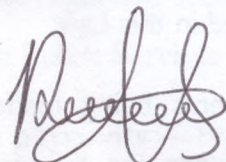


OFFICIAL TRANSLATION

MINISTRY OF JUSTICE OF THE REPUBLIC OF ARMENIA

HO-113-N/28.06.2019/EN/H/16.10.2019

RUSTAM BADASYAN



MINISTER OF JUSTICE OF THE REPUBLIC OF ARMENIA

17 OCTOBER 2019

LAW

OF THE REPUBLIC OF ARMENIA

Adopted on 28 June 2019

ON PUBLIC-PRIVATE PARTNERSHIP

CHAPTER 1

GENERAL PROVISIONS

Article 1. Subject matter of the Law

1. This Law shall define the legal framework for regulation of public-private partnership (hereinafter also referred to as "PPP"), including the rules and procedures related to the development and implementation of public-private partnership projects (hereinafter also referred to as "PPP projects"), the institutional framework for governance, applicable criteria and other issues related to the PPPs.

Article 2. Main concepts used in the Law

1. The following main concepts shall be used in this Law:
 - (1) **result-based payments** — payments being made to a private partner by customers and/or a public partner for the goods sold and services rendered by a private partner;
 - (2) **Net Present Value (NPV)** — the difference between the present values of cash inflows and cash outflows over the period of implementation of the project being assessed, and the discount rate used during the calculation of the difference shall be determined under the PPP procedures;
 - (3) **competent authority** — the Government, a body of state administration system, which develops and implements a policy in a certain field of state administration, a local self-government body of the Republic of Armenia;
 - (4) **authorised body** — a body of state administration system which develops and implements the policy of the Government in the field of public finance management;
 - (5) **applicant** — a legal person or a consortium of legal persons that participate in a tender;
 - (6) **public partner** — a competent authority which concludes a PPP contract with a successful tenderer;
 - (7) **public infrastructure** — a fixed asset of public interest or benefit (including buildings, structures, equipment) and/or intangible asset, which is used for rendering public services (or with regard thereto), and the operation and/or construction and/or the improvement and/or the technical maintenance thereof shall ensure a private partner pursuant to a PPP contract;

- (8) **public service** — an activity arising from public interest, which is usually carried out by state bodies and/or on behalf of the latter and/or for which the state body bears the main responsibility, as well as any service or activity of the regulated sector of the public services, within the meaning of the Law "On Public Services Regulatory Authority";
- (9) **availability payments** — regular payments being made by a public partner to a private partner, which are based on the accessibility of the public infrastructure complying with the Key Performance Indicators as prescribed under a PPP contract;
- (10) **private partner** — a private legal person established and operating pursuant to the legislation of the Republic of Armenia, with which a public partner has concluded a PPP contract, or which shall substitute the legal person that is a party to a contract, as provided for by Article 21 of this Law;
- (11) **public-private partnership unit or PPP unit** — an entity prescribed by the Government, which exercises the powers reserved thereto under this Law;
- (12) **PPP** — a public-private partnership;
- (13) **PPP project** — a project, which includes co-operative relations between a public partner and a private partner based on a PPP contract, complying with the criteria prescribed by Article 4 of this Law;
- (14) **PPP procedures** — procedures and rules applicable to the implementation of PPP projects, which are prescribed upon the decision of the Government;
- (15) **PPP contract** — a contract, including a concession contract concluded between a public partner and a private partner for implementation of a PPP project, as prescribed by this Law;

- (16) **permissible limit of PPP liabilities** — a total maximum limit of contingent liabilities of the Republic of Armenia, prescribed by the Government with respect to the PPP contracts concluded after the entry into force of this Law. The methodology for calculation and assessment of contingent liabilities of the Republic of Armenia shall be prescribed by the Government;
- (17) **consortium** — applicant legal persons, which participate in a tender on a basis of joint activities;
- (18) **lender** — a private financial organisation, which extends a loan to a private partner with respect to a PPP contract;
- (19) **end users** — any natural or legal person, including users, buyers, consumers, to whom a private partner renders public services or supplies goods of public interest or benefit, subject to the conditions of a PPP contract;
- (20) **Economic Internal Rate of Return (EIRR)** — a metric used for economic planning in order to assess the net benefits for the public derived from potential investments. The Economic Internal Rate of Return is the discount rate, in case of which the Net Present Value of all economic benefits and costs from the assessed project is equal to zero;
- (21) **Financial Internal Rate of Return (FIRR)** — a metric used for capital budgeting in order to assess the profitability of potential investments. Financial Internal Rate of Return is the discount rate, in case of which the Net Present Value of net cash flows from financial revenues and costs of the assessed project is equal to zero;
- (22) **direct agreement** — an agreement concluded between a public partner, a private partner and a lender (lenders), which prescribes the conditions, based on which the lenders may be entitled to exercise the step-in rights;

- (23) **value for money or VfM** — the difference between the value of the best similar project implemented through a general procedure provided for by the legislation of the Republic of Armenia ensuring a similar or comparable public infrastructure or public service, and the costs for implementation of assessed projects, and the methodology for calculation of which is prescribed under the PPP procedures;
- (24) **private partner selection procedures** — procedures applicable to PPP projects provided for by the Law "On procurement";
- (25) **policy-making body** — a body of state administration system developing a PPP policy;
- (26) **fiscally affordable** — a PPP project shall not result in exceeding the maximum limit of total contingent liabilities prescribed by the Government, where such are prescribed.

Article 3. Objectives of PPP

1. The objectives of PPP for ensuring and managing public infrastructure and public service shall include:
 - (1) reducing the costs needed during the life cycle of the public infrastructures and improving the quality of building, improvement, construction, operation and maintenance thereof;
 - (2) ensuring proper and timely maintenance of the asset during the operation period thereof;
 - (3) increasing access to public infrastructures and services;
 - (4) receiving benefits from the private sector practice, resources, technologies, efficiency and innovation capacities;

- (5) increasing accountability and transparency towards the public in the field of public infrastructures and public services;
- (6) improving the information database on public infrastructures and public services covered by PPP projects in the Republic of Armenia;
- (7) attracting investments for new public infrastructures, where necessary.

Article 4. Criteria for PPP project

1. A PPP project must comply with all the criteria mentioned below:
 - (1) have, pursuant to a PPP contract, at least five years duration, which is calculated from the day of fulfilment of all conditions precedent for the entry into force of a PPP contract;
 - (2) be aimed at construction and/or improvement and/or operation and/or technical maintenance of a public infrastructure;
 - (3) ensure allocation of risks between a public partner and a private partner, pursuant to the PPP procedures;
 - (4) ensure economic return for the Republic of Armenia, *i. e.* have Economic Internal Rate of Return, which will exceed the base rate prescribed by the PPP procedures;
 - (5) comply with the priorities prescribed by the public investment management policy adopted by the Government;
 - (6) be fiscally affordable;
 - (7) have VfM, which is greater than zero, where applicable.
2. From the perspective of managing fiscal risks and ensuring fiscal sustainability, the authorised body may, based on the analysis conducted as prescribed by

Article 11 of this Law, provide a negative opinion, where the calculation reveals that the sum total of contingent liabilities for each year — with regard to the contract to be concluded — will result in exceeding the permissible limit of PPP liabilities during any year of the implementation period of the contract.

3. For determining whether the permissible limit of PPP liabilities will be exceeded, the following shall be taken into consideration:
 - (1) the PPP projects being implemented pursuant to PPP contracts concluded following the entry into legal force of this Law;
 - (2) the PPP projects for which a decision on holding a tender has been adopted, where the given tender is going to be held in the current financial year.

Article 5. Sectors of public services being rendered within the scope of PPP projects

1. The decision of the Government shall be define the sectors of public services being rendered within the scope of PPP projects, which must comply with the priorities set in the public investment management policy adopted by the Government.

CHAPTER 2

BODIES OF PUBLIC-PRIVATE PARTNERSHIP SECTOR

Article 6. Policy-making body

1. The PPP policy-making body shall:

- (1) carry out activities for development of a PPP policy;
- (2) fulfil functions for promotion, advancement of PPP projects and engagement of private partners;
- (3) ensure the development of regulatory legal acts related to the PPP procedures;
- (4) exercise other powers prescribed by this Law.

Article 7. Authorised body

1. The authorised body in the PPP sector shall:
 - (1) exercise supervision over the fulfilment of financial liabilities prescribed under a PPP contract;
 - (2) subject PPP projects to current monitoring in terms of contingent liabilities;
 - (3) conduct an analysis provided for by Article 11 of this Law;
 - (4) deliver opinion provided for by Article 11 of this Law;
 - (5) exercise other powers reserved to it by this Law.

Article 8. PPP unit

1. The PPP unit shall:
 - (1) provide the public partners and competent authorities — in the sector of preparation and implementation of PPP projects — with administrative, methodological, expert, consultation, technical and other types of assistance;

- (2) organise training courses for the public partners and competent authorities, and other events aimed at enhancing their capacities;
- (3) exercise other powers prescribed by this Law.

Article 9. Competent authority

1. The competent authority shall:
 - (1) identify PPP projects and prepare draft PPP projects;
 - (2) submit to the Government draft decisions on preparation of a draft PPP project, amendment to PPP project being implemented and extension of a PPP contract;
 - (3) organise a tender in accordance with private partner selection procedures;
 - (4) conclude a PPP contract with a successful tenderer;
 - (5) monitor and maintain supervision over a PPP project.

Article 10. Preparation of PPP projects

1. PPP projects may be prepared by the competent authority in the format of a draft PPP project.
2. The competent authority shall identify PPP projects and prepare draft PPP projects in accordance with the criteria and principles provided for by the PPP procedures.
3. Draft PPP projects must contain substantiation of compliance of a PPP project with the criteria provided for by part 1 of Article 4 of this Law.
4. In cases provided for by the PPP procedures, the preparation of a draft PPP project must be approved by the decision of the Government.

Article 11. Analysis of draft PPP projects

1. A draft PPP project shall be analysed by the authorised body, afterwards the authorised body shall provide an opinion on the compliance of a PPP project with the criteria prescribed by point 6 of part 1 and by part 2 of Article 4 of this Law.

Article 12. Rendering a decision on implementation of PPP project

1. The Government shall render a decision on the implementation of a PPP project based on a draft PPP project.
2. Pursuant to the requirements of Article 16 of this Law, the draft PPP contract shall approved by the decision on implementation of a PPP project together with the provisions on the implementation of the given project.

Article 13. Information on PPP project

1. The information on PPP projects, their preparation and implementation shall be published on the official website at www.procurement.am, as well as on the official website of the PPP unit. The Government may prescribe the requirements for such publication.
2. The information — the publication of which is restricted by laws — on PPP projects, their preparation and implementation shall not be subject to publication.

CHAPTER 3

SELECTION OF A PRIVATE PARTNER

Article 14. Private partner selection procedure

1. The competent authority shall select a private partner in accordance with the private partner selection procedure.

Article 15. Conclusion of PPP contract

1. The competent authority shall conclude a PPP contract with a successful tender applicant (or with a legal person established thereby) for becoming a public partner. The competent authority shall have the right to authorise the state and/or community organisations and/or other legal persons to organise the tender and act as a third party to a PPP contract.
2. Where a PPP contract is concluded with a legal person established by a successful tender applicant, such legal person must meet the conditions of the tender procedures.
3. Where the successful applicant is a consortium of legal persons, the structure of equity participation of the participants of consortium shall also be included in the application. This structure may not be changed at the time of signing a PPP contract. Following the signing of a PPP contract, each amendment to the structure of equity participation of the participants of consortium shall be approved by the Government.
4. The Republic of Armenia or each body of state administration system may not have any equity participation in a private partner organisation.

CHAPTER 4

PUBLIC-PRIVATE PARTNERSHIP CONTRACTS

Article 16. Main information and conditions of PPP contracts

1. A PPP contract must at least include the following information and conditions:
 - (1) the parties to a PPP contract;
 - (2) rights and obligations of the parties;
 - (3) risks of a PPP project and the allocation of those risks between a public partner and a private partner;
 - (4) subject matter of a PPP contract, including the scope of activities to be carried out, the components and content of a PPP project and other requirements for public infrastructure and public services;
 - (5) pursuant to a PPP contract, the description of public infrastructure and other property to be transferred or constructed and/or improved and/or developed and/or operated and/or maintained, including technical and economic features, the significance and time limit (time limits) for the use thereof (where available);
 - (6) the distribution of rights of the parties (where available) over the relevant infrastructure or other property within the scope of a PPP project, as well as the procedure for their transfer;
 - (7) the procedure and conditions for allocating land parcels required for the implementation of a PPP project (where necessary), as well as the description of their condition;
 - (8) the conditions for setting and changing the prices (tariffs) for the goods being supplied, activities being carried out and/or services being rendered by a private partner or conditions related thereto;

- (9) the validity period of a PPP contract and/or the procedure for its determination;
- (10) the types of security being provided to a public partner by a private partner (where available) and the main conditions therefor;
- (11) the nature of result-based payments, availability payments and/or other payments (where available) being made to a private partner;
- (12) the procedure for making amendments to a PPP contract;
- (13) the nature of all payments (where available) being made to a public partner by a private partner;
- (14) the grounds, procedures for and circumstances of termination, including unilateral termination, of a PPP contract, including, the step-in rights of the lender and the procedure for calculation of reimbursement for early termination of the contract;
- (15) the minimum volume of investments (where available) being made by a private partner.

Article 17. Amendments made to conditions of PPP contracts

1. The conditions of a PPP contract, including the term thereof may be amended, where the possibility of making such amendment is clearly and directly provided for by a PPP contract. This provision shall prescribe the scope, nature of and procedure for making possible amendments, as well as the circumstances under which such possibility may be used.
2. A PPP contract shall include the procedure and conditions for unilaterally amending a PPP contract, upon the decision of the Government on the ground of applying part 1 of this Article, as well as for compensation of damages incurred by a private partner due to amendments to the legislation of

the Republic of Armenia directly relating to the given public infrastructure or public services.

3. The amendment provided for by parts 1 and 2 of this Article may be made only where:
 - (1) the opinion — stipulated by Article 11 of this Law — provided by the authorised body on that amendment is positive;
 - (2) the PPP project remains compliant with the criteria provided for by Article 4 of this Law.

Article 18. Public infrastructure and other property related thereto within the process of implementing PPP projects

1. The parties to a PPP contract, holding property rights over the infrastructure and the property related thereto, shall be entitled, where necessary, to transfer such rights to the other party, including the right of ownership and/or the right to use the land parcels and other movable and immovable property, as well as other property rights for implementing a PPP project in accordance with the provisions of a PPP contract.
2. A PPP contract may provide for — observing all the requirements prescribed by the legislation of the Republic of Armenia on transfer of the right over the property (property rights) — the right of a private partner to transfer all or part of its rights over the public infrastructure and the property related thereto to third parties for a term that does not exceed the term of the relevant right of a private partner established under a PPP contract. The term for transferring the rights over public infrastructure and the property related thereto may not be extended, regardless of the existence of the right to extend the term of the PPP contract.

3. The transfer of rights provided for by part 2 of this Article shall be valid only after being approved by a private partner.
4. The transfer of rights provided for by this Article shall be invalid from the moment of making such transfer, where it results in exceeding the term of a PPP contract.

Article 19. Provision of land parcels

1. In cases provided for by a PPP contract, a public partner must, as prescribed by the legislation of the Republic of Armenia, ensure the provision of land parcels required for the implementation of a PPP project, to a private partner, except for the cases where the land parcels are under the ownership or possession of a private partner.
2. The land parcels may, without holding an additional tender for that purpose, be provided on the basis of a purchase and sale agreement, lease agreement, agreement on the right to development of a land parcel, servitude or any other transaction that will allow a private partner to fulfil its obligations provided for by a PPP contract.
3. A PPP contract shall envisage the consequences for failure by a public partner to provide land parcels or the necessary rights over them to a private partner as prescribed by a PPP contract.

Article 20. Liability of parties to PPP contract

1. The violation of obligations (including performance requirements, guarantees and other obligations) by any of the parties may lead to liability prescribed by law or a PPP contract. Any liability, not prohibited by Law, may be included in a PPP contract.

Article 21. Step-in rights. Substitution of parties to PPP contract

1. A PPP contract may prescribe that in certain special circumstances and pursuant to the conditions of a direct agreement and/or agreements related thereto, a public partner or a lender (lenders) may exercise the step-in rights thereof. In that case, the operation of the relevant public infrastructure and/or the rendering of public services for the purpose of ensuring the effective operation of the infrastructure and/or effective rendering of services and the continuity of the given project may be temporarily assumed by a public partner or other legal person (persons) appointed by a lender (lenders). The costs of such stepping-in shall be borne by the party specified in a PPP contract and/or direct agreement.
2. In the case prescribed by part 1 of this Article, the private partner may be temporarily substituted (fully or partially) by the public partner or the legal person (persons) appointed by a lender (lenders), in each case guided by a more clear procedure defined by a PPP contract and/or direct agreement and pursuant to their respective conditions.
3. Where a private partner is temporarily substituted by a public partner on the basis of a direct agreement, the debt of a private partner may not be transferred to the Government.
4. Any substituting private partner must, as prescribed by a PPP contract, comply with all the qualification requirements and other essential requirements related to the works to be performed and/or to the services to be rendered (including possessing a relevant licence and/or permit provided for by the Law of the Republic of Armenia), based on which a PPP contract has been concluded with an initial private partner.
5. The procedure for and conditions applicable to the substitution of a private partner shall be prescribed by a relevant PPP contract and/or direct agreement.

In case of a permanent substitution of a private partner, a public partner shall hold an additional tender for the selection of a new private partner. In case of a temporary substitution of a private partner, no additional tender shall be necessary.

CHAPTER 5

GUARANTEES FOR RIGHTS OF PRIVATE PARTNERS

Article 22. Guarantees for rights of a private partner

1. A public partner and a private partner are equal parties to a PPP contract.
2. Where a private partner sells goods, performs works or renders services at regulated prices (tariffs), and the bodies regulating those prices (tariffs) set such prices (tariffs) for the private partner's goods, works or services that do not ensure compensation for economically substantiated investments made by a private partner within the scope of the PPP contract, a public partner may, in accordance with provisions of a PPP contract, reimburse to a private partner for the shortage of the compensation amount. The PPP procedures may define methodological instructions, guidelines, as well as criteria, rules or restrictions for reimbursement.
3. A public partner may grant to a private partner exclusive rights for carrying out the activities prescribed by a PPP contract in order to ensure technical and financial viability of a PPP project, unless it contradicts the legislation of the Republic of Armenia.

Article 23. Guarantees for lenders

1. A direct agreement may envisage such rights and guarantees for lenders that the parties to the agreement find appropriate.
2. A direct agreement may prescribe in detail the rights of lenders for substituting a private partner provided for by Article 21 of this Law, in particular, that the substitution of a private partner being recommended by a public partner may not be implemented without approval of the lender, or such substitution being recommended by lenders may not be implemented without approval of a public partner.
3. A direct agreement may envisage step-in rights for lenders, obligations of parties to an agreement related to the provision of information on the implementation of the PPP project, in case of early rescission of the PPP contract — provisions on the reimbursement to lenders and other provisions agreed between the parties.
4. A direct agreement may, in certain cases provided for thereby, prescribe an obligation for a public partner to make contractual payments directly to lenders instead of a private partner.
5. A public partner shall not hold a tender for the purpose of concluding a direct agreement, where it is concluded with a private partner and a lender.
6. A PPP contract may envisage an obligation of a private partner to provide lenders with security for each type of its obligations (related to the assets within the PPP project, its rights provided for by a PPP contract (and/or documents related thereto) and its activities related to a PPP project), which is not prohibited by the legislation of the Republic of Armenia.

CHAPTER 6

DATABASE AND REPORT ON PUBLIC-PRIVATE PARTNERSHIP PROJECTS

Article 24. Database of PPP projects

1. The Government shall establish the procedure for the creation and management of the database of all PPP projects.
2. A public partner shall, as prescribed by part 1 of this Article, submit the copies of each PPP contract concluded thereby, of all annexes or supplements thereof within 20 days following the signing of a PPP contract or of the relevant supplement thereto.
3. The database of a PPP project shall be publicly accessible, except for the information, the publication whereof is restricted by laws.

Article 25. Report on implementation of PPP project

1. A public partner shall prepare and submit to the PPP unit a report on the implementation of a PPP project, together with an opinion submitted by a private partner.
2. The form of and time limit for submitting a report on the implementation of a PPP project shall be prescribed by the Government.
3. The PPP unit may request additional clarifications and explanations with respect to each report on the implementation of a PPP project.
4. Each report on the implementation of a PPP project must be publicly accessible.

CHAPTER 7
STATE SUPPORT MECHANISMS
IN PUBLIC-PRIVATE PARTNERSHIP PROJECTS

Article 26. Types of state support in PPP projects

1. The following types of state support may be provided to private partners within the scope of a PPP project:
 - (1) grants;
 - (2) subsidies;
 - (3) allocations of assets necessary for the implementation of a PPP project;
 - (4) guarantees for the minimum revenue and/or minimum number of end users or buyers and/or other types of guarantees and privileges, within the scope of a PPP project;
 - (5) guarantees that the public partner will consume or use a certain volume or share of goods produced, works performed or services rendered during the implementation of a PPP project;
 - (6) loans and other types of funding or investments;
 - (7) reimbursement for certain types of costs and risks related to a PPP project (or direct responsibility for them);
 - (8) budgetary guarantees;
 - (9) other means not prohibited by the legislation of the Republic of Armenia, upon the decision of the Government.
2. Within the scope of a PPP project, private partners shall benefit from tax and customs privileges established by the legislation of the Republic of Armenia, as prescribed by the legislation of the Republic of Armenia.

3. The PPP procedures may define methodological instructions on different types of state support in PPP projects and guidelines on providing such support, as well as all criteria, rules or restrictions applicable to them.

Article 27. Types of payments being made within the scope of PPP contracts

1. A PPP contract may include a provision, pursuant to which a public partner shall — in addition to or instead of payments being made by end users and/or result-based payments — pay to a private partner availability payments and/or other compensations not prohibited by the legislation of the Republic of Armenia, under the conditions prescribed by the contract.
2. A private partner shall have the right to directly or indirectly receive profit from its activities within the scope of a PPP project and dispose such profit.
3. A PPP contract may envisage payments being made by a private partner to a public partner (in the form of a fee paid by a private partner or in other form), that may be in the form of a fixed amount paid on a regular basis or a lump-sum amount, or, pursuant to a PPP contract, in the form of certain share of any revenue to be received from the activities being carried out by a private partner, or in the form of transfer of property belonging to a private partner by the right of ownership to a public partner, or in other forms not prohibited by the legislation of the Republic of Armenia. A PPP contract may also envisage combination of different forms of payments by a private partner.
4. A PPP contract may envisage combination of each or all forms of payments referred to in parts 1-3 of this Article.

CHAPTER 8

SETTLEMENT OF DISPUTES

Article 28. Settlement of disputes

1. Any dispute arising from a PPP contract, direct agreement or any other agreement related to a PPP project shall be settled upon a relevant agreement and/or through the procedure for settlement of disputes agreed between the parties to the Agreement on Promotion and Reciprocal Protection of Investments, as ratified by the Republic of Armenia.
2. Parties to a PPP contract may freely choose the dispute settlement mechanism, including conciliation, legally binding or non-binding expert assessment or opinion, national or international commercial arbitration or investment arbitration, as well as procedural rules for the settlement of such disputes.
3. A public partner may not have any state or sovereign immunity with respect to disputes arising from a PPP contract, direct agreement or any other agreement related to a PPP project.

CHAPTER 9

FINAL PART AND TRANSITIONAL PROVISIONS

Article 29. Entry into force of the Law

1. This Law shall enter into force on 1 January 2020.

Article 30. Transitional provisions

1. The provisions of this Law shall not extend to the PPP contracts concluded between public and private partners and to the tenders announced with respect to the PPP projects prior to the entry into force of this Law.
2. The regulations prescribed by points 4 and 7 of part 1, by part 2 of Article 4, part 1 of Article 5, parts 2 and 4 of Article 10, part 1 of Article 11, parts 1 and 3 of Articles 12 and 24, part 2 of Article 25, part 3 of Article 26 of this Law, shall be adopted within 90 calendar days following the entry into force of this Law.

President of the Republic

A. Sargsyan

16 July 2019

Yerevan

HO-113-N

The provisions of the Law shall not extend to the PPP contracts concluded between public and private partners and to the projects announced with respect to the PPP project...

The regulations described by points 4 and 7 of part 1 of article 4 part 4 of Article 5, parts 2 and 4 of Article 10, part 1 of Article 11, part 3 of Article 12 and 24, part 2 of Article 25, part 3 of Article 26 of the Law shall...

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FINAL PART AND CONCLUSION

Article 25. Entry into force of the Law

The Law shall enter into force on January 2020