



Republika e Kosovës
Republika Kosovo-Republic of Kosovo
Kuvendi - Skupština - Assembly

Law No. 03/L-090

**ON PUBLIC-PRIVATE-PARTNERSHIPS AND CONCESSIONS IN
INFRASTRUCTURE AND THE PROCEDURES FOR THEIR AWARD**

The Assembly of Kosovo,

Pursuant to Article 65.1 of the Constitution of the Republic of Kosovo;

In conformity with articles 121 and 160 of the Constitution of the Republic of Kosovo which set forth the right of private parties to acquire concession and other rights to use and/or exploit publicly owned infrastructure, publicly owned enterprises and publicly-owned resources;

In accordance with the aforementioned articles 121 and 160 of the Constitution, the conditions relating to concession and other rights regarding the use and/or exploitation of publicly owned infrastructure and enterprises shall be established by law;

Recognizing the need for the participation of the private sector in the delivery of public infrastructure and services;

Adopts:

**LAW ON PUBLIC-PRIVATE-PARTNERSHIPS AND CONCESSIONS IN
INFRASTRUCTURE AND THE PROCEDURES FOR THEIR AWARD**

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PART I

GENERAL PROVISIONS

Article 1

Purpose

The purpose of this law is to assign the legal framework for the granting public-private-partnership and concession to build, use, and/or exploit publicly owned infrastructure and to provide public services.

Article 2

Scope of Application

1. The provisions in this law shall govern the rights to utilize and/or exploit publicly owned infrastructure and/or provide public services in all economic and social sectors:

- 1.1. transport (including railway system, transport in rails, airports, roads, tunnels, bridges, parks, public transport);
- 1.2. generation and distribution of energy;
- 1.3. generation and distribution of heat;
- 1.4. production, distribution, treatment, collection and administration of water, sewage, drainage, irrigation, channels,
- 1.5. collection, transfer, proceeding and administration of refuse and recycling;
- 1.6. telecommunication;
- 1.7. education;
- 1.8. sport and recreation;
- 1.9. health;
- 1.10. tourism and culture;
- 1.11. prison's infrastructure;
- 1.12. rehabilitation of land and forests;
- 1.13. industrial parks;

- 1.14. public shelter and social work;
- 1.15. government and public buildings;
- 1.16. municipality labor;
- 1.17. infrastructure's service and maintenance based on IT and data; and
- 1.18. oil pipeline, gas pipeline, refinement and distribution.

2. The provisions set forth herein shall apply only to contractual or institutional arrangements in which:

2.1. the Private Partner carries out an economic activity which would otherwise be carried out by a Public Authority and

2.2. the Private Partner assumes all or a substantial part of the risks associated with said economic activity.

3. This law shall not apply to the grant of licenses, except to the extent that a license is issued within the framework of a concession or public-private-partnership agreement.

4. This law shall not apply to the privatization or divestiture of public infrastructure or publicly owned enterprises.

5. This law shall not apply for mines, minerals, underground rights and shall not apply for the rights of air space.

6. Government through Minister of Ministry on Economy and Finances, as representative of PPP-ISC, shall prepare the annual report on Concessions and Public-Private-Partnership and shall submit it to the Assembly of Republic of Kosovo. The annual report should contain detailed information at least on matters addressed below:

6.1. undertaken activities and adopted policies from PPP-ISC during the previous year;

6.2. recent status of projects from PPP and Concessions, including also those projects given based on legal procedures and those expected to be given in twelve (12) coming months;

6.3. national register of concession and PPP assets, and

6.4. economical support and quota compels deriving from projects with PPP and concessions.

7. In municipal level, heads of municipalities present the annual report on concessions and public-private partnership of the Municipality Assemblies. The annual report should contain information on matters addressed below:

7.1. all PPP activities and concessions undertaken by the municipality during the previous year;

7.2. recent status of relevant projects of the municipality with PPP and Concessions, including also those projects given based on legal procedures and those expected to be given in twelve (12) coming months;

7.3. municipal register of concession and PPP assets, and

7.4. economical support and contingent compels deriving from municipal projects with PPP and concessions.

Article 3 General Principles

The provisions of this Law are subject to the principles of equality of treatment, non-discrimination, transparency, proportionality, cost-effectiveness, efficiency, protection of public interest, freedom of competition and Value-for-Money.

Article 4 Definitions

For the purposes of this law,

“**Agreement**” shall mean a concession contract, a public-private-partnership contract, or an institutional arrangement that results in a Public-Private-Partnership, as defined herein.

“**Bidder**” or “**Bidders**” shall mean legal entities, including groups thereof, which participate in a selection procedure concerning a PPP Agreement.

“**Concession**” shall mean the exclusive right granted by a Public Authority to a Private Partner for the purpose of providing, operating, and maintaining an existing Infrastructure Facility for a specified period of time. The Private Partner assumes significant economic risk, while the public sector retains ownership of the original asset. Examples include: (i) Rehabilitate, Operate, and Transfer (ROT); (ii) Rehabilitate, Lease, and Transfer (RLT); and (iii) Build, Rehabilitate, Operate, and Transfer (BROT), amongst others. Concessions differ from Greenfield Projects in that the latter generally involve new, not existing, Infrastructure Facilities.

“**Consortium**” shall mean a group of economic operators.

“Contracting Authority” means a Public Authority that is legally empowered to enter into a Concession or PPP Agreement.

“Economic Support” shall mean financial mechanisms offered by a Contracting Authority and/or Ministry of Economy and Finances to ensure the financial viability, possibility, and/or sustainability of a PPP project, defined in paragraph 2 of Article 10 of this law.

“Greenfield Projects” or **“Greenfield PPP”** refer to a form of PPP and shall mean a Project in which a Private Partner or a public-private joint venture finances, builds, and operates a new or expanded facility for the period specified in the Agreement. Greenfield projects may include, amongst others, the following types of contractual arrangements: (i) Build, lease, and transfer (BLT); (ii) Build, operate, and transfer (BOT), (iii) Build, own, and operate (BOO), and (iv) Design-Build-Finance-Transfer (DBFT) and (v) Design-Build-Finance- Operate (DBFO).

“Infrastructure Facility”, means physical assets and systems that directly or indirectly provide services to the public.

“Institutional PPP” shall mean a joint venture between the Contracting Authority and the Private Partner in which both parties jointly own shares in a legal entity whose sole purpose is the delivery of specified infrastructure and services.

“Private Partner” shall mean the legal entity that enters into a PPP Agreement with the Contracting Authority to deliver infrastructure and services.

“Project” or **“PPP Project”**, means each of the following activities or any combination, such as: the design, construction and development of new infrastructure facilities, rehabilitation, modernization, and expansion of existing infrastructure facilities; administration, expansion or other services pertaining to new or existing infrastructure facilities.

“Public Authority” shall mean any of the following: (i) a central, regional, municipal or other executive authority, public body, ministry, department, agency, or other authority that exercises, pursuant to any normative or sub-normative act, executive, legislative, regulatory, public-administrative or judicial powers; (ii) a body governed by public law; and (iii) an association of one or more such authorities or bodies.

“Public-Private-Partnership” or **“PPP”** shall mean any form of cooperation between public authorities and the private sector which involve risk sharing and aim to provide the financing, construction, renovation, management, operation and/or maintenance of an infrastructure and/or the provision of a service. PPP shall refer to Concessions, Greenfield Projects, and/or any of these combinations.

“Municipal works” shall means infrastructure assets and municipal services of the lowest level, as defined in the Law on Local Self-Governing.

“Inter-Ministerial Steering Committee of Public-Private-Partnership or “PPP-ISC” shall have the meaning appointed in Article 11 of this law.

“Unit of Public-Private-Partnership” or **“PPP Unit”** shall have the meaning appointed in Article 13 of this law.

“Review Procurement Body” or **“RPB”** means the Procurement Body of Public Procurement established pursuant to Part VII of the Law on Public Procurement.

“Unsolicited Proposal” means any proposal undertaking a PPP Project that is not submitted in response to a request or solicitation issued by the Contracting Authority within the context of a competitive selection procedure.

“Value for Money” shall mean the economic and social marginal benefit taken from the utilization of PPP instead of offering a clean public infrastructure and specified services. Value for money is calculated on basis of actual net value expected from the project related to comparative of public sector. Calculation of Value-for-Money shall not only refer to the price or cost of goods or services, but shall also reflect the quality, effectiveness, timeliness of implementation, and other factors which influence the determination of the best economic value amongst options.

PART II

PUBLIC-PRIVATE-PARTNERSHIP AND CONCESSIONS

Article 5

Authorization to Grant Rights for Public-Private-Partnership and Concessions

Rights to utilize and/or exploit publicly owned infrastructure and/or provide public services may be granted in accordance with this law in any economic or social sector identified in paragraph 1 of Article 2 of this law.

Article 6

Contracting Authority

1. Public-Private-Partnerships and Concessions shall be granted by the Public Authority which, based on the law, is directly responsible for the economic activity which is the object of the Agreement.
2. In the event that a Public-Private-Partnership or Concession Project involves infrastructure and/or services which are the responsibility of more than one Public Authority, the PPP-ISC shall identify the Contracting Authority or Authorities for the corresponding Agreement.
3. In accordance with the provisions set forth in Article 12 of this law, with the prior approval of the Government, the PPP-ISC shall also have the authority to act as a Contracting Authority and grant concession and other rights to build PPP, use, and/or exploit a public Infrastructure Facility.

Article 7
Forms of Partnership

1. Agreements may be implemented through either contractual or institutional arrangements.
2. Public Private Partnerships may involve any of the following activities or any combination thereof:
 - 2.1. the design, construction, financing, maintenance and operation of new infrastructure facilities;
 - 2.2. the rehabilitation, modernization, financing, expansion, maintenance and operation of existing infrastructure facilities; and/or
 - 2.3. the administration, management, operation, maintenance or other services pertaining to new or existing infrastructure facilities.
3. The Contracting Authority shall select the contractual or institutional modality which best reflects the desired allocation of risks and responsibilities for each agreement. Contractual modalities may include, amongst others, Management Contracts, Lease-Develop-Operate agreements, Concessions, Design-Build-Finance-Operate-Transfer arrangements, Build-Own-Operate structures, and any other contractual structure that involves the transfer to the Private Partner of some level of economic and/or performance risk relating to the delivery of public infrastructure and services.
4. This law shall not apply to service contracts or works contracts, as defined in the Law on Public Procurement.

Article 8
Duration

1. The duration of a Concession or Public-Private-Partnership shall be set forth in the corresponding Agreement but in no event shall exceed a period of forty (40) years from the date the Agreement enters into force.
2. Excluding from paragraph 1 of this article and in accordance with paragraph 3 of Article 60 of this law, contracting authority may comply to extend the duration of the agreement for additional period which cannot exceed more than $\frac{1}{4}$ (one fourth) of initial duration appointed in the agreement.
3. Except the formalized agreements by municipal governments, PPP-ISC should authorize any extension issued based in paragraph 2 of this article

Article 9
Ownership of Assets

During the term of the Agreement, the Contracting Authority may temporarily transfer to the Private Partner the ownership of the Infrastructure Facility and other specified public assets directly related to the object of the Agreement, which shall be returned to the Contracting Authority of upon expiry or termination of the Agreement.

Article 10
Financial Rights

1. A Private Partner shall have the right to charge, receive or collect tariffs or fees for the use of the facility or its services in accordance with the terms and condition set forth in an Agreement, which shall additionally provide the methods and formulas for the establishment and adjustment of those tariffs or fees, in accordance with the rules established by the competent Public Authority.

2. When duly justified and required on the basis of Value-for-Money and with prior approval of the Ministry of Economy and Finance and the PPP-ISC, the Contracting Authority may provide economic supports and guarantees to ensure sustainability, implementation and/or financial viability of the Project. This economic supports must be preliminary identified in document of the request for proposals and/or is factor in proposal `s assessment. The economic support may take any reasonable form, including:

2.1. direct payments to the Private Partner as a substitute for, or in addition to, tariffs or fees for the use of the facility or its services. These may include availability payments, cash subsidies, capital grants, minimal trafficking guarantees, payment guarantees and off-take and purchase agreements;

2.2. contributions-in-kind, including asset transfers and land usage rights; and

2.3. other financial support and similar guarantees.

3. The Contracting Authority may also provide compensation to the Private Partner in the event that its financial condition is negatively and materially affected by unforeseeable changes in legislation or regulations which directly impact the Infrastructure Facility or services it provides.

4. The Private Partner has a right to depreciate the value of its capital investment in the Infrastructure Facility utilizing a straight line depreciation method during the duration of the Agreement.

PART III

INSTITUTIONAL COORDINATION AND RESPONSIBILITIES

Article 11

PPP Inter-Ministerial Steering Committee (PPP-ISC)

1. A Public Private Partnerships Inter-ministerial Steering Committee (“PPP-ISC”) shall be established to control and coordinate PPP Projects in all economic and social sectors.
2. The PPP-ISC shall consist of the following standing members:
 - 2.1. The Minister of Economy and Finance;
 - 2.2. Ministry of Trade and Industry;
 - 2.3. The Minister of Environment and Spatial Planning;
 - 2.4. A duly appointed representative of the Prime Minister, whose appointment shall be conferred and come into force by a formal decision of the Government.
3. Additionally, the highest level representative of any Public Authority having a direct interest in an individual PPP project, procurement, or Agreement shall serve ex officio as a temporary member of the PPP-ISC when issues directly relating to the relevant project, procurement or Agreement are under consideration.
4. The Minister of Economy and Finance shall direct and coordinate the activities of the PPP-ISC and act as its chairperson.

Article 12

Competencies of the PPP-ISC

1. The PPP-ISC shall provide leadership in the development of PPP policies and programs, and make recommendations to the Government of Kosovo for its consideration and adoption.
2. The PPP-ISC shall have the following rights and responsibilities:
 - 2.1. management of the national PPP program;
 - 2.2. development of general PPP policies;
 - 2.3. issuance of implementing regulations regarding rules and standards for PPP projects and project documents;

- 2.4. review and approval or disapproval of Project proposals on the basis of value-for-money and other considerations;
- 2.5. identification of a Contracting Authority for specific Projects;
- 2.6. acting as a Contracting Authority for specific Projects;
- 2.7. approval or disapproval Economic Supports for Projects;
- 2.8. oversight and review of performance compliance and project execution;
- 2.9. review and approval of proposed amendments and modifications to Agreements on the basis of value-for-money and similar considerations;
- 2.10. maintenance of a national concession assets registry;
- 2.11. making decisions relating to the use of funds deriving from PPP appropriations; and
- 2.12. making other relevant decisions relating to PPP.

3. All Public Authorities shall have the right to make recommendations to the PPP-ISC regarding the development of policies and directives and the PPP-ISC shall have the duty to duly consider said recommendations, prior to making its decisions.

4. In the event that a Project involves the transfer of rights which are the competency of more than one Public Authority, the PPP-ISC shall identify the Contracting Authority or Authorities for the corresponding Agreement and establish procedures for the coordination of responsibilities.

5. The PPP-ISC shall have the power to prohibit a Contracting Authority from issuing any solicitation document and/or formalizing any Agreement for any project which does not demonstrate value-for-money or meet minimum standards set forth by the PPP Unit. This authority shall also apply for all projects including rehabilitation of land and forests, as foreseen in article 2.1. point (I). This authority of PPP-ISC, shall not be valid for PPP projects that include municipality works, except if this project includes economic support, budgetary guarantees and/or quota obligations in amount higher than 5% of the annual budget of the respective municipality, for the year when the project was contracted.

6. The PPP-ISC shall be advised and supported in its functions by the PPP Unit, a technical secretariat established in the Ministry of Economy and Finance, in accordance with Article 13 of this law.

Article 13

PPP Unit

1. A Public-Private-Partnership central unit shall be set up in the Ministry of Economy and Finance to assist the PPP-ISC and Public Authorities in all activities relating to PPP. Its primary duties shall include the following:

- 1.1. providing technical assistance and support to Contracting Authorities and the PPP-ISC on all matters relating to PPP;
- 1.2. making recommendations regarding the PPP legal, regulatory, institutional and policy framework;
- 1.3. developing and promulgating procedures and standardized best practices;
- 1.4. reviewing and issuing opinions regarding the viability of proposed projects and make recommendations to the PPP-ISC and Contracting Authorities;
- 1.5. disseminating information regarding the PPP program and individual projects;
- 1.6. outreaching to stakeholders and public education campaigns on PPP;
- 1.7. advising and assisting the PPP-ISC on all matters relating to PPP; and
- 1.8. in general, coordinating activities relating to PPP in all economic and social sectors.

2. The general duties of the PPP Unit include the following:

- 2.1. requiring that Public Authorities provide details of projects being proposed, being prepared for tender, given for tender or for negotiations or that are in the process of implementation;
- 2.2. issuing standards and recommended practices relating to PPP;
- 2.3. preparing and distributing information and directives about PPP;
- 2.4. issuing standardized documents in order to harmonize tender procedures and Agreements;
- 2.5. submitting proposals for the strengthening of the legislative, regulatory, institutional and policy framework for PPP to the PPP-ISC;
- 2.6. coordinating technical assistance for relevant contracting authorities;
- 2.7. scrutinizing project-proposals, tenders and contracts and systems of contract governing;

2.8. monitoring and issuing opinions regarding the level of compliance of the Contracting Authority and the Private Partner with the terms of an Agreement; and

2.9. issuing technical opinions to the PPP-ISC and Contracting Authorities.

3. To ensure that key positions within the PPP Unit are filled with suitably qualified professionals, the Ministry of Economy and Finance may procure the services of qualified outside professional and/or technical experts to fill such positions, utilizing monies appropriated from the Kosovo Consolidated Budget, dedicated revenues, or external funding sources.

Article 14

Rights and Responsibilities of the Contracting Authority

1. The Contracting Authority shall enjoy all rights set forth in the Agreement, including without limit, the right to reasonably inspect the activities of the Private Partner and to ensure its strict compliance with the terms of the Agreement.

2. The Contracting Authority shall strictly comply with the terms of the Agreement and faithfully fulfill its obligations, as stipulated therein. Additional responsibilities of the Contracting Authority shall include:

2.1. execution of preparatory activities for a potential Project, including all relevant feasibility and options studies, financial models, value-for-money analysis and other studies necessary to structure a technically and financially viable Project;

2.2. submission of proposed Projects and requested Economic Supports for approval by the PPP-ISC and/or PPP Unit, in accordance with this law and subsequent directives;

2.3. establishment of a technically qualified project management team to oversee the transaction process, as required;

2.4. preparation of tender documents and specifications in accordance with applicable norms;

2.5. execution of the procurement process and selection of the Private Partner;

2.6. establishment of effective and transparent governance structure to monitor and enforce strict compliance by all parties with the terms Agreement;

2.7. provision of information, as reasonably requested, by the PPP-ISC and PPPU Unit; and

2.8. coordination of activities and compliance with directives issued by the PPP-ISC.

3. Regulatory competency for agreements of PPP shall be confined to functionally independent bodies with sufficient level of guaranteed autonomy that their decisions are taken without

political interference or inappropriate pressure from infrastructure operators, public service providers or parties included in the agreement.

4. Unless otherwise stipulated in the Agreement, the Contracting Authority shall be responsible for supervising the Private Partner and ensuring strict compliance with the terms of the Agreement.

Article 15 **Rights and Responsibilities of the Private Partner**

1. The Private Partner shall enjoy all rights set forth in the Agreement, including without limit, the exclusive right to utilize and/or exploit an Infrastructure Facility in accordance with the terms and conditions stipulated in the Agreement.

2. The Private Partner shall strictly comply with the terms of the Agreement and faithfully fulfill its obligations, as stipulated therein.

Article 16 **Rights and Responsibilities of Users of an Infrastructure Facility**

1. The public shall have access to infrastructure and services on a non-discriminatory basis and have the right to receive quality and continuous services for a reasonable price.

2. When so required by the terms of the Agreement, the public shall be required to pay tariffs or fees for the use of the facility or its services.

Article 17 **PPP Budget Considerations**

1. The Contracting Authority or Authorities shall be directly responsible for any budgetary appropriations required for a Project's implementation and oversight.

2. To supplement funding from the Budget of Republic of Kosovo and to generate own sourced revenues for the PPP Unit, the PPP-ISC may require that some or all Agreements establish fees that shall be paid by the Private Partner for the purposes of partially or fully compensating costs incurred by the PPP Unit, including:

2.1. **Transaction Fee:** The PPP-ISC may require that a transaction fee be paid by the Private Partner for the purposes of partially or fully compensating the costs associated with a specific transaction and to ensure sufficient financial resources are available for monitoring compliance with the terms of the Agreement. The amount of any transaction fee, as well as the terms and conditions relating to its payment, must be stipulated in the request for proposals documents. Payment of the transaction fee shall be considered a non-negotiable,

binding obligation of the selected Bidder.

2.2. **Oversight Fee:** The PPP-ISC may require that the Private Partner pay either a one-time or annual oversight fee for the purpose of partially or fully compensating the costs associated with monitoring compliance by all parties to a PPP Agreement. The amount of any oversight fee, as well as the terms and conditions relating to its payment, must be stipulated in the request for proposals documents. Payment of the oversight fee shall be considered a non-negotiable, binding obligation of the Private Partner.

3. In accordance with the Annual Appropriations Law and the Law on Public Financial Management and Accountability, the PPP Unit's own source revenues and designated grants may be used to finance the operations of the PPP Unit, including the engagement of staff.
4. Funds appropriated for the PPP Unit shall be disbursed by the Ministry of Economy and Finance, acting on behalf of the PPP-ISC.
5. The selection of qualified advisors who shall be funded by the PPP Unit budget shall be realized in accordance with the Law on Public Procurement.

PART IV

IDENTIFICATION OF POTENTIAL PROJECTS AND PROCEDURES FOR THE AWARD OF CONCESSIONS AND PUBLIC-PRIVATE-PARTNERSHIPS

PART I

Identification of Potential Projects

Article 18

Public Sector Initiative

1. The identification of Potential Projects shall be done by the competent Contracting Authority, a Public Authority, the PPP-ISC or the PPP Unit.
2. Before going to tender, the Contracting Authority shall carry out an investment-grade project feasibility study, as well as a viability and bank ability analysis to decide whether a potential Project should be implemented. This analysis shall be based upon the principles of value for money, as well as with sector strategic objectives, the technical and commercial feasibility of the potential project and its ability to attract potential private partners and private financing.
3. In the event that a proposed Concession or Public-Private-Partnership does not meet reasonable criteria confirming the Project's feasibility and value for money, then the Contracting Authority shall not be permitted to proceed to tender the project under this law.

4. The PPP Unit and the PPP-ISC shall have the authority to review the studies identified herein and if reasonably required, insist that additional studies be carried out by either the Contracting Authority or the PPP Unit prior to issuing a determination as to whether the project is authorized to proceed to tender.

5. Except identified projects in paragraph 5 of article 12 including municipality works without economic support, budgetary guaranties and/or quota obligations in amount higher than 5% of the annual budget in respective municipality, all PPP projects should have a written formal approval from PPP-ICS before continuing with the tender. The authorization shall be given or refused based on technical review of physibility study of the investing scale and other documents related to the project, and based on recommendations made by PPP unit in relation to draft documents of the tender.

Article 19 Private Sector Initiative

Potential Concessions or Public-Private-Partnerships may also be identified by the private sector through unsolicited proposals, in accordance with the procedures set forth in Article 36 of this law.

PART II Selection of the Private Partner

CHAPTER I General Principles

Article 20 Provisions regulating the selection and award proceedings

The selection of the Private Partner shall be conducted in accordance with Articles 22 to 44 of this law.

Article 21 Nullity of Agreements

If the Procurement Review Body (PRB) determines that an Agreement has been awarded by a Contracting Authority in violation of this law, such contract shall be null and void. The PRB may decide if such a contract is valid and enforceable if:

- 1.1. the contract has already been wholly or substantially performed, and

1.2. taking into account the probable consequences for all interests likely to be harmed, including the public interest, it concludes that negative consequences exceed the benefits that may be achieved. In such a case, the PRB shall have the authority to take whatever measures it deems necessary to ensure that the concerned Contracting Authority thereafter strictly observes the requirements of this law.

Article 22 Selection Stages

The Private Partner shall be selected through a pre-qualification procedure, accompanied by a request for proposal procedure, as set forth in Articles 23 through 44 of this law.

CHAPTER II Prequalification and Pre-Selection of Bidders

Article 23 Purpose and Procedure of Prequalification

1. When PPP-ISC approves the project and authorizes the commencement of tendering procedure in compliance with paragraph 18.5, the Contracting Authority shall engage in pre-selection proceedings with a view to identifying Bidders that are suitably qualified to successfully implement the envisaged concession or PPP project.
2. The invitation to participate in the pre-selection proceedings shall be published in accordance with the relevant provisions of the Law on Public Procurement and shall allow sufficient time for Bidders to prepare and submit their applications.
3. The invitation to participate in the pre-selection proceedings shall include at least the following:
 - 3.1. a description of the Infrastructure Facility;
 - 3.2. an indication of other essential elements of the project, such as the services to be delivered by the Private Partner, basic performance measures, and the financial arrangements envisaged by the Contracting Authority;
 - 3.3. where already known, a summary of the main terms and conditions of the proposed Agreement;
 - 3.4. the manner and place for the submission of applications for pre-selection, including the deadline for the submission, expressed as a specific date and time; and
 - 3.5. the manner and place for solicitation of the pre-selection documents.

4. In addition to the above, the pre-selection documents shall include at least the following information:

4.1. the pre-selection criteria in accordance with Article 24 of this Law;

4.2. whether the Contracting Authority intends to waive the limitations on the participation of consortia set forth in this law;

4.3. whether the Contracting Authority intends to request only a limited number of pre-selected Bidders to submit proposals upon completion of the pre-selection proceedings in accordance with paragraph 2, Article 26 of this law, and, if applicable, the manner in which this selection will be carried out;

4.4. the proposed timeline for the tendering process; and

4.5. incorporation requirements for the successful Bidder.

Article 24 **Pre-selection criteria**

1. In order to qualify for the selection proceedings, interested Bidders must meet objectively justifiable criteria that the Contracting Authority considers appropriate in the particular proceedings, as stated in the pre-selection documents. These criteria shall include at least the following:

1.1. adequate professional and technical qualifications, human resources, equipment and other physical facilities as necessary to successfully perform all services required for the phases of the project;

1.2. sufficient capacity to manage and fulfill the financial requirements of the project; and

1.3. appropriate managerial and organizational capability, reliability and experience, including previous experience in the delivery of similar infrastructure and services.

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

2.1. 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;

2.2. they have not been found guilty of producing false documents.

Article 25
Participation of Consortia

1. The Contracting Authority, when first inviting the participation of Bidders in the selection proceedings, shall allow them to form bidding consortia. The information required from members of bidding consortia to demonstrate their qualifications in accordance with the previous Article shall relate to the consortium, as a whole as well as to its individual participants.
2. Unless otherwise stated in the pre-selection documents, each member of a consortium may participate, either directly or indirectly, in only one consortium at the same time. A violation of this rule shall cause the disqualification of the consortium and of the individual members.
3. When considering the qualifications of bidding consortia, the Contracting Authority shall consider the capabilities of each of the consortium members and assess whether the combined qualifications of the consortium members are adequate to meet the needs of all phases of the project.

Article 26
Decision on pre-selection

1. The Contracting Authority shall make a decision with respect to the qualifications of each Bidder that has submitted an application for pre-selection. In reaching that decision, the Contracting Authority shall apply only the criteria that are set forth in the pre-selection documents. All pre-selected Bidders shall thereafter be invited by the Contracting Authority to submit proposals in accordance with Articles 27 to 35 of this law.
2. Notwithstanding the preceding paragraph, the Contracting Authority may, provided that it has made an appropriate statement in the pre-selection documents to that effect, reserve the right to request proposals upon completion of the pre-selection proceedings only from a limited number of pre-selected Bidders that best meet the pre-selection criteria. For this purpose, the Contracting Authority shall rate the Bidders that meet the pre-selection criteria on the basis of the criteria applied to assess their qualifications and draw up the list of Bidders that will be invited to submit proposals upon completion of the pre-selection proceedings. In drawing up the list, the Contracting Authority shall apply only the manner of rating that is set forth in the pre-selection documents.

CHAPTER III

Procedures for Requesting Proposals

Article 27_

Single-stage and two-stage procedures for Solicited Proposals

1. The procedures for solicited proposal shall take place in 1 or 2 stages.
2. Against payment of any fee that might be applied or assessed, the contracting authority shall provide the pre-qualified bidders with the tender specifications and related documents, in compliance with Article 28 of this law.
3. Notwithstanding the above, the contracting authority may use a two-staged procedure to request proposals from pre-selected Bidders, if elements of the project, such as project specifications, performance indicators, financial arrangements or contractual terms cannot be described in the request for proposal document in a manner sufficiently detailed or accurate to permit the bidders to formulate their final proposals.
4. Where a two-stage procedure is used, the following provisions apply:
 - 4.1. 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;
 - 4.2. 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 containing the questions raised and the clarifications provided by the Contracting Authority;
 - 4.3. following examination of the proposals received, the Contracting Authority may review and, as appropriate, 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 set forth in the initial request for proposals, as well as by adding characteristics or criteria to it. The Contracting Authority shall indicate in the record of the selection proceedings the justification for any revision to the request for proposals. Any such deletion, modification or addition shall be communicated in the invitation to submit final proposals;
 - 4.4. in the second stage of the proceedings, 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 28 to 35 of this Law.

Article 28
Content of the request for proposals

1. The request for proposals shall include at least the following information:

1.1. general information as may be required by the Bidders in order to prepare and submit their proposals, including information on the deadline for submission of proposals;

1.2. project specifications and performance indicators, as appropriate, including the Contracting Authority's requirements regarding safety and security standards and environmental protection;

1.3. the contractual terms proposed by the Contracting Authority, including an indication of which terms are deemed to be non-negotiable;

1.4. criteria for evaluating proposals and the thresholds, if any, set by the Contracting Authority for identifying non-responsive proposals; the relative weight to be accorded to each evaluation criterion; and the manner in which the criteria and thresholds are to be applied in the evaluation and rejection of proposals.

Article 29
Bid securities

1. The request for proposals shall set forth the requirements with respect to the issuer and the nature, form, amount and other principal terms and conditions of the required bid security.

2. A Bidder shall not forfeit any bid security that it may have been required to provide, other than in cases of:

2.1. withdrawal or modification of a proposal after the deadline for submission of proposals;

2.2. failure to enter into final negotiations with the Contracting Authority pursuant to paragraph 1 Article 35 of this law;

2.3. failure to submit its best and final offer within the time limit prescribed by the Contracting Authority pursuant to paragraph 2 Article 35 of this law;

2.4. failure to sign the Agreement, if required by the Contracting Authority to do so, after the proposal has been accepted;

2.5. failure to provide required security for the fulfillment of the Agreement after the proposal has been accepted or to comply with any other condition prior to signing the Agreement specified in the request for proposals.

Article 30
Clarifications and modifications

1. The Contracting Authority may, whether on its own initiative or as a result of a request for clarification by a Bidder, review and, as appropriate, revise any element of the request for proposals.
2. Each change shall be communicated promptly to all candidates having requested the documents. If the contracting authority deems it necessary to change the documents, and when this is done with less than two -third (2/3) or more of the time period for the preparation of bids, then the contracting authority shall postpone the deadline for bid submission for one third (1/3) of the original period.
3. The Contracting Authority shall indicate in the record of the selection proceedings 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 31
Submission of Proposals

The Bidders shall submit their proposals in writing, signed and placed in sealed envelopes. A proposal received by the Contracting Authority after the deadline for submission of proposals shall not be opened and shall be returned to the Bidder that submitted it.

Article 32
Evaluation criteria

1. The criteria for the evaluation and comparison of the technical proposals shall include at least the following:
 - 1.1. technical soundness;
 - 1.2. compliance with environmental standards;
 - 1.3. operational feasibility and efficiency;
 - 1.4. quality of services and measures to ensure their continuity;
 - 1.5. the social and economic development potential offered by the proposals.
2. The criteria for the evaluation and comparison of the financial and commercial proposals shall include, as appropriate:
 - 2.1. the present value of the proposed tolls, unit prices and other charges over the Agreement

period;

2.2. the present value of the proposed direct payments by the Contracting Authority, if any;

2.3. the costs for design and construction activities, annual operation and maintenance costs, present value of capital costs and operating and maintenance costs;

2.4. the extent of economical support, if any, expected from a Public Authority;

2.5. the soundness and viability of the proposed financial arrangements;

2.6. the extent of acceptance of the negotiable contractual terms proposed by the Contracting Authority in the request for proposals; and

2.7. potential of economic and social development offered from proposals.

Article 33 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 above, 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 34 Further demonstration of fulfillment of qualification Criteria

The Contracting Authority may require any Bidder that has been pre-selected to demonstrate again its qualifications in accordance with the same criteria used for pre-selection. The Contracting Authority shall disqualify any Bidder that fails to demonstrate again its qualifications, if requested to do so.

Article 35 Final negotiations

1. The Contracting Authority shall rank all responsive proposals on the basis of the evaluation criteria and invite for final negotiation of the Agreement the Bidder that has attained the best rating.

2. Final negotiations shall not concern those contractual terms, if any, that were stated as non-negotiable in the final request for proposals.

3. If it becomes apparent to the Contracting Authority that the negotiations with the Bidder invited will not result in an Agreement within a reasonable timeframe, the Contracting Authority shall inform the Bidder of its intention to terminate the negotiations and give the Bidder thirty (30) days to formulate its best and final offer. If the Contracting Authority does not find that proposal acceptable, it shall terminate the negotiations with the Bidder concerned and execute any corresponding guarantees. The Contracting Authority shall then invite for negotiations the other Bidders in the order of their ranking until it arrives at an Agreement or rejects all remaining proposals. The Contracting Authority shall not resume negotiations with a Bidder with which negotiations have been terminated pursuant to this paragraph.

CHAPTER IV

Negotiation of Agreements without Competitive Procedures

Article 36

Circumstances authorizing award without competitive procedures

1. Subject to approval in the first instance by the PPP-ISC and in the second instance, by the Public Procurement Regulatory Commission, the Contracting Authority is authorized to negotiate an Agreement without using the procedure set forth in Articles 23 to 35 in the following instances:

1.1. when there is an urgent need for ensuring continuity in the provision of the service and engaging in the competitive procedures set forth in Articles 23 to 35 would be impractical, provided that the circumstances giving rise to the urgency were neither foreseeable by the Contracting Authority nor the result of dilatory conduct on its part;

1.2. where the project involves matters pertaining to public security;

1.3. in other cases where the Public Procurement Regulatory Commission authorizes such an exception for compelling reasons of public interest.

2. The duration of an Agreement signed according to sub-paragraph 1.1. of paragraph 1 of this Article shall not exceed twelve (12) months.

Article 37

Procedures for Negotiating of Agreements

1. Where an Agreement is negotiated without using the competitive tender procedures set forth in Articles 23 to 34, the Contracting Authority shall:

1.1. except for Agreements negotiated pursuant to subparagraph 1.2. of Article 36 of this law, cause a notice of its intention to commence negotiations in respect of an Agreement to be published in accordance with the relevant provisions of the Law on Public Procurement;

1.2. engage in negotiations with as many persons as the Contracting Authority judges capable of carrying out the project as circumstances permit;

1.3. establish evaluation criteria against which proposals shall be evaluated and ranked.

CHAPTER V

Unsolicited Proposals

Article 38

Admissibility of Unsolicited Proposals

The contracting authority is authorized to review and accept unsolicited proposals pursuant to the procedures set forth in Articles 39 to 40 herein, provided that such proposals do not relate to a project for which selection procedures have been initiated or announced.

Article 39

Procedures for Determining the Admissibility of Unsolicited Proposals

1. Within ninety (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, inform the proponent.

2. If the project is considered to be potentially in the public interest, the Contracting Authority shall invite the proponent to submit as much information on the proposed project as is feasible to allow the Contracting Authority to make a proper evaluation of the proponent's qualifications and the technical and economic feasibility of the project and to determine whether the project is likely to be successfully implemented in the manner proposed in terms acceptable to the Contracting Authority. For this purpose, the proponent shall submit within one hundred twenty (120) days of the request from the Contracting Authority, a technical and economic feasibility study, an environmental impact study and satisfactory information regarding the concept or technology contemplated in the proposal.

3. In considering an 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 twelve (12) month from its receipt.

Article 40
Initiation of the Selection Procedure

1. Within six (6) months of receipt of the documentation set forth in paragraph 2 of Article 39 of this law, the Contracting Authority shall formally decide whether to accept or reject the potential project derived from the unsolicited proposal. If the unsolicited proposal is accepted by the contracting authority, the contracting authority, when suitable, firstly shall request authorization from PPP-ICS appointed in paragraph 5 of Article 18 of this law to move on towards the tender and after the approval shall initiate a competitive selection procedure in accordance with Articles 23 to 35 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 and any copies of documents that the proponent submitted and prepared throughout the procedure.
2. The proponent shall be invited to participate in any competitive selection procedure initiated in response to its unsolicited proposal, and upon decision of the Contracting Authority, 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.

CHAPTER VI
Miscellaneous Provisions

Article 41
Confidentiality

The Contracting Authority shall treat proposals in such a manner as to avoid the disclosure of their content to competing Bidders. Any discussions, communications and negotiations between the Contracting Authority and a Bidder shall be confidential. Unless required by law or by a court order or permitted by the request for proposals, no party to the negotiations shall disclose to any other person any technical, price or other information in relation to discussions, communications and negotiations pursuant to the aforementioned provisions without the consent of the other party.

Article 42
Notice of contract award

Except for Agreements awarded pursuant to subparagraph 1.2. of paragraph 1 of Article 36 of this law, the Contracting Authority shall cause a notice of the contract award to be published in accordance with the relevant provisions of the Law on Public Procurement. The notice shall identify the Private Partner and include a summary of the essential terms of the Agreement.

Article 43
Record of selection and award proceedings

The Contracting Authority shall keep an appropriate record of information pertaining to the selection and award proceedings in accordance with the relevant provisions of the Law on Public Procurement.

Article 44
Review procedures

A Bidder that claims to have suffered or that may suffer, loss or injury due to a breach of a duty imposed on the Contracting Authority by the law may seek review of the Contracting Authority's acts or failures to act in accordance with the relevant provisions of the Law on Public Procurement.

PART V

THE PPP AGREEMENT

PART 1
Content and General Provisions

Article 45
Governing Law

1. The Agreement shall be governed by the law of the Republic of Kosovo.
2. The Private Partner, its shareholders, and other business partners shall be free to choose the law governing their relations.

Article 46
Contents of the Agreement

1. The Agreement shall provide for such matters as the parties deem appropriate, such as:
 - 1.1. the nature and scope of works to be performed and services to be provided by the Private Partner;
 - 1.2. the conditions for provision of those services and the extent of exclusivity, if any, of the Private Partner's rights under the Contract;

- 1.3. the assistance that the Contracting Authority may provide to the Private Partner in obtaining licenses and permits to the extent necessary for the implementation of the project;
- 1.4. the extent to which the Private Partner shall be authorized to subcontract the services it must provide in accordance with the Agreement;
- 1.5. any requirements relating to the establishment and minimum capital of a legal entity incorporated in accordance with Article 52 of this law;
- 1.6. the ownership of assets related to the project and the obligations of the parties, as appropriate, concerning the acquisition of the project site and any necessary easements, in accordance with Articles 47 to 49 of this law;
- 1.7. the remuneration of the Private Partner, whether consisting of tariffs or fees for the use of the facility or the provision of services; the methods and formulas for the establishment or adjustment of any such tariffs or fees; and payments, if any, that may be made by the Contracting Authority or other Public Authority;
- 1.8. procedures for the review and approval of engineering designs, construction plans and specifications by the Contracting Authority, and the procedures for testing and final inspection, approval and acceptance of the Infrastructure Facility;
- 1.9. the extent of the Private Partner's obligations to ensure, as appropriate, the modification of the service so as to meet the actual demand for the service, its continuity and its provision under essentially the same conditions for all users;
- 1.10. the Contracting Authority's or other Public Authority's right to monitor the works and services to be provided by the Private Partner and the conditions and extent to which the Contracting Authority or any other authorized Public Authority may order variations in respect of the works and conditions of service or 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;
- 1.11. the extent of the Private Partner's obligation to provide the Contracting Authority or any other Public Authority with reports and other information on its operations;
- 1.12. mechanisms to deal with additional costs and other consequences that might result from any order issued by the Contracting Authority or another Public Authority in connection with subparagraphs 1.9. and 1.10. of this paragraph, including any compensation to which the Private Partner might be entitled;
- 1.13. to the extent considered necessary, any rights of the Contracting Authority to review and approve major contracts to be entered into by the Private Partner, in particular with the Private Partner's own shareholders or other affiliated persons;
- 1.14. guarantees of performance to be provided and insurance policies to be maintained by

the Private Partner in connection with the implementation of the project;

1.15. remedies available in the event of default of either party;

1.16. the extent to which either party may be exempt from liability for failure or delay in complying with any obligation under the Contract owing to circumstances beyond its reasonable control;

1.17. the duration of the Contract and the rights and obligations of the parties upon its expiry or termination;

1.18. the manner for calculating compensation in the case of early termination;

1.19. the governing law and the mechanisms for the settlement of disputes that may arise between the Contracting Authority and the Private Partner;

1.20. the rights and obligations of the parties with respect to confidential information.

1.21. identification of the institutions and/or personnel directly responsible for contract oversight and monitoring.

Article 47 Ownership of assets

1. The Agreement shall specify which assets are or shall be publicly owned property and which assets are or shall be the private property of the Public Partner. The Contract shall in particular identify which assets belong to the following categories:

1.1. assets, that the Private Partner is required to return or transfer to the Contracting Authority or to another entity indicated by the Contracting Authority in accordance with the terms of the Agreement;

1.2. assets, that the Contracting Authority, at its option, may purchase from the Private Partner; and

1.3. assets that the Private Partner may retain or dispose of upon expiry or termination of the Agreement.

Article 48 Acquisition of rights related to the project site

The Contracting Authority or other Public Authority under the terms of the law and the Agreement shall make available to the Private Partner or, as appropriate, shall assist the Private

Partner in obtaining such rights related to the project site, including PART thereto, as may be necessary for the implementation of the project.

Article 49 Easements

1. The Private Partner shall have the right to enter upon, transit through or do work or fix installations upon property of third parties, as appropriate and required for the implementation of the project in accordance with the provisions of the applicable law on property rights.
2. Any easements that may be required for the implementation of the project shall be created in accordance with the applicable law on property rights.

Article 50 Operation of infrastructure

1. The Agreement shall set forth, as appropriate, the extent of the Private Partner's obligations to ensure:
 - 1.1. the modification of the service so as to meet the demand for the service;
 - 1.2. the continuity of the service;
 - 1.3. the provision of the service under essentially the same conditions for all users;
 - 1.4. the non-discriminatory access, of other service providers to any public infrastructure network operated by the Private Partner.
2. The Private Partner shall have the right to issue and enforce rules governing the use of the facility, subject to the approval of the Contracting Authority or any other authorized Public Authority.

Article 51 Financial Provisions

1. The Private Partner shall have the right to charge, receive or collect tariffs or fees for the use of the facility or its services in accordance with the Agreement, which shall provide for methods and formulas for the establishment and adjustment of those tariffs or fees in accordance with the rules established by the competent Public Authority.
2. When applicable, the Agreement shall expressly identify the terms and conditions of any and all payments, guarantees, subsidies or other financial supports to be provided by the Contracting Authority

Article 52
Organization of the Private Partner

The Contracting Authority shall require that the successful Bidder establish an independent legal entity incorporated under the laws of Kosovo, prior to formalizing an Agreement. Any requirement relating to the minimum capital of such a legal entity and the procedures for obtaining the approval of the Contracting Authority to its statute and by-laws and significant changes therein shall be set forth in the Agreement, in a manner consistent with the terms of the request for proposals.

Article 53
Transfer of controlling interest in the Private Partner

Except as otherwise provided in the Agreement, a controlling interest in the Private Partner may not be transferred to third parties without the consent of the Contracting Authority. The Agreement shall set forth the conditions under which consent of the Contracting Authority shall be given.

Article 54
Security interests

1. Subject to any restriction that may be contained in the Agreement, the Private Partner has the right to create security interests over any of its assets, rights or interests, including those relating to the Infrastructure Project, as required to secure any financing needed for the project.
2. The shareholders of the Private Partner shall have the right to pledge or create any other security interest in their shares in the Private Partner.
3. No security under paragraph 1 may be created over public property or other property, assets or rights needed for the provision of a public service, where the creation of such security is prohibited by the applicable law.

Article 55
Assignment of the Agreement

Except as otherwise provided in Article 54 of this law, the rights and obligations of the Private Partner under the Agreement may not be assigned to third parties without the consent of the Contracting Authority. The Agreement shall set forth the conditions under which the Contracting Authority shall give its consent to an assignment of the rights and obligations of the Private Partner under the Agreement, including the acceptance by the new Private Partner of all obligations thereunder and evidence of the new Private Partner's technical and financial capability as necessary for providing the service.

Article 56
Change of Law

The Agreement shall set forth the extent to which the Private Partner is enPARTd to compensation in the event that the cost of the Private Partner's performance of its obligations deriving from the Agreement has substantially increased or that the value that the Private Partner receives for such performance has substantially diminished as a result of changes in legislation or regulations specifically applicable to the Infrastructure Facility or the services it provides.

Article 57
Revision of the Agreement

1. Without prejudice to Article 56 of this law, the Agreement shall further set forth the extent to which the Private Partner is enPARTd to an adjustment of the Agreement with a view to providing compensation in the event that the cost of the Private Partner's performance of the Agreement has substantially increased or that the value that the Private Partner receives for such performance has substantially diminished as a result of:

1.1. changes in economic or financial conditions; or

1.2. changes in legislation or regulations not specifically applicable to the Infrastructure Facility or the services it provides;

Provided that the economic, financial, legislative or regulatory changes:

1.1. occur subsequent to the formalization of the Agreement;

1.2. are beyond the control of the Private Partner; and

1.3. are of such a nature that the Private Partner could not reasonably be expected to have taken them into account at the time the Agreement was negotiated or to have avoided or overcome their consequences.

2. The Agreement shall establish procedures for revising, amending, and modifying the terms of the Agreement.

Article 58
Step-In by the Contracting Authority

Under the circumstances set forth in the Agreement, the Contracting Authority has the right to temporarily take over the operation of the facility for the purpose of ensuring the effective and uninterrupted delivery of the service in the event of serious failure by the Private Partner to

perform its obligations and to rectify the breach within a reasonable period of time after having been given notice by the Contracting Authority to do so.

Article 59
Substitution of the Private Partner

In accordance with the terms and conditions set forth in the Agreement, the Contracting Authority may agree with the entities extending financing for an Infrastructure Project to provide for the substitution of the Private Partner by a new qualified entity or person appointed to perform under the existing Agreement upon serious breach by the Private Partner or other events that could otherwise justify the termination of the Agreement. With exception of the projects that include municipal works, any such substitution shall require prior approval by the PPP-ISC.

PART 2
Duration, Extension and Termination of the Agreement

CHAPTER I
Duration and Extension

Article 60
Duration and extension of the Agreement

1. The Agreement shall expressly set forth its duration, which shall in no event exceed the limits set forth in paragraph 1 of Article 8 of this law.
2. The Contracting Authority may agree to extend the duration of the Agreement for an additional period in compliance with paragraph 2 of Article 8 of this law.
3. By being subject of prior authorization by PPP-ICS, the Contracting Authority may agree to extend duration of the Agreement in the following circumstances:
 - 3.1. delay in completion or interruption of operation due to circumstances beyond the reasonable control of either party;
 - 3.2. project suspension brought about by acts of the Contracting Authority or other public authorities; or
 - 3.3. increase in costs arising from requirements of the Contracting Authority not originally foreseen in the Agreement, if the Private Partner would not be able to otherwise recover said costs without such extension.

CHAPTER II

Expiry and Termination of the Agreement

Article 61

Expiry of the Agreement

Unless terminated earlier pursuant to the provisions stated herein, the Agreement shall terminate at the end of the period specified in the Agreement and its revisions.

Article 62

Early Termination of the Agreement by the Contracting Authority

1. With prior approval of PPP-ISC, the Contracting Authority may terminate the Agreement:
 - 1.1. in the event that it can no longer be reasonably expected that the Private Partner will be able or willing to perform its obligations; or
 - 1.2. for compelling reasons of public interest, subject to payment of compensation to the Private Partner, the terms of the compensation set forth in the Agreement.

Article 63

Early Termination of the Agreement by the Private Partner

1. The Private Partner may not terminate the Agreement except under the following circumstances:
 - 1.1. in the event of material breach of Agreement by the Contracting Authority or other Public Authority;
 - 1.2. if the conditions for a revision of the Agreement under Article 57, paragraph 1, are met, but the parties have failed to agree on a revision of the Agreement; or
 - 1.3. if the cost of the Private Partner's performance of the Agreement has substantially increased or the value that the Private Partner receives for such performance has substantially diminished as a result of acts or omissions by the Contracting Authority or other public authorities and the parties have failed to agree on the legally appropriate remedies.

Article 64
Early Termination of the Agreement for Other Reasons

1. Either party shall have the right to terminate the Agreement in the event that the performance of its obligations is rendered impossible due to force majeure or circumstances beyond either party's reasonable control.
2. The parties shall also have the right to terminate the Agreement by mutual consent.

CHAPTER III
Arrangements upon Termination or Expiry of the Agreement

Article 65
Compensation upon termination of the Agreement

The Agreement shall stipulate how compensation due to either party is calculated in the event of termination of the Agreement, providing, where appropriate, for compensation for the fair value of works performed under the Agreement, costs incurred or losses sustained by either party, including, as appropriate, lost profits.

Article 66
Wind-up and transfer measures

1. The Agreement shall provide, as appropriate, for:
 - 1.1. procedures for the transfer of assets to the Contracting Authority;
 - 1.2. the compensation to which the Private Partner may be entitled for the transfer or sale of assets to the Contracting Authority or to a new Private Partner;
 - 1.3. the transfer of technology required for the operation of the facility;
 - 1.4. the preparation of the Contracting Authority's personnel or of a successor Private Partner in the operation and maintenance of the facility;
 - 1.5. the provision, by the Private Partner, of continuing support services and resources, including the supply of spare parts, if required, for a reasonable period after the transfer of the facility to the Contracting Authority or to a successor.

PART 3 DISPUTE RESOLUTION

Article 67

Disputes between the Contracting Authority and the Private Partner

1. Any disputes between the Contracting Authority and the Private Partner shall be settled through the dispute settlement procedures agreed by the parties in the Contract.
2. If the contract does not specify the dispute settlement procedures, the disputes shall be settled with the agreement between parties or by competent court.

Article 68 Arbitration

Amongst the dispute resolutions mechanisms, the Agreement may provide for procedures for international arbitration, the resolution of which shall be binding and definitive on the parties.

Article 69

Disputes involving customers or Users of the Infrastructure Facility

Where the Private Partner provides services to the public or operates infrastructure facilities accessible to the public, the Contracting Authority may require the Private Partner to establish simplified and efficient procedures for handling claims submitted by its customers or users of the Infrastructure Facility.

PART VI PROCEDURES OF PROCUREMENT REVIEW

Article 70

Procurement Review Body

1. The Procurement Review Body (PRB) shall be responsible for ensuring the proper implementation of PARTs IV and V of this law. The PRB shall, therefore, have the same functions and powers with respect to the implementation of this law as it has with respect to the implementation of the Law on Public Procurement.
2. The procedure settled in the Law on Public Procurement in respect to the process of appeal and review of administrative decisions shall be applied in this law.

PART VII REPEAL PROVISIONS

Article 71 Law in force

This Law No. 02/L-44 “On the Procedure for the Award of Concessions”, dated April 27, 2006 shall be repealed.

Article 72 Transitory period

1. Continuous tendering procedures

Provisions of this law regarding the procurement procedures and prior authorizations from PPP-ICS shall not be valid for tendering procedures for Public-Private-Partnerships which are materially advanced on the day of promulgation of this law. PPP-ISC shall define which projects are “materially advanced” and shall expel from prior authorization and settled procedures in this law, but under no circumstance a project shall not be expelled from this law, except if (i) potential bidders have already been pre-qualified in compliance with procedures settled in the Law on Public Procurement or in directions of procurement settled by any international financial institution or (ii) an official request for proposal documents is published in compliance with the Law on Public Procurement.

2. Existing Steering Committees of the Projects

If at the time when this law is promulgated, a PPP project is being implemented actively under supervision of a steering committee of the project settled by the Government and if the steering committee of the project has finalized open public procurement to engage a qualified adviser of transaction on the day of promulgation of this law, the existing steering committee shall act as PPP-ISC for all purposes related to implementation of the project until the contract is awarded in compliance with this law.

3. Agreements Already Signed

This law shall not apply to concession contracts already signed prior to the date of enforcement of this law. The referenced contracts shall only be renewed, amended, or extended in compliance with this law.

Article 73
Implementation of Law

By enforcement of this law, Ministry on Economy and Finances and PPP-ISC shall establish and consolidate the PPP Unit, which acts within the Ministry on Economy and Finances.

Article 74
Entry into Force

This law shall enter into force after fifteen (15) days after publication in the Official Gazette of Republic of Kosovo.

Law No. 03/L-090
25 June 2009

President of the Assembly of the Republic of Kosovo

Jakup KRASNIQI