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# Chapter 10.

## CIS model PPP law

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**Interparliamentary Assembly of Member Nations of the Commonwealth of Independent States**

**Model law  
on public-private partnership**

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## Article 1. Purpose and object of regulation of this law

1. This law has been adopted with a view to ensuring uniform and systematic regulation of public-private partnerships; achieving social and economic development goals by public-law entities of the states; improving affordability and quality of goods, works, and services the provision of which follows from the functions and powers of the states; increasing the efficiency of budgets of public-law entities of the states; attracting investments into the economies of the states by combining resources of public and private partners for the purpose of investments and implementation of projects in various economic sectors; ensuring that risks associated with the preparation and implementation of public-private partnership projects are allocated fairly; guaranteeing the rights and legitimate interests of private partners, public partners, and financing organisations; ensuring the protection of the environment, informational transparency and other public interests.

2. This law shall form the legal foundation for regulation, coordination of policies and practical actions in the course of preparation and implementation of public-private partnership projects, as well as when entering into and performing public-private partnership agreements.

## Article 2. Principal terms used in this law

In this law, the following principal concepts shall have the following meanings:

Public-private partnership means mutually beneficial cooperation of public and private partners which is legally documented for a specified period of time, based on their pooling of resources (including monetary funds and other property, professional and other knowledge, expertise and skills) and allocation of risks among them (including financing and construction risks, risks associated with ensuring accessibility of or demand for a public-private partnership object or respective public services as well as other related risks) to attain any governmental, municipal or other public interest goals within the area of public interests and control.

Public-private partnership project means a project being implemented by a private partner and a public partner which involves making investments in any form with a view to attaining any governmental, municipal or other public interest goal, in particular, a design and engineering project, a project involving construction, development and operation of new infrastructural facilities or reconstruction, upgrading, expansion, other improvement and/or operation of existing infrastructural facilities or another project

enabling a public subject represented by respective authorities to perform its statutory duties in a greater scope and/or at a higher quality level.

Public-private partnership objects means immovable things, movable things, other property, including property rights, or a number of such objects related to each other as well as results of works and services falling within the area of public interests and control and being the object of a public-private partnership agreement.

Public-private partnership agreement means a civil law agreement setting forth the terms and conditions of implementation of a public-private partnership project.

Direct agreement means an agreement by and between a public partner, a private partner and one or more financing organisations and/or other parties retained by the private partner with a view to implementing a public-private partnership project which sets forth the terms and conditions of their cooperation in connection with the implementation of such project.

Improvement of a public-private partnership object means measures on reconstruction and/or modification of the public-private partnership object or its individual components based on introduction of new technologies, automation and mechanisation of production processes, replacement of obsolete and worn equipment by new, more efficient equipment, change of technological or functional designated uses of such object or its individual components, and/or other measures aimed at improving parameters and performance characteristics of the object or its individual components.

Private partner's fee means a fee payable to a public partner by a private partner under a public-private partnership agreement during the term of use (operation) of a respective public-private partnership object.

Availability payment means a fee payable by a public partner to a private partner under a public-private partnership agreement during the term of use (operation) and/or maintenance of a respective public-private partnership object by the private partner.

Public-private partnership company means a commercial corporate-type entity established to implement a public-private partnership project and involving both private and public partners.

### Article 3. Legislation on public-private partnership

1. Legislation on public-private partnership shall be based on the state's constitution and provisions of its national civil, budgetary, land, and other legislation.
2. National legislation on public-private partnership shall consist of a law on public-private partnership, other national legislative acts enacted pursuant thereto and other regulatory legal acts as well as municipal legal acts.

### Article 4. Principles of public-private partnership

Legal regulation of relations arising in the course of preparation and implementation of public-private partnership projects shall be based on the following principles:

- equality of public and private partners before the law;
- that goals of a public-private partnership should be attained with due account of interests of its private and public partners, general public, consumers, users of a respective infrastructural facility and other interested parties;
- transparency and accessibility of rules and procedures in the framework of public-private partnership;
- that a private partner should be selected on the basis of a tender, except in instances provided for by national legislation;
- free access of private parties to participation in a tender for the right to enter into public-private partnership agreements and non-discrimination of bidders taking part therein;
- that risks, benefits, guarantees and duties relating to performance of any agreements entered into to implement a public-private partnership project should be fairly allocated among the project's public and private partners;
- bona fide and mutually beneficial cooperation of the parties to an agreement entered into to implement a public-private partnership project;
- efficient management of a public-private partnership project with participation of its public and private partners and, should this be necessary, financing organisation, while maintaining the balance between their rights and legitimate interests;
- stability of the legal framework existing as of the entering into a public-private partnership agreement throughout its term; and

- other principles set forth by national legislation and international treaties.

### Article 5. Legal regime of activity of foreign parties

1. Unless otherwise is provided for by an international treaty or national legislation, foreign parties shall enjoy a national regime in relation to any and all procedures, conditions, rights, and duties arising out of this law and a public-private partnership agreement. Foreign legal entities shall be allowed to participate in a private partner selection process for the purpose of entering into a public-private partnership agreement on the same terms and conditions as any domestic parties.
2. The regime provided for by this Article shall apply to a foreign party provided that a similar regime is established by the state, of which the foreign individual in question is a citizen or in which the foreign legal entity in question is registered, in respect of its domestic parties.

### Article 6. Forms of public-private partnership

1. A public-private partnership project may be implemented by public and private partners by means of their entering into and performance of a public-private partnership agreement, participation in a public-private partnership company as well as in any other forms pursuant to national legislation and a respective international treaty.
2. Implementation of a public-private partnership project by public and private partners through their participation in a public-private partnership company may be accompanied by entering into and performing a public-private partnership agreement between the public partner and the public-private partnership company. In such a case, the rules of Chapter V of this law shall apply to the relations between the participants of the public-private partnership project.

## Chapter II. Preparation of a public-private partnership project and passing resolution on its implementation

### Article 7. Preparation of a public-private partnership project

1. A public-private partnership project shall be prepared by an authorised public body pursuant to a procedure set forth by national legal acts and within the limits of budgetary powers vested in such public body.

2. A public-private partnership project shall be prepared on the basis of preliminary financial and economic calculations that help assess its rationality and efficiency as well as identify its optimal form for the purpose of its successful implementation.

3. To take account of the interests of the general public, consumers, users of an infrastructural facility and other interested parties, a public-private partnership project should be prepared along with holding public hearings which shall be held based on the results of preparation of a financial feasibility study in respect of the project.

4. Requirements to professional qualifications of the public body employees who will be in charge of preparation of a public-private partnership project should be set forth by national legal acts.

#### Article 8. Unsolicited proposals

1. A proposal on implementation of a project in the form of a public-private partnership project may be developed and submitted to a body authorised to pass a resolution on implementation of such project by a potential private partner. When developing a proposal on implementation of a public-private partnership project, a potential private partner may negotiate with a proposed public partner. The body authorised to pass a resolution on implementation of the public-private partnership project shall be obliged to consider such proposal and pass the resolution thereon pursuant to a procedure and within time limits provided for by national legislation. A resolution against implementing a public-private partnership project (resolution against entering into a public-private partnership agreement) may only be passed by the body authorised to pass the resolution thereon in a limited number of instances, a list of which shall be provided for by national legal acts.

2. If a tender commission resolves that a public-private partnership agreement should be entered into with a different private partner, the potential private partner that has developed and submitted to the authorised body the above-mentioned proposal on implementation of the project in the form of a public-private partnership project shall be entitled to be fully compensated by the public partner or, if provided by respective tender documents, by the winner of the tender for the right to enter into the public-private partnership agreement for its reasonable and justified costs incurred by such potential private partner in connection with the development of that proposal.

#### Article 9. Preparing a financial feasibility study for a public-private partnership project

Methodologies of financial and economic calculations and application of criteria of social, financial and economic efficiency of public-private partnership projects, as well as maximal and minimal values of such criteria for the purpose of preparing a financial feasibility study for a project shall be selected pursuant to a procedure set forth by national laws and other legal acts and shall be based on the following criteria:

- conformance of a goal to be attained through implementation of a project to the social and economic development strategies of a respective public-law entity;
- demonstration of comparative benefits of implementation of a public-private partnership project in a particular form in comparison with other possible arrangements which can be used by the public partner to perform the public function imposed thereon by national legislation;
- ensuring, as a result of implementation of the project, continuous supply of a respective public service to the general public at a required quality level;
- budgetary implications of the decision to implement the public-private partnership project, its effects on the amount of revenues and long-term expenditure commitments of the governmental (local) budget along with other consequences of the implementation of the public-private partnership project;
- cost of the project and expected social and economic effects of its implementation;
- ensuring a fair balance between positive effects for the partners that are expected to be achieved as a result of the project implementation and allocation of identified risks between them;
- innovativeness of the project and the extent it uses knowledge-intensive, energy-saving or resources-saving technologies;
- environmental implications of the project implementation and possible measures designed to mitigate its adverse effects on the environment; and
- other criteria provided for by national legislation.

#### Article 10. Requirements in respect of qualified assessment of public-private partnership projects

1. The public body in charge of preparation of a public-private partnership project shall ensure that financial and economic calculations are submitted for approval,



pursuant to an established procedure, to the financial authority of a respective public-law entity as well as to the body authorised to carry out executive functions in the area of economic development of a respective territory or other authorities as provided for by national legislation.

2. The procedure for preparing a public-private partnership project approved by regulatory legal acts of a public-law entity shall set forth, in particular, the limits and rules of carrying out an independent expert examination of a financial feasibility study underlying the project.

#### **Article 11. Passing a resolution on implementing a public-private partnership project**

1. An authorised executive authority of a respective public-law entity shall pass a resolution on implementing a public-private partnership project upon the results of the project preparation, provided that the requirements set forth by national legal acts are met.

2. The resolution on implementing a public-private partnership project shall contain major financial and economic characteristics of the project which may include, among other things: the composition and parameters of a public-private partnership object; form of implementation of the public-private partnership project; expected (projected) minimum amount of investments to be made by a private partner; expected (projected) amount of budgetary financing, a procedure for, the amount and terms and conditions of provision of any governmental or municipal guarantees to the private partner, as well as any other obligations of the public partner; financial and economic rationales for the public-private partnership project; mechanism of and time limits for repayment of the private partner's investments; terms and conditions of the general public's access to public services to be provided using the public-private partnership object in respect of which the public-private partnership project is to be implemented; and other characteristics, as may be required. A procedure for, the amount and terms and conditions of the public partner's undertaking to cover expenses and provision thereby of governmental or municipal guarantees to the private partner should be specified in the resolution on implementation of the public-private partnership project and/or in the tender documents.

3. A resolution on implementing a public-private partnership project should set forth a procedure to select a private partner, time limits therefor and how it should be done.

## **Chapter III. Public-private partnership agreement**

### **Article 12. General provisions of public-private partnership agreements**

1. Unless otherwise is provided for in this law, under a public-private partnership agreement, the private partner undertakes, whether in part or in full, for its own account, including out of funds raised thereby, to design and/or build or otherwise create and/or reconstruct or otherwise improve a public-private partnership object specified in the agreement, carry out other works and/or provide services relating to the object to be so designed, built, reconstructed or otherwise improved as well as to transfer the results of such works to the public partner to subsequently be granted the right to possess and/or use the public-private partnership object or the ownership right therein, including with an option of transferring the same to the public partner into lease and the public partner's option to subsequently purchase it, with a view to using (operating) the object of the public-private partnership agreement, including by providing public services using such object or by rendering technical and other services in respect of the public-private partnership object (maintaining the same) until the expiration of a respective term set by the public-private partnership agreement.

A public-private partnership agreement may provide that a newly created, reconstructed or otherwise improved public-private partnership object may be transferred into ownership of a respective private partner without the latter's obligation to transfer the same into the public partner's ownership.

2. A public-private partnership agreement may provide for the duty of the public partner to grant to the private partner, on the terms and conditions set forth by this law and the agreement, the rights to possess and/or use a public-private partnership object or other objects, including land plots, results of intellectual activity or means of individualisation, with a view to conducting operations under the public-private partnership agreement. In such a case, the private partner shall have duties, as provided for by the public-private partnership agreement, to use (operate) such public-private partnership object or provide technical or other services in relation thereto (maintain the same).

3. A public-private partnership agreement may provide that the public partner shall assume part of expenditures required to create and/or reconstruct or otherwise improve a public-private partnership object or to use (operate) the same as well as that it shall

provide governmental or municipal guarantees to the private partner.

If the amount of financing provided by the public partner to create and/or reconstruct or otherwise improve the public-private partnership object exceeds the amount of financing provided by the private partner and if the ownership right to the object of that agreement (after the object was built, reconstructed or otherwise improved) arose or passed to the private partner, then, upon the expiration of the term of public-private partnership agreement, the private partner, if so provided by the above agreement, shall be obliged to transfer the ownership right to such object or provide respective compensation to the public partner on the terms and conditions set out in the public-private partnership agreement.

A public-private partnership agreement may provide for other forms and mechanisms of financial or other property-based participation of public and private partners in a public-private partnership project which shall be consistent with applicable legislation.

4. If a public partner does not have funds or has an insufficient amount of funds in a respective budget or has no other property or has insufficient property at its disposal, this shall not be grounds for modification or termination of such partner's obligations under a public-private partnership agreement or for its release from liability for failure to perform or improper performance of any such obligations.

5. A public-private partnership agreement may be a mixed contract. In such a case, rules of civil law on those contracts whose elements are contained in the public-private partnership agreement shall apply (to a respective extent) to relations arising thereunder, unless otherwise follows from this law or the substance of the agreement in question.

A public-private partnership agreement may provide for other elements or a combination thereof than those referred to in paragraph 1 of this Article, unless this contradicts the substance and principles of public-private partnership or any mandatory rules of this law or other acts of the civil legislation.

6. A public-private partnership agreement shall be a non-gratuitous contract. A public-private partnership agreement may provide that the public partner is obliged to pay to the private partner an availability payment in the amount, form, within time limits, pursuant to a procedure and on terms and conditions set forth by this law and the public-private partnership agreement, with due account of the private partner's right to receive revenues from sale of goods, works, or services to the general public and other consumers, as well as of other circumstances.

A public-private partnership agreement may provide that the private partner shall be obliged to pay a fee to the public partner.

The amount of such fee to be paid by the private partner, its form, procedure and time limits for its payment as well as other terms and conditions thereof shall be set forth in the public-private partnership agreement.

A private partner's fee may be set in the form of fixed-amount payments to be made regularly or as a lump sum in favour of the public partner; or in the form of a specified portion of products or revenues to be received by the private partner as a result of its operations under the public-private partnership agreement; in the form of transfer into the public partner's ownership of property owned by the private partner as well as in other forms consistent with the law. A public-private partnership agreement may also provide for a combination of different forms of a private partner's fee.

7. A public-private partnership agreement may provide that the private partner is obliged to obtain the consent of its public partner in respect of granting a pledge or other encumbrance over and/or disposal of a controlling block of shares in the charter capital of the private partner's entity in favour of any third parties.

A public-private partnership agreement may provide that the private partner shall be obliged to obtain the consent of a financing organisation retained thereby in respect of granting a pledge or other encumbrance over and/or disposal of a controlling block of shares in the charter capital of the private partner's entity in favour of any third parties.

8. In instances provided for by national legislation, risks of liability of the private partner and other parties involved in implementation of a public-private partnership project for any obligations arising as a result of harm caused to life, health, or property of third parties or the environment must be insured against.

9. General information about a public-private partnership agreement, particularly about its parties, date and place of its execution and other information about the agreement and amendments thereto, if any, should be published, as provided for by national legislation, in mass media and/or on a generally accessible website.

A list of general information to be published, place of and procedure for its publication shall be set forth by an authorised governmental authority or a local self-government body.

It shall not be allowed to charge a fee or demand registration or set any other conditions or restrictions in relation to one's access to such website.

### Article 13. Sectors where public-private partnerships can be implemented

A public-private partnership may be used in respect of public-private partnership objects in any sectors, including:

- transportation
- housing and utilities sector
- energy sector
- public and municipal management
- national defence, security and law enforcement
- telecommunications
- scientific research, education, training and culture
- social services
- healthcare, physical education, and sports
- tourism
- agriculture.

### Article 14. Parties to a public-private partnership agreement

1. Subject to any restrictions that may be imposed by national legislation, a private partner to a public-private partnership agreement may be an individual entrepreneur, a domestic legal entity, a foreign legal entity or two or more legal entities and/or individual entrepreneurs acting on the basis of an agreement without creating a legal entity.

No party that, pursuant to this law, other national laws or other legal acts, may act as a public partner in public-private partnerships and no legal entity controlled thereby may act as a private partner.

A legal entity is deemed to be under control of a public partner if the latter or any parties controlled thereby hold(s) a majority stake in the charter (share) capital of the legal entity in question and/or if such controlling party (parties) has (have) the right (powers), whether on the basis of an agreement or otherwise, to determine actions or decisions of such legal entity, appoint its one-person executive body and/or more than 50 per cent of members of its collective executive body and/or if such controlling party (parties) is (are) unconditionally able to elect more than 50 per cent of members of such legal entity's board of directors (supervisory board) or other collective management body.

A party that, pursuant to this law, national laws or other legal acts, may act as a public partner in public-private partnerships may not be a member of an association of legal entities and/or individual

entrepreneurs acting without creating a legal entity which is deemed to be a private partner for the purpose of its participation in a public-private partnership.

2. Subject to any restrictions that may be imposed by national legislation, the following parties may act as a public partner under a public-private partnership agreement:

- a state, municipality or other public entity represented by an authority authorised, within the limits of its powers, to enter into a public-private partnership agreement, or other organisation vested, by virtue of a law or other legal act, with the authority to enter into a public-private partnership agreement;
- any other organisation which is vested by a political subdivision with special powers to enter into a public-private partnership agreement by virtue of a law or other legal act.

3. Several public bodies and organisations (public subjects) may act on the side of a public partner. The rights and duties of such subjects in connection with their joint participation on the side of the public partner shall be determined by an agreement to be entered into between them. Such agreement should contain terms and conditions regarding:

- the scope and forms of participation (in particular, financial and/or other property-based participation) of the public subjects in a respective public-private partnership agreement;
- a procedure for exercise by the public subjects of their rights under the public-private partnership agreement, including for allocation of rights to a public-private partnership object upon its commissioning between by the public subjects, where the public partner acquires any rights to the public-private partnership object under the agreement; and
- a procedure for performance by the public subjects of their obligations under the public-private partnership agreement.

A copy of that agreement or an extract from it containing all the provisions affecting the private partner's rights and legitimate interests should be attached to the public-private partnership agreement when entering into the same or otherwise provided to the private partner prior to the entering into the public-private partnership agreement, or, alternatively, all such provisions affecting the private partner's rights and legitimate interests should be included in the main body of the public-private partnership agreement.

4. A respective public body may delegate the exercise of individual rights and duties of public bodies related to the implementation of a public-private partnership project to a legal entity.

A respective mandate should contain data enabling one to identify the legal entity to which the public body's powers have been so delegated, the scope of such powers, their term, and the date of the mandate. If any of the above details are missing, the mandate shall be invalid.

#### **Article 15. Terms and conditions of a public-private partnership agreement**

1. A public-private partnership agreement should include the following terms and conditions:

1) subject matter of the agreement: the scope, content of and other requirements to works and services relating to a respective public-private partnership project as well as other terms and conditions relating to the subject matter of the agreement, depending on particular types of agreements whose elements are contained in the public-private partnership agreement in question;

2) time limits and procedure for carrying out works (provision of services) relating to the public-private partnership project and purposes of use (operation) of a respective public-private partnership object;

3) time limits and procedure for transfer of the ownership rights, rights of possession and use of the public-private partnership project and, where applicable, rights to land plots and other property rights as may be required to implement the public-private partnership project;

4) a description (including technical and economic parameters and the composition) of the public-private partnership object and other property to be transferred under the agreement, purposes and term of their use (operation), and, where applicable, terms and conditions of, time limits and procedure for their return to the party that has provided the same, requirements to the quality of the public-private partnership object and other property being provided and returned;

5) terms and conditions as well as time of transfer of the burden of maintenance of any property to be transferred under the agreement, as well as risks of accidental loss of or damage to that property and procedure for allocating other risks provided for by the public-private partnership agreement between the parties;

6) methods, the amount of collateral, and term of securing performance by the private and public

partners of their obligations provided for by the subject matter of the agreement, as well as the obligations to transfer the property under the agreement;

7) term of the agreement and/or a procedure for determining the same;

8) forms, amounts, terms and conditions of, time limits or a procedure for payment of remuneration: an availability payment, a private partner's fee payable to the public partner and/or other payments, in particular, allocation of revenues in connection with the implementation of the public-private partnership project; and

9) other material terms and conditions provided for by this law and national legislation.

2. A public-private partnership agreement may also contain other terms and conditions, including:

1) obligations of the parties on preparing a territory required to create and/or improve a public-private partnership object and/or conduct operations provided for by the agreement;

2) technical and economic parameters and characteristics of designing, creating (reconstructing or otherwise improving) and/or operating a public-private partnership object;

3) obligations of the private partner to sell manufactured goods, perform works, or provide services on a domestic market during a time period set forth by the agreement;

4) obligations of the private partner to sell manufactured goods, perform works, or provide services at regulated prices (tariffs) and a procedure for approval of such prices (tariffs) for the private partner;

5) obligations of the private partner to provide certain benefits to consumers, including discounted prices of goods, works, or services, as provided for by the legislation and regulatory legal acts of a local self-government body;

6) target indicators of quality and volume of production of goods, performance of works, or provision of services when conducting operations provided for by the agreement;

7) obligations of the parties to insure against risks of accidental loss of and/or accidental damage to the object of the agreement and other property to be transferred thereunder;

8) obligations of the public partner to provide governmental or municipal guarantees to the private



partner, a procedure for and terms and conditions of provision of the same;

9) terms and conditions of approval by the public partner of termination (suspension) of operation of a public-private partnership object by the private partner, except in instances when such termination (suspension) is caused by a force majeure event, as well as other instances provided for by the legislation and the agreement between the parties, unless otherwise is provided for by the legislation;

10) terms and conditions of approval by the public partner of organisations being retained by the private partner to design, build or otherwise create, improve and use (operate) the object of the agreement, as well as of material terms and conditions of agreements with such organisations;

11) the possibility of the private partner granting, without the need to enter into an additional agreement, a pledge or other encumbrance over the public-private partnership object or its disposal under a condition precedent or the possibility of assignment of rights, in particular, if certain events specified in the agreement occur;

12) a procedure for giving a consent to a transfer by the private partner of the latter's rights and duties under the agreement, including by way of assignment of claims and/or transfer of a debt or to granting a pledge or other encumbrance over the public-private partnership object with a view to securing performance of any obligations under the agreement, as well as terms and conditions on which the public partner will give its consent to the transfer of rights and duties under the agreement, including various aspects of assumption by a new private partner of all the obligations under the agreement and presentation of evidence confirming that the new private partner has required technical and financial capabilities;

13) warranty obligations of the private partner relating to the results of the works to be performed under the agreement and property to be transferred thereunder;

14) a procedure for control by the public partner over the performance of the agreement;

15) rights and duties of other parties participating in the agreement, including in relation to exercising control over the parties' compliance with the terms and conditions of the agreement, giving a consent to certain actions, in particular, in relation to approval of retaining third parties for the purpose of implementation of the public-private partnership project or dismissing third parties from its implementation, or to collection and allocation of funds under the agreement, or to making other

payments in the amount and pursuant to the procedure provided for by the agreement;

16) the right of the public partner or, if so provided by a direct agreement entered into with a financing organisation, the right of such financing organisation, to dismiss, on a temporary basis, the private partner or other parties from implementation of the public-private partnership project, in particular, from its operation and to set forth a procedure for temporary replacement of the private partner or another party in the event that the private partner has materially violated any terms and conditions of the agreement, including through the fault of third parties, or in the event that any terms and conditions of implementation of the public-private partnership project have been violated by third parties and such violation has not been remedied within a reasonable time allowed for this purpose by the public partner as may be provided under the public-private partnership agreement or other agreement between the public and private partners, as well as upon the occurrence of other circumstances specified in the agreement, in particular, to prevent, mitigate, or eliminate risks or effects of emergencies, protect human health or ensure security or safety of any property or other rights and legitimate interests of individuals and legal entities, as well as to protect the environment;

17) warranties and representations of the parties regarding any circumstances that may be relevant to the implementation of the public-private partnership project;

18) the amount, terms and conditions of a procedure and time limits for payment of a cancellation penalty as well as a procedure for applying other consequences of a violation by the parties of their obligations under the public-private partnership agreement;

19) a procedure for amending the agreement;

20) exceptional instances when it shall be allowed to unilaterally change term and conditions of the agreement and/or unilaterally repudiate it, as well as a procedure for determining the amount of compensation to the private partner due and payable by the public partner in the event of early termination of the public-private partnership agreement;

21) a condition on measures of support to be provided by the public partner to the private partner, in particular, on assistance in obtaining licences, authorisations and approvals, in granting easements or setting reduced rent rates for use of any property owned by the state and/or a municipality;

22) a condition on a procedure for resolving disputes arising out of or in connection with the agreement, including using mediation procedures where the parties would retain an independent expert, as well as on choice of a court, including a state court, an arbitral tribunal or a court of international arbitration that would have jurisdiction over or be authorised to resolve any such disputes; and

23) other terms and conditions as may be agreed on by the parties to the public-private partnership agreement.

3. If national legislation provides that provision of goods, works, and services to individuals and other consumers may be fully funded out of the state budget, a public-private partnership agreement should not provide that such goods, work, or services shall be paid for at the expense of individuals and other consumers.

4. In respect of certain public-private partnership objects, an authorised national body may approve model (indicative, template) public-private partnership agreements intended to be recommendatory by nature.

5. A public partner, a private partner and a financing organisation may enter into a direct agreement on cooperation throughout the term of implementation of a public-private partnership project (direct agreement with the financing organisation) which may include the following terms and conditions:

1) a procedure for approval of a proposed new private partner and criteria that such partner should meet, in case of assignment by a private partner of its rights and transfer of its obligations under the public-private partnership agreement and/or if a private partner becomes unable to perform its obligations under the public-private partnership agreement, as well as in the event of other substitution of the private partner under that agreement, as well as the consequences of such substitution;

2) a procedure for giving a consent to the private partner's granting a pledge or other encumbrance over a public-private partnership object to secure performance of its obligations under the public-private partnership agreement and/or agreements with financing organisations;

3) exceptional instances when it shall be allowed to unilaterally change term and conditions of the direct agreement and/or unilaterally repudiate it, as well as a procedure for determining the amount of compensation to the private partner and financing organisation due and payable by the public partner in the event of early termination of the direct agreement;

4) instances of, a procedure for and consequences of modification and/or termination of the public-private partnership agreement upon the agreement between the parties or unilaterally;

5) instances of, a procedure for and consequences of dismissal, upon the initiative of the financing organisation, of the private partner or other parties from operation of a public-private partnership object; and

6) other terms and conditions consistent with the existing national legislation.

6. A public partner, private partner, financing organisation (where applicable) and a party (parties) retained by the private partner to implement a public-private partnership project, including contractors, operators, parties providing property required to implement the project and/or parties assuming respective obligations to ensure the implementation of such project, may enter into direct agreements regarding their cooperation throughout the term of its implementation (other direct agreements) containing any terms and conditions consistent with the existing national legislation.

## **Article 16. Conclusion, modification and termination of a public-private partnership agreement**

1. A public-private partnership agreement shall be entered based on the results of a selection of a private partner in accordance with the provisions of Chapter IV of this law.

2. A public-private partnership agreement may be amended or terminated upon the agreement of the parties, unless otherwise is provided for by national legislation or by such agreement.

3. A public-private partnership agreement may be amended or terminated at the request of either party on the basis of a court judgment:

- in the event that the agreement has been materially violated by either party thereto and such violation has not been remedied within a period provided for by the public-private partnership agreement or another agreement entered into between the public and private partners or, if no such period is set, within reasonable time, where the other party is substantially deprived of what it was entitled to expect at the time of the conclusion of the agreement;

- in the event of a fundamental change of circumstances on which the parties relied at the time they entered into the agreement, when the circumstances have changed to such extent that, if the parties could have reasonably foreseen such change, they would not have entered into the agreement or

would have entered into it on substantially different terms and conditions; and

- in other instances provided for by national legislation or the public-private partnership agreement.

4. Unless otherwise provided for by a public-private partnership agreement, it may be amended or terminated at the request of the private partner on the basis of a court judgment:

1) in the event of a delay in completion or suspension of a respective public-private partnership project resulting from any circumstance beyond the control of any of the parties;

2) in the event of suspension of the public-private partnership project as a result of any action on the part of the public partner, public bodies of the state or local self-government bodies;

3) if the public partner, a public body of the state or a local self-government body passes a resolution or takes an action preventing the private partner from performing its obligations under the public-private partnership agreement, including if any such party interferes with business operations of the private partner;

4) if the private partner's costs in connection with its performance of the agreement have significantly increased or if the value that it receives as a result of such performance has significantly decreased as a result of any action or omission on the part of the public partner or public bodies of the state, provided that the private partner cannot recover such costs without amending the public-private partnership agreement;

5) if the public partner or a public body of the state materially violates its obligations relating to the public-private partnership agreement;

6) if any actual data are found to be different from the data specified in tender documents or other data provided by the public partner to the private partner when entering into the public-private partnership agreement, or if any errors or irregularities are identified in any information so provided that prevent the private partner from performing its obligations under the public-private partnership agreement;

7) if there has been identified any encumbrance over a land plot or other movable or immovable property provided to the private partner in connection with the implementation of a public-private partnership project or other defect thereof which was not and should not have been known to the private partner when entering into the agreement; and

8) in other instances provided for by this law, national legislation or the public-private partnership agreement (unless otherwise covered by the public-private partnership agreement and/or respective direct agreements), the private partner, financing organisations and/or other interested parties taking part, directly or indirectly, in a public-private partnership project, may demand full compensation of losses, fair amendment of any terms and conditions of agreements that they previously entered into with a view to restoring the position that existed prior to the occurrence of any circumstances referred to in this paragraph, as well as application of other consequences provided for by the public-private partnership agreement and/or other agreements.

5. A public-private partnership agreement may be terminated by a court at the request of the public partner:

1) for any reason relating to public interests, provided that compensation is paid to the private partner and other parties in accordance with this law, other national legislation, and the public-private partnership agreement;

2) in other instances provided for by national legislation or the public-private partnership agreement.

6. A public-private partnership agreement may provide for instances when it may be terminated unilaterally, without applying to court.

7. A public-private partnership agreement shall terminate upon the expiration of its term or if the parties agree.

8. A party may apply to court seeking an amendment to or termination of a respective public-private partnership agreement only after it has received the other party's refusal to amend or terminate the same or has failed to get a response from the latter within a time period specified in a respective proposal or provided for by the agreement, or, if such period is not so specified or provided, within a time period provided for by national legislation.

9. Unless otherwise is provided for by a public-private partnership agreement and/or respective direct agreements, if the public-private partnership agreement is amended or terminated because of any circumstance for which the public partner or private partner is responsible or none of the parties is responsible, the private partner, financing organisations and/or other participants in a respective public-private partnership project that have entered into agreements with the public partner, may demand that the public partner fully compensate them for



losses or pay fair compensation thereto without being required to prove the amount of losses inflicted thereon, or demand restoration of the position that existed prior to the occurrence of any circumstance referred to in this paragraph, as well as application of other consequences provided for by the public-private partnership agreement and/or such other agreements entered into with the public partner and/or by national legislation.

10. The amount of compensation referred to in paragraph 9 of this Article and/or other consequences of modification or termination of a public-private partnership agreement shall be determined in accordance with the public-private partnership agreement and/or other agreements entered into with the public partner.

In any case, the amount of such compensation and/or such other consequences shall be proposed by the public partner or another party referred to in paragraph 9 of this Article, or, if no agreement has been reached thereon, shall be determined by a court subject to respective provisions of the existing agreements, on the basis of the public-private partnership principles and with due account of the need to fairly allocate among the parties any costs incurred thereby in connection with their performance of that agreement as well as any revenues that have been received or are reasonably expected to be received by a respective party.

#### **Article 17. Property used in the course of implementation of a public-private partnership project**

1. A party to a public-private partnership agreement that has respective rights shall be obliged to grant to the other party thereto the rights of possession and/or use of land plots, other real properties and movable things, rights to use results of intellectual activity and/or means of individualisation, as well as other property rights within the limits required for implementation of a respective public-private partnership project and subsequent use (operation) and maintenance of a respective public-private partnership object by the other party.

2. The public partner must provide reasonable assistance to the private partner in respect of acquisition by the latter and other parties that take part in implementation of the public-private partnership project, of any rights held by third parties and required to implement such project under the public-private partnership agreement, including rights of limited use of such third parties' land plots, other real properties, other rights in rem, intellectual property rights as well as other property rights.

3. The parties shall use property provided thereto for implementation of the public-private partnership project in accordance with national legislation and the public-private partnership agreement solely to attain the goals set forth in the agreement in question, unless otherwise is provided for by this law and such agreement.

4. A party to a public-private partnership agreement may transfer, with the consent of the other party and pursuant to a procedure set forth by national legislation and/or that agreement, a respective public-private partnership object and other related property into use to third parties for a term that shall not exceed the term of use (operation) of such object set forth by the public-private partnership agreement, provided that such third parties comply with obligations of the transferor under that agreement. The transferor shall be liable for any actions of the third parties in question as if they were its own actions.

5. Unless otherwise is provided for by a public-private partnership agreement or national legislation, no party to such agreement may grant a pledge or other encumbrance over a public-private partnership object and other related property as well as over future receipts and accounts receivable owing to the private partner in connection with the use of the public-private partnership object or services provided thereby or dispose of such property without the consent of the other party to the agreement, except when a pledge or other encumbrance over such property is granted to secure funding for the public-private partnership project. A public-private partnership agreement as well as a direct agreement between a respective public partner, private partner and financing organisation may provide that the private partner shall be obliged to obtain the financing organisation's consent to its granting a pledge or other encumbrance over or disposal of a public-private partnership object and other property referred to in this paragraph, including in favour of the public partner or to secure the performance by the private partner of its obligations under the public-private partnership agreement and/or agreements with other financing organisations.

6. Any property, including property rights that has (have) been created and/or acquired by a party to a public-private partnership for its own account when implementing a public-private partnership project and has (have) not been transferred to the other party under the public-private partnership agreement, shall be property of such first party, unless otherwise is provided for by the public-private partnership agreement.



7. A public-private partnership object and other property that has been transferred by the public partner to the private partner under a public-private partnership agreement shall be recorded in the balance sheet of the private partner and shall be segregated from its property. The private partner shall maintain separate accounting records in respect of such property in connection with the performance thereby of its obligations under the public-private partnership agreement, and depreciation amounts shall be accrued thereon by the private partner.

#### Article 18. Operation of a public-private partnership object

1. A public-private partnership agreement may provide for the following obligations of the private partner in respect of operation of a respective public-private partnership object:

- 1) to adapt parameters of services to be rendered, works to be performed, and goods to be provided so as to meet the demand for such services, works or goods;
  - 2) to ensure continuous rendering of services, performance of works or provision of goods;
  - 3) to ensure non-discriminatory access for consumers to services, works, and goods;
  - 4) to ensure non-discriminatory access for other service providers, parties performing works or providing goods to any public infrastructural network that is operated by such private partner; and
  - 5) other obligations of the private partner in relation to the operation of the public-private partnership object.
2. The private partner may introduce, in consultation with the public partner or an authorised body of the state, any rules governing the operation of the public-private partnership object and ensure that they are complied with, within the limits set forth by national legislation.
3. The private partner may not give preference to one consumer over another consumer in relation to rendering services, performance of works or provision of goods, except in instances provided for by national legislation.
4. The price of goods, works, and services, as well as other terms and conditions of a respective agreement shall be set in such a way that they would be the same for all consumers of a particular category, except in instances when certain privileges may be provided to individual groups of consumers in accordance with national legislation.

5. If the private partner or another party under a public-private partnership agreement renders services, performs works, or provides goods to the general public or operates an infrastructural facility accessible by the general public and, if so provided by the public-private partnership agreement, the public partner may demand that the private partner should introduce simplified and efficient procedures for considering complaints filed by consumers or users of such infrastructural facility.

#### Article 19. Securing performance of obligations arising out of a public-private partnership agreement

1. One or more of the following methods may be used to secure performance of the private partner's obligations arising out of a public-private partnership agreement as may be selected by such private partner:

- 1) an irrevocable bank or other independent guarantee;
- 2) granting by the private partner of a pledge over its rights under a fixed-term bank deposit agreement to the public partner;
- 3) insurance against risks of liability of the private partner under the public-private partnership agreement, if a respective insurance agreement prohibits early termination of such insurance agreement by the private partner as well as by the insurer, except for any grounds on which the insurance agreement may be terminated by the insurer and which are expressly provided for by national legislation;
- 4) granting a pledge over rights and/or the object of the public-private partnership agreement (where applicable); and
- 5) other methods that are not prohibited by national legislation.

2. An authorised body of a state may approve requirements to organisations whose independent guarantees or bank deposits in which may be accepted as security for performance of a private partner's obligations under a public-private partnership agreement as well as any requirements to insurance organisations that are eligible to provide insurance coverage against risks of liability under the public-private partnership agreement or risks associated with any obligations arising as a result of personal injury or damage caused to any property of third parties as a result of implementation by the private partner of a public-private partnership project to secure the performance of the private partner's obligations under the public-private partnership agreement.

3. In the event of modification or termination of an independent guarantee or an insurance agreement providing coverage against risks of liability of a private partner or in the event of early repayment by a credit institution of a deposit (or part thereof) as well as in other instances when performance of the private partner's obligations under a public-private partnership agreement becomes unsecured or secured other than in full, the private partner shall be obliged, within 10 business days from such termination of the above-mentioned security, unless another time limits therefor are provided by the public-private partnership agreement, to provide the public partner with other eligible collateral securing the performance of the private partner's obligations under the public-private partnership agreement.

4. Performance of a public partner's obligations under a public-private partnership agreement may be secured by governmental and municipal guarantees, any methods referred to in paragraph 1 of this Article, as well as other methods that are not prohibited by national legislation.

5. The scope of and time limits for securing the performance by the parties of a public-private partnership of their obligations under a respective public-private partnership agreement shall be determined, respectively, on the basis of the scope and term of the private and public partners' obligations under the public-private partnership agreement, the performance of which the partners secure.

#### **Article 20. Substitution of persons in an obligation under a public-private partnership agreement**

1. Substitution of persons in an obligation arising out of a public-private partnership agreement on the side of the private partner by assigning a claim or transfer of debt shall be allowed at any stage of implementation of a respective public-private partnership project with the consent of the public partner, unless otherwise is provided for under the public-private partnership agreement, and, in instances provided for by such public-private partnership agreement or a direct agreement with a financing organisation, with the consent of the financing organisation in question.

2. Substitution of a private partner in a public-private partnership agreement shall be effectuated by holding a tender or without holding the same where the public-private partnership agreement may be entered into without holding a tender, as well as in other instances provided for by national legislation or by a direct agreement with a respective financing organisation.

If the public partner resolves to substitute the private partner, the parties shall be released from the

performance of their duties under the public-private partnership agreement vis-à-vis each other, and the private partner shall also be released therefrom vis-à-vis third parties, as of the moment when the public partner enters with a new private partner into an agreement on substitution of the private partner in the public-private partnership agreement, unless otherwise is provided for by the parties in the public-private partnership agreement.

3. In the event of reorganisation of the private partner, its rights and duties should pass to another legal entity only on the condition that the legal entity created as a result of such reorganisation meets the requirements contained in the respective tender documents.

4. In the event of substitution of the private partner in the public-private partnership agreement, its terms and conditions may be amended with the account of obligations that have been actually performed by the private partner by the time when a respective tender is held, as well as of any proposals made by the tender winner in the course of substitution of the private partner, provided that such proposals do not worsen the position of the public partner and that of any third party as compared with the terms and conditions of the original public-private partnership agreement. Any amendments to be made to the public-private partnership agreement shall be made in the same form in which such agreement was entered into.

#### **Article 21. Guarantees in respect of rights and legitimate interests of a private partner**

1. A private partner shall be guaranteed the rights provided for by national legislation, a legal regime of its operations that rules out the possibility of applying any discriminatory measures which would prevent it from freely managing and disposing of its investments, products and revenues obtained as a result of its activity provided for by a respective public-private partnership agreement.

2. The private partner shall be guaranteed that its rights and legitimate interests will be protected as provided for by international treaties and national legislation.

3. The private partner shall have the right to be compensated for any losses inflicted thereon as a result of any illegal action (or failure to act) on the part of any public bodies of the state, local self-government bodies or their officials in accordance with national legislation.

4. If the private partner sells goods, performs works or renders services at regulated prices (tariffs), then, when setting such prices (tariffs) for the private partner's goods, works or services, the tariff

regulatory bodies shall do so with due account of the amount and time limits for making investments in the design, creation and/or improvement of a respective public-private partnership object or related property set forth in the public-private partnership agreement.

In addition, in such a case, the private partner may demand, at its own discretion, that the public partner and/or respective public bodies of the state or local self-government bodies should ensure the approval of long-term prices (tariffs) containing elements of indexation in accordance with the public-private partnership agreement.

5. No public bodies of the state, local self-government bodies or their officials may interfere with the activity of private partners relating to their performance of public-private partnership agreements, except in instances provided for by national legislation or a respective public-private partnership agreement.

6. No transfer of ownership rights to a public-private partnership object or other property required to implement a public-private partnership project, from the public partner or other owner to another party shall be grounds for modification or termination of a respective public-private partnership agreement.

7. If, during the term of a public-private partnership agreement, an international treaty of the state, its legislation, or any regulatory legal act issued by a governmental body or local self-government body establishes rules that worsen the position of the private partner in such a way that it becomes substantially deprived of what it was entitled to expect at the time of its entering into the public-private partnership agreement, in particular, if the private partner's costs of performance thereby of such agreement have significantly increased or the value that it receives as a result of such performance has significantly decreased or will decrease as compared with the originally planned costs and value, as well as in other instances of a fundamental change of circumstances, the terms and conditions of the public-private partnership agreement should be amended by its parties with a view to securing property interests of the private partner that existed as at the execution date of the public-private partnership agreement, as may be subsequently amended, unless other consequences of such circumstances are provided for by the public-private partnership agreement.

The following support measures may be provided to the private partner upon its application and subject to the provisions of the public-private partnership agreement: a deferral of performance of obligations, subsidies, compensations as well as other payments aimed at reimbursing costs and/or other losses of the private partner suffered thereby in connection

with its worsened position or a fundamental change of circumstances, privileges in relation to payments to/from the public partner, including in the form of payment by instalments, deferral, full or partial exemption of the private partner from making respective payments and/or other measures of support, regardless of whether such measures were provided for by the public-private partnership agreement and/or other agreements with the public partner.

8. In instances provided for by this law, national legislation and a public-private partnership agreement, the private partner shall have the right to amend the terms and conditions of such agreement to secure its property interests that existed as at the execution date of the agreement, as may be subsequently amended.

9. A procedure for amending a public-private partnership agreement, as well as any terms and conditions of provision of subsidies, compensations, or privileges to the private partner shall be set forth by the public-private partnership agreement, unless otherwise is provided for by this law or national legislation.

10. National legislation, regulatory legal acts of local self-government bodies and a public-private partnership agreement may provide for other guarantees of rights and legitimate interests of the private partner.

## **Article 22. Guarantees in respect of rights and legitimate interests of a public partner**

1. A public partner shall be guaranteed that it would be able to exercise control over the progress of implementation of a public-private partnership project, including by providing it with unrestricted access to a respective public-private partnership object and documents relating to any operations provided for by a respective public-private partnership agreement, pursuant to a procedure and on terms and conditions set forth by such agreement.

However, the public partner may not interfere with any business activity carried out by the private partner or other parties taking part in the implementation of a respective public-private partnership project; nor may it disclose any confidential data, including those falling within the category of commercial secrets, or perform any other action which may result in a breach of the public-private partnership agreement.

2. A public-private partnership agreement and/or direct agreement may provide for the public partner's right to dismiss the private partner or other parties from operation of a public-private partnership object

and cause the same to be operated by the public partner itself or by another party on the terms and conditions set forth in the public-private partnership agreement, if the private partner has materially violated any terms and conditions thereof and such violation has not been remedied within a reasonable time allowed by the public partner that may be set by such public-private partnership agreement or other agreement between the public and private partners, as well as upon the occurrence of other circumstances specified in the public-private partnership agreement, in particular, to prevent, mitigate or eliminate risks or effects of emergencies, protect human health or ensure security or safety of any property of individuals and legal entities, as well as to protect the environment.

3. A public-private partnership agreement may provide that where the public-private partnership object is a movable asset which is owned by the private partner and will be subsequently transferred to the public partner, such asset shall be deemed to be pledged to the public partner until the state registration of transfer of the ownership rights to the object to the public partner.

4. No execution may be levied, in connection with any debts of the private partner, on the public-private partnership object and other related property owned thereby and relating to the implementation of the public-private partnership, except in instances where, pursuant to this law, an encumbrance may be granted over such property to secure financing of the public-private partnership project and where the consent of the public partner has been granted to such encumbrance.

5. National legislation, regulatory legal acts of local self-government bodies and a public-private partnership agreement may provide for other guarantees of rights and legitimate interests of the public partner.

#### **Article 23. Liability of parties for failure to perform or improper performance of obligations under a public-private partnership agreement**

1. The parties to a public-private partnership agreement shall bear property liability for non-performance or improper performance of their obligations in accordance with national legislation and the public-private partnership agreement.

2. If the public partner fails to perform or improperly performs its obligations under the public-private partnership agreement, the private partner shall have the right to be compensated for actual damages caused as a result of the foregoing and, if provided by the public-private partnership agreement, also for its lost profit.

3. It shall not be allowed to limit liability of the public partner for non-performance or improper performance of its obligations under a public-private partnership agreement.

4. Reimbursement by a party to a public-private partnership of any inflicted losses or payment thereby of a cancellation penalty in the event of non-performance or improper performance of its obligations under the public-private partnership agreement shall not relieve the respective party to the agreement from the performance of such obligation.

#### **Article 24. Dispute resolution**

1. Any disputes arising out of a public-private partnership agreement, including those relating to its execution, performance, modification, termination or invalidation, may be resolved by a state court or non-governmental arbitration tribunal of the home country of the public partner, as well as using other alternative means of dispute resolution, subject to any restrictions provided for by national legislation.

2. Any dispute referred to in paragraph 1 of this Article and involving foreign parties, as well as other disputes, as provided for by national legislation, may be referred to and resolved by any international commercial arbitration court regardless of the location of the public partner.

### **Chapter IV. Selection of a private partner for implementation of a public-private partnership project**

#### **Article 25. Procedures of selection of a private partner**

1. A private partner for the purpose of entering into a public-private partnership agreement shall be selected on the basis of the resolution to implement a public-private partnership project pursuant to any of the following procedures:

1) a tender for the right to enter into the public-private partnership agreement (hereinafter referred to as the “tender”); or

2) negotiations on entering into the public-private partnership agreement with a potential private partner without holding a tender.

2. A public-private partnership agreement shall be entered into by holding a tender, except for the following instances when such agreement shall be entered into on the basis of negotiations:



- 1) if a public subject needs certain goods, works, or services in connection with the occurrence of a force majeure event or other emergency which makes it impossible to hold a tender;
  - 2) when implementing a short-term public-private partnership project (i.e., with a term of up to five years) whose value does not exceed a threshold amount set by national legislation;
  - 3) when implementing a public-private partnership project needed to ensure defence capability and security of the state;
  - 4) if nobody except for a particular party (because such party owns exclusive rights in results of intellectual activity, other exclusive rights, a land plot or other real property or other assets that constitute a mandatory prerequisite for implementation of a public-private partnership project) is able to carry out respective works, render services or perform other actions as may be required to implement the same; or
  - 5) in other exceptional instances which may be provided for by national legislation provided that the entering into a public-private partnership agreement without holding a tender is most consistent with the public interests.
3. The private partner selection procedures must conform to the following principles:
- 1) openness and transparency;
  - 2) equal non-discriminatory attitude to any participants in such procedures;
  - 3) equal access of such participants to information; and
  - 4) clarity, certainty, completeness and adequacy of the criteria to be used for selection of a private partner.
4. Selection of a private partner for participation in a public-private partnership company shall be conducted in accordance with the rules set forth by this chapter, provided that it does not contradict the nature of relations in a public-private partnership being implemented through participation in the public-private partnership company and unless otherwise follows from this law.

#### **Article 26. Tender for the right to enter into a public-private partnership agreement**

1. A tender for the right to enter into a public-private partnership agreement shall be held upon the resolution to implement a respective public-private partnership project and on the basis of approved tender documents.

2. A tender may be an open or closed one.

In the case of an open tender, bids to participate therein may be submitted by any party. In the case of a closed tender, bids to participate therein may be submitted by any person that was sent an invitation to take part therein pursuant to the resolution on implementation of a respective public-private partnership project.

A tender shall be open, save for the following instances provided for by national legislation in which a closed tender must be held:

- 1) information about a public-private partnership object falls within the category of state secrets;
  - 2) a public-private partnership object is of strategic importance for defence capability and security of the state; and
  - 3) in other instances provided for by national legislation.
3. A procedure for holding a tender must include the following stages:
- 1) publication of an announcement about the tender;
  - 2) acceptance of bids for the tender;
  - 3) preliminary selection of bidders;
  - 4) submission of tender bids;
  - 5) evaluation of the tender bids and determining the winning bidder;
  - 6) negotiations with the winning bidder regarding terms and conditions of the agreement other than those set forth by the tender documents and the winning bidder's bid; and
  - 7) entering into the public-private partnership agreement.

In accordance with a resolution on implementation of a public-private partnership project, a tender may be held without the stages referred to in subparagraphs 2 and 3 of this paragraph. In the case of a closed tender, it shall be held without the stage referred to in subparagraph 1 of this paragraph, and in such a case, the parties entitled to take part in the tender shall be informed thereof by a written notice.

4. An authorised body of a state shall determine the contents of tender documents, procedures for forming tender commissions, publication of announcements about tenders and their results, submission of bids for participation in tenders, preliminary selection of bidders, and evaluation of bids on the basis of regulatory legal acts governing the procedure for holding tenders.

5. Tender documents of a tender may contain the following criteria:

- 1) technical and economic parameters of a public-private partnership object;
- 2) time limits for creation and/or improvement of the public-private partnership object;
- 3) quality guarantees in respect of the public-private partnership object to be provided by a partner;
- 4) amount of financing, a list of property or property rights to be provided by the public partner to perform the agreement;
- 5) amount of the private partner's funds to be raised to perform the agreement;
- 6) security of performance by the partners of their obligations under the agreement;
- 7) maximum and minimum prices (tariffs) for goods to be manufactured, works to be performed, and services to be rendered, and mark-ups to such prices (tariffs) in the course of activity provided for by the public-private partnership agreement;
- 8) risks to be assumed by the partners; and
- 9) other criteria provided for by the tender documents.

6. In the case of a particularly complex public-private partnership project, where it is objectively impossible for a public subject to identify the most efficient technical, legal, and financial forms of project implementation, it shall be allowed to hold a competitive dialogue with private parties with a view to identifying the most advantageous form of the project implementation.

1) Only those parties to whom invitations were sent for participation in a competitive dialogue procedure may take part therein.

2) In the framework of a competitive dialogue, negotiations shall be held with each private party invited to participate on all aspects of implementation of a public-private partnership project, with a view to identifying most efficient forms of its implementation.

3) Negotiations shall be held until one or two forms of project implementation are identified in respect of which further procedures will be held to select a respective private partner.

4) Upon completion of the competitive dialogue procedure, its participants shall be sent invitations to submit their bids in relation to the chosen form of project implementation.

7. Tender documents may contain requirements to qualifications, professional and business qualities of the bidders, including the requirement whereby a bidder

must have no overdue obligations to pay rent, taxes, or make other mandatory payments to the state budget.

8. An authorised body of the state may amend tender documents provided that information about such amendments is published and the term for submission of tender bids is extended for at least 30 business days from the date of such amendments.

9. Tender documents may provide for the following stages of submission of tender bids:

1) submission of a tender bid based on criteria set for the purpose of the tender and other issues of technical nature (first stage);

2) submission of a final tender bid based on all of the tender criteria (second stage).

If there are several stages of submission of tender bids, respective tender documents may be clarified and/or supplemented based on the results of consideration of tender bids that were submitted during the first stage.

10. If, in accordance with tender documents, there are several stages of submission of tender bids:

1) requirements to decisions which may be made by the tender commission upon the results of evaluation of any pre-final stage shall be set in the tender documents;

2) unless otherwise is provided for by the tender documents, the results of evaluation of any pre-final stage shall not be taken into account when evaluating tender bids submitted at any subsequent stage of their submission; and

3) the winning bidder shall be determined at the final stage of submission of tender bids.

11. A bidder may change or revoke its tender bid at any time until the expiration of the term for submission of tender bids to the tender commission.

A bidder may not submit two or more bids at the same stage of submission of tender bids.

12. Criteria for evaluation of tender bids shall be set in the tender documents and should meet the requirements of completeness and adequacy for selection of the private partner that has offered the best terms of implementation of a public-private partnership project.

13. The winning bidder shall be the bidder whose tender bid was found by the tender commission to offer the best terms and conditions as compared with tender bids of the other bidders.

14. The tender commission shall issue its decision on evaluation of tender bids and determining the winning

bidder within the time limits set forth by national legislation, and that decision should be well-founded and substantiated.

15. The results of consideration and evaluation of tender bids shall be recorded in a respective protocol which shall be published subject to any restrictions and pursuant to a procedure provided for in respect of publication of an announcement about the tender, within time limits provided for by national legislation.

The bidders shall be sent written notices about the results of consideration and evaluation of the tender bids.

16. If, by the time tender bids are evaluated, no tender bid has been submitted or if, upon the results of their consideration, it has been resolved that none of the tender bids met the tender criteria set forth in the tender documents, the tender shall be declared void.

17. If, by the time tender bids are evaluated, there is just one tender bid, the tender commission shall evaluate it and, provided that this bid conforms to the tender documents, the tender shall be declared void. In such a case, the public-private partnership agreement may be entered into with the respective bidder without holding a tender.

18. If the tender documents contained a draft public-private partnership agreement, the tender commission shall send that draft to the winning bidder concurrently with sending thereto a protocol of the results of the tender.

19. A public-private partnership agreement shall be entered into the winning bidder pursuant to a procedure set forth by the tender documents. The public-private partnership agreement must be entered into within the term set by the tender documents. Such term should include a period for discussing the terms and conditions of the public-private partnership agreement to the extent that this does not affect any material terms and conditions set forth by the tender documents and the winning bidder's bid in respect thereof.

20. If the winner refuses to enter into the agreement within the time limits set by the tender documents, an authorised body of the state may resolve to enter into the agreement with another bidder whose bid, based on the results of consideration and evaluation of the tender bids, offers the next best terms which are second only to the terms offered by the winning bidder.

21. If the bidder that has submitted the second best bid (that is second only to that of the winning bidder) refuses to enter into the agreement, the tender shall be declared void.

## Article 27. Negotiations regarding conclusion of a public-private partnership agreement without holding a tender

1. Negotiations regarding the conclusion of a public-private partnership agreement shall be held on the basis of the resolution to implement a public-private partnership project in instances provided for by this law and other national legislation.

2. A resolution to hold negotiations regarding the conclusion of a public-private partnership agreement shall be published subject to any restrictions and pursuant to a procedure provided for in respect of publication of announcements about tenders, within time limits provided for by national legislation.

3. The authority authorised to arrange for such negotiations should ensure that they are held with a maximum possible number of potential partners.

4. In the course of such negotiations, a private partner shall be selected on the basis of criteria ensuring the conclusion of such a public-private partnership agreement that would be most consistent with the public interests.

## Chapter V. Public-private partnership company

### Article 28. General provisions on a public-private partnership company

1. A public-private partnership may be implemented through participation of the public and private partners in a public-private partnership company.

2. A public-private partnership company shall be created solely with the purpose of implementation of a public-private partnership project in one of the corporate forms provided for by national legislation.

3. A public-private partnership company shall have a special legal capacity and may only carry out activities aimed at implementing or facilitating the implementation of a public-private partnership project.

The name of a public-private partnership company should include the words "public-private partnership".

A public-private partnership company shall be established for the term of implementation of a public-private partnership project, whereupon it shall be liquidated.

4. Members of a public-private partnership company shall not be liable for the company's debts, except in instances provided for by national legislation.

5. National legislation may provide for a minimal and/or maximal limit of a public partner's participation in a public-private partnership company. However, a public-private partnership company should not be controlled by its public partner.

6. Accounting (financial) statements of a public-private partnership company must be audited annually.

#### **Article 29. Corporate relations in a public-private partnership company**

1. Unless otherwise is provided for by national legislation, corporate relations of the members in a public-private partnership company may be governed by an agreement on its establishment and activities and/or a shareholder agreement and/or other agreement (hereinafter referred to as an "agreement between the public-private partnership company members") to the extent this does not contradict the national legislation and articles of association of the public-private partnership company.

2. The provisions of this law on substitution of parties in an obligation arising out of a public-private partnership agreement shall apply mutatis mutandis to relations in connection with a disposal by a private partner of its share(s) in the charter (share) capital of a public-private partnership company.

A public partner may dispose of or grant a pledge or other encumbrance over its share(s) in the charter (share) capital of a public-private partnership company in favour of third parties only with the consent of the other members of such company, or, in instances provided for by the company's articles of association, an agreement between its member or a direct agreement with a financing organisation, with the consent of the financing organisation.

Unless otherwise is provided for by national legislation, an agreement between the public-private partnership company members or the articles of association of a public-private partnership company, the private partner may not, without the consent of the public partner or, in instances provided for by the articles of association, agreement between the public-private partnership company members, or a direct agreement with a financing organisation, without the consent of the financing organisation, grant a pledge or other encumbrance over its share(s) in the charter (share) capital of the public-private partnership company, except in instances where such encumbrance over this/these share(s) is established to secure financing for a public-private partnership project.

3. The object of an public-private partnership agreement and other related property owned by a public-private partnership company may be pledged

or otherwise encumbered upon the resolution of the general meeting of its members (shareholders) passed by a simple majority vote of its members (shareholders) unless a higher majority vote is prescribed by its articles of association or, if all or some of those issues fall within the jurisdiction of its board of directors, upon the resolution of the company's board of directors passed by a simple majority vote of its members.

4. Instances where a party is allowed to exit or otherwise terminate its participation in a public-private partnership company, apart from disposing of such party's share(s) in the charter capital of the company, provided that such termination is allowed by national legislation and the company's articles of association, as well as a procedure for termination of such participation shall be set forth in the articles of association of the company.

5. None of the following shall be allowed without the consent of the public partner of a public-private partnership company:

- public placement of shares in the company;
- increase of the company's charter capital or any amendments to its articles of association, except for amendments that must be made pursuant to national legislation or the agreement between the public-private partnership company members;
- issuance of bonds or other securities by the public-private partnership company;
- reorganisation or liquidation of the public-private partnership company;
- any other action which requires the public partner's consent under the agreement between the public-private partnership company members or such company's articles of association.

6. A procedure for granting consent by the public partner of a public-private partnership company in instances referred to in this Article should be set forth in the agreement between the public-private partnership company members or such company's articles of association.

7. Any disputes arising out of corporate relations between members of a public-private partnership company or agreements between them may be resolved by a governmental court, non-governmental arbitration tribunal as well as by other alternative means of dispute resolution, subject to any restrictions provided for by national legislation.





## Chapter VI. Authorised bodies and organisations in the public-private partnership area

### Article 30. Powers and authority of executive authorities in the public-private partnership area

1. The supreme executive authority of a state or other public-law entity shall:

- 1) adopt regulatory legal acts on procedures for preparation and implementation of public-private partnership projects;
- 2) approve long-term specialised programmes providing for measures to be taken in the framework of public-private partnership, as well as lists of projects to be implemented in the form of a public-private partnership for a certain period of time (infrastructural plans);
- 3) designate a public body that will be in charge of implementing, on behalf of the public-law entity, policies in the public-private partnership area, as well as bodies and organisations authorised to enter into public-private partnership agreements on behalf of such public-law entity;
- 4) ensure education/training for representatives of public authorities on various aspects of public-private partnerships;
- 5) approve regulations on a procedure, time limits for and terms and conditions of property and/or financial participation of the public-law entity in public-private partnership projects and a methodology of evaluation of efficiency of such participation;
- 6) approve a procedure for holding a tender for the right to enter into a public-private partnership agreement, pass the resolution on holding such tender, approve a list and contents of tender documents as well as the composition of a tender commission or designate the respective public body authorised to approve the tender documents and form the tender commission in relation to the tender in question;

7) approve a procedure for holding public hearings in relation to a public-private partnership project;

8) approve a procedure for holding negotiations regarding conclusion of a public-private partnership agreement without holding a tender;

9) approve standard forms of public-private partnership agreements, methodological guidelines on entering them, and a procedure for entering into such agreements and monitoring their implementation;

10) pass resolutions on conclusion of public-private partnership agreements by the authorised body or enter therein on its own;

11) monitor the implementation of public-private partnership agreements; and

12) make decisions on cooperation with other public subjects with a view to jointly participating in public-private partnership projects and submit such cooperation agreements for approval by the representative body of the respective public-law entity.

2. An executive authority in charge of implementing policies in the public-private partnership area shall:

- 1) develop regulatory legal acts on procedures for preparation and implementation of public-private partnership projects;
- 2) develop long-term specialised programmes providing for measures to be taken in the framework of public-private partnership;
- 3) coordinate actions in the public-private partnership area taken by other executive authorities and organisations authorised by the public subject;
- 4) take part in negotiating and preparing a draft agreement on cooperation with other public subjects with a view to participating jointly in public-private partnership projects;
- 5) develop a methodology of evaluation of efficiency of the public subject's property and/or financial participation in a public-private partnership;
- 6) develop regulations on a procedure, time limits for and terms and conditions of the public subject's property and/or financial participation in a public-private partnership;
- 7) develop a procedure for holding a tender for the right to enter into a public-private partnership agreement, as well as a list and contents of tender documents;
- 8) develop a procedure for holding negotiations regarding conclusion of a public-private partnership agreement without holding a tender;

9) develop standard forms of public-private partnership agreements, methodological guidelines on entering them, and a procedure for entering into such agreements and monitoring their implementation;

10) upon resolutions of the supreme executive authority of the state, a municipality or other public-law entity, enter into public-private partnership agreements;

11) monitor public-private partnership projects and exercise control over compliance with terms and conditions of respective public-private partnership agreements; and

12) disclose information about public-private partnership projects in mass media and ensure constant availability of such information on a generally accessible website.

3. In the event that other authorised bodies and organisations act under a public-private partnership agreement on the side of a respective public partner and on behalf of a respective public-law entity, forms of their participation in the agreement, their powers, rights and duties shall be determined by the public-law entity in question.

#### **Article 31. Control in the public-private partnership area**

1. The supreme executive authority of the state, a municipality or other public-law entity and/or the executive authority in charge of implementing policies in the public-private partnership area, as well as other authorised bodies within the limits of their jurisdiction (hereinafter referred to as the “supervisory bodies”) shall exercise control over preparation and implementation of public-private partnership projects, and monitor whether budgetary funds are used in the framework of public-private partnership projects efficiently and in accordance with their designated purposes.

2. Supervisory bodies shall check whether the terms, conditions of and procedures for holding tenders for the right to enter into public-private partnership agreements are complied with.

3. The parties to a public-private partnership agreement shall inform supervisory bodies of the progress of implementation of a respective public-private partnership project pursuant to a procedure set forth by national legislation or, as appropriate, by regulatory legal acts of local self-government bodies.

#### **Article 32. Development agencies in the public-private partnership area**

1. National legislation may provide for measures designed to help the creation and operation of development agencies in the public-private partnership area, i.e., non-profit organisations created with a view to providing informational, advisory, methodological, organisational and other appropriate assistance to authorised authorities, other organisations and individuals in the public-private partnership area, including in the form of pre-trial and out-of-court dispute resolution using means of mediation, arbitration and other means as well as through expert evaluation of public-private partnership projects at the stage of their preparation.

2. It shall be allowed to create national, regional and municipal development agencies in the public-private partnership area whose powers will be limited to a respective territory.

Development agencies in the public-private partnership area may be created by the state, a municipality or other public-law entity or, if provided by national legislation, by private organisations and individuals.

### **Chapter VII. Final provisions**

#### **Article 33. Procedure for giving effect to this law**

1. This law shall enter into force as of the date of its official publication, unless otherwise is expressly provided for by this law.

2. This law shall have no retroactive effect and shall apply to relations that arise after its entering into force, unless otherwise is expressly provided for by this law.

As to any relations which arose prior to the entering of this law into force, it shall apply to those rights and duties that arise after its entering into force.