2 of Article21, Paragraph 5 of Article24; Paragraph7 ofArticle25, Paragraph 3 ofArticle42and the other bylaws pursuant to it.

Article 50

Concession contracts already signed

1. This law shall not apply to the concession contracts already signed prior to coming into force of this Law, except provisions regulating Concession/PPP Registry, which should be regulated within six months of the entry into force of this law.

Article 51

Application of Exclusion for HPP concessions

Subparagraph “i” of Paragraph 1 of Article 5 and Article 7 shall be repealed after 4 years of the entry into force of this law.

Article 52
Entry into Force

This law shall enter into force 15 days after its publication in the Official Gazette.

SPEAKER

JOZEFINATOPALLI (ÇOBA)

Adopted on 25 April 2013