



FIFTH CONSTITUTIONAL GOVERNMENT

DECREE-LAW NO. 2/2014

DATED 15 JANUARY

First Amendment to Decree-Law no. 42/2012, dated 7 September, approving the Legal Regime on Public-Private Partnerships

Decree-Law no. 42/2012, dated 7 September, established a legislative framework whereby the legal regime for arrangements between the State and private entities, i.e. public-private partnerships was defined.

Public-private partnerships were defined as the arrangement through which private partners undertake a durable commitment to the Government in relation to the construction and operation of an infrastructure project. However, the design and/or the operation and/or the maintenance of infrastructures can also be procured through public-private partnerships, so as to enable effectiveness and efficiency gains in terms of service delivery.

As such, the present diploma sets a framework enabling a public sector entity and a private partner to be parties in a public-private partnership arrangement for designing and/or building and/or operating and/or maintaining infrastructures. This will promote the creation and development of public infrastructures, as well as the delivery of associated services.

Thereby, under sections 115.1 (e) and 116 (a) of the Constitution of the Republic, the Government decrees the following, to prevail as law:

Article 1

Amendment to Decree-Law no. 42/2012, dated 7 September

Articles 1, 2, 3, 6, 7, 8, 11, 16, 17 and 21 as well as Annex II of Decree-Law no. 42/2012, dated 7 September, are replaced by the following:

**“Article 1
Subject**

This decree-law sets the principles and instruments for establishing partnerships between the Government and private entities concerning public infrastructures, as well as the tasks and processes for the identification, appraisal, procurement, construction and/or operation and/or maintenance of those infrastructures.

**Article 2
Definitions**

1. For the purposes of this diploma, the term
 - (a) *public-private partnership* means the arrangement through which private entities, designated as private partners, undertake a durable commitment to the Government ensuring the design and/or the construction and/or the operation and/or the maintenance of one or more infrastructure projects, whereby funding and the responsibility for the investment and its exploitation belong, in part or in full, to the private partner.
 - (b) (...)
2. (...)

**Article 3
Power to approve and sign arrangements**

1. (...)
2. The minister of the public sector body responsible for supervising the project shall sign the relevant public-private partnership contracts and other direct arrangements, after being authorized by the Council of Ministers, which may approve other additional signatories representing the State.
3. The Ministry of Finance is responsible for assessing the fiscal risks in any public-private partnership arrangement.
4. (...)
 - (a) (...)
 - (b) (...)
 - (c) (...)
5. (...)

6. (...)
7. (...)

Article 6

Reviewing the project and the respective procurement

1. (...)
2. The methods and procedures for selecting private partners, awarding contracts and signing public-private partnership contracts, as well as for identifying public-private partnership advisors, are subjected to the regime included in this Decree-Law and respective regulations, the Legal Regime on Procurement shall apply on a subsidiary basis.
3. (...)
4. (...)
 - a. (...)
 - b. (...)
 - c. (...)
5. (...)
 - a. (...)
 - b. (...)
 - c. (...)
 - d. (...)
6. (...)

Article 7

Procedures for approving projects

1. The list of infrastructure projects that may be procured through the public-private partnership modality shall be submitted to the Major Projects Secretariat for registration, which then submits the list to the Public-Private Partnership Unit for appraisal and recommendation.
2. The Public-Private Partnership Unit shall draft an opinion on the feasibility of the project for entry into the public-private partnership project cycle.

Article 8

Financial feasibility study

- (...)
- a) Forecast future payments and receipts for the term of the project, including fees for a concession or operating lease;
 - b) (...)

- c) (...)
- d) (...)
- e) (...)

Article 11

Principles

- 1. (...)
- 2. *repealed*
- 3. The procurement process may consist of the following:
 - a) (...)
 - b) (...)
- 4. (...)
- 5. (...)
- 6. (...)

Article 16

Contract regime

Public-private partnership contracts are subject to the regime of this Decree-Law and respective regulation, the Legal Regime on Public Contracts shall apply on a subsidiary basis.

Article 17

Contract contents

- 1. Annex II to this diploma approves an indicative list of the provisions to be included in the public-private partnership contract.
- 2. (...)

Article 21

Regulation

- 1. The responsibilities of the Public-Private Partnership Unit as well as the public-private partnership project cycle are regulated by decree-law.
- 2. (...)

Attachment 2

Contents of a Public-Private Partnership Contract

Contents of a public-private partnership contract in accordance with Article 17:

- a) (...)
- b) (...)

- c) (...)
- d) (...)
- e) (...)
- f) (...)
- g) (...)
- h) (...)
- i) (...)
- j) (...)
- k) (...)
- l) (...)
- m) (...)
- n) (...)
- o) (...)
- p) (...)
- q) (...)
- r) (...)
- s) (...)
- t) (...)
- u) (...)
- v) (...)
- w) (...)
- x) (...)
- y) (...)
- z) (...)"

Article 2
Repeal

Article 22 is hereby repealed.

Article 3
Entry into force

This Decree-Law enters into force on the day after its publication.

Approved by the Council of Ministers on 5 November 2013.

The Prime Minister,

Kay Rala Xanana Gusmão

The Minister of Finance,

Emília Pires

Promulgated on 4.01.2014
To be published.

The President of the Republic,

Taur Matan Ruak