

Law no 9663, dated 18.12.1006

LAW ON CONCESSIONS

Pursuant to articles 78 and 83, point 1, of the Constitution, upon proposal of the Council of Ministers,

**Assembly
of Republic of Albania**

ENACTS:

Chapter 1 GENERAL PROVISIONS

Article 1 PURPOSE OF LAW

The purpose of this law is to create a favorable framework for promoting and facilitating the implementation of privately financed Concession Projects enhancing transparency, fairness, efficiency and long-term sustainability, in development of infrastructure and public service projects.

It aims at further developing the general principles in the award of contracts by public authorities through the establishment of specific procedures for the award of Concession Projects.

Article 2 DEFINITIONS

In this law, the following terms shall mean:

1. **“Bidder”** or **“Bidders”**, means legal entities, including groups thereof, that intend to participate or participate in a selection procedure concerning a Concession.
2. **“Competitive Selection Procedure”**, means the procedure for the selection of the Concessionaire in accordance with Articles 10 to 21 of this law.
3. **“Concession”**, means the agreement, notwithstanding the term, between the Contracting Authority and the concessionaire which provides for requirements and conditions in terms of which the Concessionaire:

- (a) Carries out an economic activity which would otherwise be carried out by Contracting Authority related to a concession project, management contract or other public services;
 - (b) Assumes all or substantial part of risks related to such economic activity;
 - (c) Receives a benefit by way of:
 - (i) Direct payments paid by or on behalf of contracting authority;
 - (ii) Tariffs or fees collected from users or customers;
 - (iii) A combination of such direct payments and tariffs.
4. **"Concessionaire"** is a legal person, Albanian or foreign, with or without local or foreign participation, that enters into a concession contract with the contracting authority.
 5. **"Concession register"**, means the appropriate record of information pertaining to the Concession selection and award procedure to be kept by the contracting authority and which at the end of the process is filed with the Public Procurement Agency. Form and method of filing shall be determined by this Agency.
 6. **"Contracting Authority"**, means a public authority that has the power to enter into a Concession Contract.
 7. **"Infrastructure Facility"**, means physical assets and systems that directly or indirectly provide services to the public.
 8. **"Concession project"**, means each of the following activities or any combination such as: the design, construction and development of new infrastructure facilities, rehabilitation, modernization, expansion of existing infrastructure facilities; administration, expansion or other services pertaining to new or existing infrastructure facilities.
 9. **"License"** means an administrative act which is issued by a relevant public authority to exercise an activity based on objective qualification criteria.
 10. **"Local Concessions"** are concessions for those economic activities which according to the legislation in effect in the Republic of Albania fall under the competence of local government units.
 11. **"State Concessions"**, means Concessions for those economic activities, which based on the legislation in effect in the Republic of Albania, fall under the competence of the central government.
 12. **"Unsolicited Proposal"** means any proposal undertaking concession projects that is not submitted in response to a request issued by the Contracting Authority within the context of a Competitive Selection Procedure.
 13. **"Private Investment"** means the proposal, financed and implemented fully by private sector where the public sector does not participate directly or indirectly. For the purpose of this law, any kind of guarantees, financial or other guarantees, given by public sector, will be considered as participation of public sector in private investment.
 14. **"Public Procurement Agency"** is the agency created and operating according to Law no. 9643, dated 20.11.2006 "On Public Procurement".

15. **“Procurement Advocate”** is the institution established and operating according to law no 9643, dated 20.11.2006 “On Public Procurement.
16. **Temporary union of companies”** is an agreement in writing between two or more legal entities, the scope of which is the accomplishment of a certain activity, whereby the role of each party is defined and where one party is the main company that represents the union in signing the contract and in each initiative.
17. **Value for money**, is a term, which is used to determine whether a contractual authority has gained the maximum profit from goods or services, which it receives and/or provides for use within the limits of resources it possesses. This term is not only used to measure the value of goods or services, but assesses the quality, cost and utilization of resources, compliance with the purpose, time and possibility to decide that all of these together constitute the best economic value.

Article 3

SCOPE OF LAW

This law defines conditions, modalities, criteria and procedures for granting concession in the Republic of Albania.

Article 4

SECTORS FOR APPLICATION OF CONCESSIONS

1. This law is implemented for granting of concessions by contractual authorities for the economic activities in the following sectors:

- a) transport (railway system, rail transport, ports, airports, roads, tunnels, bridges, parking, public transport);
- b) generation and distribution of electricity and heating;
- c) production and distribution of water, treatment, collection distribution and administration of waste water, irrigation, drainage, cleaning of canals, dams;
- ç) collection, transfer, processing and administration of solid waste;
- d) telecommunication;
- dh) education and sport;
- e) health;
- ë) tourism and culture;
- f) prison infrastructure;

g) recycling projects, rehabilitation of land and forests, in industrial parks, housing, governmental buildings, service of maintenance of IT and data base infrastructure;

gj) natural gas distribution;

h) management contract or provision of public services including those related to sectors specified above.

2. Council of Ministers, upon the proposal of the Minister responsible for economy, authorizes Concessions to be implemented in other sectors.

3. In particular instances, for the promotion of investments pointed out in point 1 of this Article or for other priority sectors for the economic development of the country, in line with the strategic objectives, Council of Ministers may offer to local or international investors concessions for the symbolic price of 1 EURO. Council of Ministers, upon the proposal of the Minister responsible for economy, approves the list of assets that will be given on concession, to the effect of applying this point.

4. This Law shall not apply to grant of licenses, except to the extent that a license is issued within the framework of a Concession Contract.

5. This Law shall not apply to public procurement of services, goods and constructions, as well as for private investments.

Article 5

CONTRACTING AUTHORITY

1. The contracting authority is the ministry or the local government unit, which in compliance with the legislation in effect is responsible for the economic activity for which the concession is granted.

2. The contracting authority for local concessions is the responsible authority of the local government units.

3. Council of Ministers shall identify the contracting authority for each concession after the identification of potential concessions, according to Article 11 of this law.

4. Council of Ministers approves the evaluation regulations and granting of concessions, to the effect of achieving the purpose and applying the provisions of this law, as well as standard documents in concession field.

Article 6

SUPERVISION OF APPLICATION OF CONCESSIONARY PROCEDURES

1. Supervision of application of the concession procedures and administrative review of complaints against them shall be performed by the Public Procurement Agency.
2. Exercising the concession functions, Public Procurement Agency has the following competencies:
 - a) it requires from the contracting authorities periodic reporting, once in 6 months regarding the concessions situation;
 - b) it verifies the application of concessionary procedures, in compliance with this law and other acts stemming from its implementation, while requesting from the concession authorities all the necessary information;
 - c) it proposes disciplinary measures and imposes penalties to the extent defined in the procurement legislation, in the instances when it observes violation of the procedures of this law.
 - ç) it conducts the administrative review of complaints from bidders regarding concession procedures.
 - d) it decides and announces the debarment from concession procedures of bidders who have, during a concessionary procedure, deposited forged documents or declared false information;
 - dh) it provides to Council of Ministers its opinion regarding the procedure followed for concessions.

Article 7

REPRESENTATION OF LEGAL INTERESTS OF BIDDERS

1. Monitoring of the implementation of this law and the bylaw acts, stemming from it and for its implementation, during the conduct of the concessionary procedures, in protection of the legitimate interests of the bidders, is done by the Procurement Advocate.
2. Exercising the functions under this law, the Procurement Advocate has the following competencies:
 - a) reviews complaints of interested persons relating to acts or omissions on the side of the contracting authority;

- b) institutes administrative investigation upon finding out that the cases consists a violation of this law;
 - c) upon completion of the administrative investigation, informs the contracting authority and Public Procurement Agency about the results of the investigation.
3. The Procurement Advocate notifies, within 5 days from the beginning of the investigations, the interested parties and the Public Procurement Agency about this fact.
4. In the course of exercising his functions for the investigation of administrative procedure, the Procurement Advocate may:
- a) inspect on the spot acts and documents relating to the investigation case;
 - b) seek information and explanation from public administration or interview any person with regard to the case under investigation, as well ask for expertise from third parties.
 - c) recommend changes in the law and the acts issued for its implementation, upon observing that the content of these acts possibly causes the violation of concessionary procedures.

Article 8

CONCESSION TRATMENT UNIT

The Concession Treatment Unit shall be under the Minister responsible for economy, to promote and assist the contracting authority in evaluation and negotiation of concessions.

HEADING II

IDENTIFICATION OF POTENTIAL CONCESSIONS AND SELECTION OF THE CONCESSIONNAIRE

Article 9

IDENTIFICATION OF POTENTIAL CONCESSIONS

1. Identification of Potential Concessions shall be done by competent ministries or local government authorities, in cooperation with the Concession Treatment Agency.

Potential Concessions may also be identified by a proponent through unsolicited proposals, in compliance with the procedures set forth in Article 23 of this law.

2. Competent ministries or the Local Government units, in cooperation with the Concession Treatment Unit, shall carry out a viability and bankability analysis to decide whether a potential concession should be implemented. This analysis shall be based upon the principles of value for money, alignment of potential Concessions with the national strategic objectives, as well as with sector_strategic objectives, the technical and commercial feasibility of the potential Concession and its ability to attract potential Concessionaires and private financing.

Article 10

SELECTION STAGES

1. The Concessionaires are selected through a pre-qualification procedure, accompanied by a request for proposal foreseen in Articles 11 through 21 of this law. An exception to this rule shall constitute concessions granted according to point 2 of this Article and Article 23 of this law.
2. Notwithstanding the definition contained in point 1 of this Article, the Contracting Authority shall be entitled to request proposals from all potential bidders, without a pre-qualification procedure, if it deems that in this case the conduct of prequalification procedure is not necessary.

Article 11

PRE-QUALIFICATION PROCEDURE

1. The Contracting Authority shall prepare the invitation for participation in the pre-selection procedure and the pre-qualification documents with a view to identifying bidders that are suitably qualified to implement the concession.
2. The invitation to participate in the pre-qualification procedure shall be published in the Public Announcements Bulletin, as well as in the international and local press.
3. The invitation to participate in the pre-selection procedure shall include the following data:
 - a) A brief description of the infrastructure facility;
 - b) indicators of other essential elements of the concession, such as the services to be delivered by the concessionaire, ways of financing the concession envisaged by the contracting authority (for example, funds to be used, whether they will be entirely financed by

user fees or payments or whether public funds shall be provided to the concessionaire, such as direct payments, loans or guarantees);

c) where appropriate, a summary of the main terms of the concession contract to be entered into;

ç) manner and place for the submission of applications for pre-qualification and the legal deadline for the submission, expressed as a specific date and time, allowing sufficient time for bidders to prepare and submit their applications;

d) manner and place of receiving the pre-qualification documents.

Article 12

PRE-QUALIFICATION DOCUMENTS

In the pre-qualification criteria, there are at least included:

- a) pre-qualification criteria in accordance with Article 13 of this law;
- b) participation of the temporary union of companies, in line with Article 12 of this law;
- c) any requirement for the necessity to create a legal entity for the winning bidder, according to the legislation in effect.

Article 13

PRE- QUALIFICATION CRITERIA

1. In order to participate in the selection procedure, interested bidders must meet some objective criteria, which the Contracting Authority considers appropriate in the particular procedure.

The criteria shall at least include:

- (a) professional and technical qualifications, human resources, equipment and other physical facilities as necessary to carry out all the phases of the concession project, including design, construction, operation and, where appropriate, maintenance;
- (b) Sufficient ability to manage the financial funds of the project and capability to finance the project;
- (c) Appropriate managerial and organizational capability, reliability and experience in operating similar projects.

2. Interested qualified bidders are qualified to participate in a selection procedure when:

- (a) they are not subject to proceedings of bankruptcy, liquidation or controlled administration or termination of activity or of any other related situation, which according to the effective laws, brings about proceedings of the same character;
- (b) they have not been found guilty of producing false documents.

Article 14

PARTICIPATION OF TEMPORARY UNION OC COMPANIES

1. The contracting authority shall, prior to inviting the bidders into the selection phases, allow them to form temporary bidding unions of companies. Unless otherwise stated in the pre-qualification documents, the information required from members of temporary bidding unions of companies to demonstrate their qualifications in accordance with provisions of this article, shall relate to the temporary union of companies as a whole as well as to its individual members in particular.
2. Each member of a temporary union of companies may participate, either directly or indirectly, in only one temporary union of companies at a time. A violation of this rule shall cause the disqualification of the temporary union of companies and of the individual member of this union of companies.

Article 15

PRE-QUALIFICATION DECISION

The contracting authority performs the qualification of each bidder that has submitted an application for pre-qualification, in accordance with the criteria set forth in the pre-qualification documents. The contracting authority shall publish the list of pre-qualified bidders in the Public Announcements Bulletin within 30 days from taking the decision. All pre-selected bidders shall be invited to submit proposals in accordance with provisions of Articles 16 through 21 of this law.

Article 16

PROCEDURES FOR SOLICITED PROPOSALS

1. The procedures for solicited proposal shall take place in 1 or 2 stages.
2. The contracting authority provides, against payment of a fee that might be applied, the pre-qualified bidders with the request for proposal and related documents, in compliance with Article 5 of this law, or any other document if deemed necessary. If the pre-qualification

procedures are not implemented, the request for proposal shall be issued to all potential bidders.

3. Notwithstanding the above, the contracting authority may use a two-staged procedure to request proposals from Bidders, if elements of the concession project such as project specifications, performance indicators, financial arrangements or contractual terms can not be described in the request for proposal in a manner that detailed or accurate that would allow the bidders to submit their final proposals.

4. Where a two-staged procedure is used, the following provisions apply:

a) The initial request for proposals shall call upon the bidders to submit, in the first stage of the procedure, initial proposals relating to project specifications, performance indicators, financing requirements or other characteristics of the project, as well as to the main contractual terms proposed by the contracting authority;

b) The contracting authority may convene meetings and hold discussions with any of the bidders to clarify questions concerning the initial request for proposals or the initial proposals and accompanying documents submitted by the bidders. The contracting authority shall prepare minutes of any such meeting or discussion on this issue. (The minutes contain the questions raised and the clarifications provided by the contracting authority.)

c) Following examination of the proposals, the contracting authority may review and revise the initial request for proposals by deleting or modifying any aspect of the initial project specifications, performance indicators, financing requirements or other characteristics of the project, including the main contractual terms, and any criterion for evaluating and comparing proposals and for ascertaining the successful bidder, as well as by adding characteristics or criteria to it. The contracting authority shall indicate in the concession register, the justification for any revision to the request for proposals. Any such deletion, modification or addition shall be contained in the invitation to submit final proposals;

ç) In the second stage of the procedure, the contracting authority shall invite the bidders to submit final proposals with respect to a single set of project specifications, performance indicators or contractual terms in accordance with Articles 17 through 21 of this law.

Article 17

CONTENT OF THE REQUEST FOR PROPOSALS

The request for proposals, prepared by the contracting authority, shall include in the least the following data:

a) general information as may be required by the bidders in order to prepare and submit their proposals;

b) project specifications and performance indicators, as appropriate, including the contracting authority's requirements regarding safety and security standards and environmental protection;

- c) contractual terms proposed by the contracting authority, including an indication of non-negotiable terms;
- ç) criteria for evaluating proposals and the thresholds, if any, for evaluating the proposals, the relative importance of each criterion and the manner in which the criteria and thresholds are to be applied in the evaluation and disqualification of proposals;
- d) requirements pertaining to bid security.

Article 18

CLARIFICATIONS AND MODIFICATIONS

1. The contracting authority may, whether on its own initiative or upon a request for clarification by a bidder, review and, as appropriate, revise any element of the request for proposals in compliance with article 17 of this law.

Each change shall be communicated promptly to all candidates having purchased the documents. If the contracting authority deems it necessary to change the documents, and when this is done within less than 1/3 of the number of days defined for the preparation of bids, it shall postpone the deadline for bid submission by the same period.

2. The contracting authority shall, in the case set forth in point 1, indicate in the concession register the justification for any revision to the request for proposals. Any such deletion, modification or addition shall be communicated to the bidders in the same manner as the request for proposals.

Article 19

EVALUATION CRITERIA

1. The criteria for the evaluation and comparison of the technical proposals shall include at least:

- a) technical soundness;
- b) compliance with environmental standards;
- c) operational efficiency;
- ç) quality of services and measures to ensure their continuity;
- d) social and economic development potential offered by the proposals.

2. The criteria for the evaluation and comparison of the financial and commercial proposals shall at least include, as appropriate:

- a) present value of the proposed tolls, unit prices and other charges over the concession period;

- b) present value of the proposed direct payments by the contracting authority, if any;
- c) costs for design and construction activities, annual operation and maintenance costs, present value of investments and operating and maintenance costs;
- ç) extent of financial support, if any, expected from a public authority of the Republic of Albania; and
- d) soundness and viability of the proposed financial arrangements.

3. Council of Ministers determines, in line with implementation of point 3 of Article 4 of this law, additional criteria which will be taken into account in the bid evaluation process. These criteria are based on the sector importance of the development of economy, investment amount, and employment level, priorities for the development of particular areas of the country, other sector specific indicators, as well as the proposed price or fee. Council of Ministers determines in this case the weight of each criterion in the bid evaluation.

Article 20

COMPARISON AND EVALUATION OF PROPOSALS

1. The contracting authority shall compare and evaluate each proposal in accordance with the evaluation criteria, the relative weight accorded to each such criterion and the evaluation process set forth in the request for proposals.
2. For the purposes of point 1 of this Article, the contracting authority may establish minimum thresholds with respect to quality, technical, financial and commercial aspects. Proposals that fail to achieve these minimum thresholds shall be regarded as non responsive and disqualified.

Article 21

DETERMINATION OF THE SUCCESSFUL BIDDER AND FINAL NEGOTIATIONS

1. The contracting authority shall rank all responsive proposals on the basis of the evaluation criteria and notify about this the bidders. Upon notification, all bidders have the right to present any claims in compliance with provisions of heading III of this law. Upon expiry of the complaining period, the contracting authority shall invite for final negotiations the bidder that has attained the best rating.
2. Final negotiations shall not concern those contractual terms that were stated as non-negotiable in the final request for proposals.

3. If it becomes clear to the contracting authority, within a time period set by Council of Ministers, that the negotiations with the bidder invited will not result in a concession contract, the contracting authority shall terminate the negotiations with such bidder and invite for negotiations the other bidders in the order of their ranking until it signs a concession contract or rejects all remaining proposals. The contracting authority shall not resume negotiations with a bidder with which negotiations have been terminated pursuant to this point.
4. Following completion of concession contract negotiations, the Concession Treatment Agency shall, within 45 days, issue an opinion on the terms thereof. Following such opinion and the signature of the Concession Contract, it shall be submitted to Council of Ministers for approval.
5. The contracting authority shall publish in the Public Notification Bulletin the name of the concessionaire and essential terms of the concession contract within 30 days after the approval in line with the provision of point 4 of this Article.

Article 22

NEGOTIATION OF CONCESSION CONTRACTS WITHOUT SELECTION PROCEDURES

1. Contracting authority may conduct the negotiation of concession contracts without using the selection procedure, only with the approval of Council of Ministers, where:
 - (a) the project affects national security. The cases where national security is affected, as a consequence of implementation of selection procedure, shall be approved upon the decision of National Security Council;
 - (b) the concession contract has been terminated due to a serious violation by the concessionaire and where there a selection procedure is not possible to be implemented, due to the urgent need to ensure continuation of activity.
2. The duration of a concession contract signed according to letter (b), point 1 of this Article shall not exceed 12 months.
3. No concession contract shall be concluded pursuant to letter (b), point 1 of this Article, unless the contracting authority has initiated a competitive selection procedure for the selection of a concessionaire, in accordance with the contract terms set forth in point 2 of this Article or when it has decided not to grant a concession following expiry of such contract term.
4. When a concession contract is negotiated pursuant to this article without using the Selection Procedure, the contracting authority shall determine reasonable evaluation criteria for the requirements of the projects, based on which there shall be evaluated and ranked the proposals.
5. The contracting authority shall publish in the Public Announcements Bulletin the name of the concessionaire and essential terms of the concession contract within 30 days after the

approval of the Concession Contract by the Council of Ministers, excluding the cases determined in letter “a”, point 1 of this Article.

Article 23

UNSOLICITED PROPOSALS

1. The contracting authority is 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. Procedures for determining the admissibility of unsolicited proposals are the following:

a) within 90 days of receipt and review of such unsolicited proposal, the contracting authority shall determine whether the project is considered to be in the public interest, and to this end informs the proponent.

b) if the concession project is considered to be in the public interest, the contracting authority shall invite the proponent to submit additional data, to make an evaluation of the proponent's qualifications and the technical and financial feasibility of the project;

c) within 120 days of the invitation from the contracting authority, the proponent has to submit a technical and financial feasibility study (including but not limited to a financial model and a project financing plan), an environmental impact study and satisfactory information regarding the concept or technology contemplated in the proposal.

ç) in course of reviewing the unsolicited proposal, the contracting authority shall respect the intellectual property, trade secrets or other exclusive rights contained in, arising from or referred to in the proposal. The contracting authority shall not make use of information provided by or on behalf of the proponent in connection with its unsolicited proposal without the consent of the proponent, for a period of 12 month from its receipt.

3. Initiation of a Selection Procedure shall be done as follows:

(a) the contracting authority shall, within 6 months of receipt of the documentation in compliance with letter “b” of point 2 of this Article, decide to accept or reject the potential concession project derived from the unsolicited proposal. If the unsolicited proposal is accepted by the contracting authority, the contracting authority shall initiate a competitive selection procedure in accordance with Articles 11 through 21 of this law, while when the proposal is refused and the parties do not agree differently, the contracting authority shall return to the proponent the original documents and the submitted copies of documents;

(b) the proponent shall be invited to participate in the competitive selection procedure initiated pursuant to letter (a) of point 3 of this Article, and upon decision of the Council of Ministers, it shall be awarded a bonus on its technical and/or financial score during the competitive selection procedure up to a maximum of 10% of the points. The identity of the

proponent and the existence and amount of the bonus shall be indicated in the competitive selection procedure documents.

Article 24

CONFIDENTIALITY

The contracting authority shall preserve the confidentiality of all the technical, economic, financial and other data of the proposals done by the bidders. Unless provided for by law or court decision or request for proposals, no party to the negotiations shall disclose to any other person any technical, price or other elements with regard to discussions, communications and negotiations, pursuant to the aforementioned provisions without the consent of the other party.

HEADING III

ADMINISTRATIVE REVIEW PROCEDURES

Article 25

COMPLIANT PROCEDURES

1. Each bidder may request an administrative review of the selection processes, when he deems that an action undertaken by the contracting authority is in violation of the provisions of this law or other legal or bylaw acts on the concession procedures.
2. The complaint shall be submitted to the Public Procurement Agency within 5 calendar days from the date of the publication of the announcement of the pre-qualified candidates or announcement of the ranking of the bidders by the contracting authority.
3. Upon receipt of the complaint, the Public Procurement Agency notifies within 5 days the contracting authority regarding suspension of concession procedures and institution of administrative review procedures.
4. Public Procurement Agency does not suspend the concession procedure when:
 - a) from the preliminary review it results that the complaint has no legal grounds.
 - b) suspension would be in conflict with the public interest or would be to the detriment of the contracting authority or other bidders.
5. During the review of the complaint, until the moment of entering into the contract, Public Procurement Agency shall be entitled to:
 - a) cancel partially or wholly decisions or acts of the contracting authority.

b) guide the contracting authority to rectify the violation prior to proceeding with the concession procedures.

6. The Public Procurement Agency shall, during the procedures of administrative investigation, have all competencies set forth in the law no 9643, dated 20.11.2006 "On public procurement" and in the bylaw acts issued for its implementation.
7. The complaint with the Public Procurement Agency is done by the relevant form, which includes the name and address of the petitioner, the reference to the concrete procedure, the legal basis and the description of the violation. The above mentioned elements are indispensable for the review of the complaint. The Public Procurement Agency reviews the complaint, in compliance with this legislation, bylaw acts issued for its implementation, as well as with the Administrative Procedures Code.
8. Public Procurement Agency concludes the administrative review within 20 calendar days from the submission of the complaint and notifies the contracting authority and the petitioner about the decision.
9. The decision of Public Procurement Agency constitutes a final administrative act.

Article 26

COMPLAINT IN THE COURT

The petitioner is entitled to take an appeal against the decision of the Public Procurement Agency within 30 days since the notification to the effect of having the administrative conflict tried at the Court of Tirana Judicial circle (Administrative Section).

The court shall carry out the judicial review in line with the procedures and time periods established in the provisions of the Civil Procedures Code, chapter II, "Adjudication of administrative disputes".

The review of such a complaint in the court does not suspend continuation of the concession procedures.

HEADING IV

CONCESSION CONTRACTS

Article 27

CONTENT

Concession contracts shall provide for such issues as the parties deem appropriate, such as:

- a) nature and scope of works to be performed and services to be provided by the concessionaire;
- b) concession contract duration, which shall be adjusted to the specific requirement of the relevant concession and shall not exceed 35 years, and conditions, if any, to its extension;
- c) assistance that the contracting authority and the concession treatment agency may provide to the concessionaire in obtaining licenses and permits necessary for the concession;
- ç) any requirements relating to the establishment and minimum capital of a legal entity to be established by the successful bidder in accordance with the effective laws, and prohibition of transfer of shares or part of the capital of this company without prior consent of the contracting authority;
- d) ownership on assets related to the concession project and the obligations of the parties, as appropriate, concerning the acquisition of the concession project site and any necessary facility;
- dh) remuneration of the concessionaire, regardless whether it consists of tariffs or fees for the use of the infrastructure facility or the provision of services; the methods and formulas for the establishment or adjustment of any such tariffs or fees; payments, if any, that may be made by the contracting authority or other public authority; as well as whether there is any obligation of the concessionaire to make payments to the contracting authority;
- e) procedures for the review and approval of engineering designs, construction plans and specifications by the contracting authority, as well as the procedures for testing and final inspection, approval and acceptance of the infrastructure facility, rules and standards based on which the concession projects are designed, which should ensure the application of best practice, developing the market through sensible risks allocation;
- ë) extent of the concessionaire's obligations to ensure, as appropriate, the modification of the service so as to meet the actual demand for the service, its continuation and its provision under essentially the same conditions for all users; mechanisms to deal with eventual costs related thereto;
- f) right of contracting authority, or of another public authority to monitor the works to be performed and services to be provided by the concessionaire and the conditions and extent to which the contracting authority may order variations in respect of the works and conditions of service. The right of contracting authority to take such other reasonable actions as they may find appropriate to ensure that the infrastructure facility is properly operated and the services are provided in accordance with the applicable legal and contractual requirements, as well as the right to monitor mechanisms to deal with eventual costs related thereto;
- g) concessionaire's obligation to provide the contracting authority, or other public authority, as appropriate, with reports and other information on its activity;

- gj) any restrictions or conditions applicable to the assignment of rights and obligations of the concessionaire under the concession contract;
- h) Any restrictions or conditions related to the transfer of a controlling interest at the concessionaire;
- i) definition and consequence of force majeure, change in law and other changes in circumstances (including any right of the parties to seek compensation or revision of concession contract);
- j) eventual liabilities, if any, of the relevant public authorities or contracting authority;
- k) circumstances under which the contracting authority has the right to temporarily take over the operation of the infrastructure facility for the purpose of ensuring the effective and uninterrupted delivery of the service in the event of failure by the Concessionaire to perform its obligations and to rectify the breach of contract;
- l) any rights of the contracting authority to review and approve the main contracts to be entered into by the concessionaire, in particular with the concessionaire's own shareholders or other legal entities where the concessionaire is participating or vice versa;
- ll) guarantees of performance to be provided and insurance policies to be maintained by the concessionaire in connection with the implementation of the concession;
- m) remedy procedures available in the event of breach of contract by any of the parties;
- n) conditions and procedure for amendment and/or termination of contract; rights and obligations of the parties upon the expiry of time period or termination of contract (including mechanism of transfer of assets, technology, compensation, training and support services to be provided by the concessionaire);
- nj) applicable law and the mechanisms for the settlement of disputes that may arise between the contracting authority and the concessionaire;
- o) rights and obligations of the parties with regard to confidential information.

Article 28

TERMINATION OF THE CONCESSION CONTRACT

1. Unless otherwise provided for in the concession contract, the contracting authority may terminate the concession contract when:
 - (a) it has a reason to believe that the concessionaire can no longer be expected to perform its obligations, owing to insolvency, serious breach or other cases which hinder or do not allow the continuation of concession contract;
 - (b) concessionaire fails to ensure the financing of the project within 12 months as of signing the concession contract.

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

- (a) performance of its obligations is rendered impossible by circumstances beyond either party's reasonable control;
- (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 concession contract.

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

HEADING V

FINANCING

Article 29

FINANCIAL ARRANGEMENTS

1. The Concessionaire shall have the right to charge, receive or collect tariffs or other incomes for the use of the facility or the services provided by it, in accordance with the concession contract, which shall provide for methods and formulas for the establishment and adjustment of those tariffs or payments.

2. The contracting authority shall have the power to make direct payments to the concessionaire as a substitute for, or in addition to, tariffs or payments for the use of the facility or services provided by it.

HEADING VI

SETTLEMENT OF DISPUTES AND APPLICABLE LAW

Article 30

APPLICABLE LAW

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

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

Article 31

DISPUTES BETWEEN THE CONTRACTING AUTHORITY AND THE CONCESSIONAIRE

1. Any disputes between the contracting authority and the concessionaire shall be settled through the dispute settlement mechanisms agreed by the parties in the concession contract, including procedures of international arbitration.
2. The concessionaire, its shareholders and other business partners shall be free to choose the appropriate mechanisms for settling disputes among themselves.

HEADING VII

FINAL PROVISIONS

Article 32

REPEAL

The Law No .7973, dated 26.7.1995 “On concessions and the participation of the private sector in public and infrastructure services” as amended, shall be repealed.

Article 33

TRANSITION PERIOD UNTIL THE ESTABLISHMENT OF THE CONCESSION TREATMENT AGENCY

Until the establishment of the Concession Treatment Agency in accordance with Article 8 of this law and it becoming fully operational, its responsibilities and powers shall be exercised by the ministry responsible for economy.

Article 34

EXISTING AND SECTOR SPECIFIC LAWS

1. In case of incompatibility with the existing laws, this law shall prevail over all other existing laws on concessions.
2. All sector specific laws shall regulate concessions in accordance with this law.

Article 35

CONCESSION CONTRACTS ALREADY SIGNED

This law shall not apply to the concession contracts already signed prior to the date of this law. The contracts may never be renewed or extended, except in compliance with this law.

Article 36

ENTRY INTO FORCE

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

Promulgated by the Decree no 5179, dated 12.01.2007 of the President of the Republic of Albania. Alfred Moisiu