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If a whole or part of a section has been amended, the date of the amending law appears in square brackets at the end of the section. If a whole section, paragraph or clause has been deleted, the date of the deletion appears in square brackets beside the deleted section, paragraph or clause.

The *Saeima*¹ has adopted and
the President has proclaimed the following Law:

Law On Public–Private Partnership

Division A General Provisions

Chapter I General Issues

Section 1. Terms Used in this Law

The following concepts and terms are used in this Law:

1) public–private partnership – co-operation between the public and private sector simultaneously characterized by the following features:

a) the co-operation is between one or several public partners and one or several private partners involved in the public-private partnership procedure;

b) the co-operation is carried out in order to meet public needs in performing construction works or providing services;

c) it is a long-term co-operation lasting up to 30 years but in the cases laid down in this Law – even longer;

d) a public and a private partner pool and use the resources available thereto (e.g. property, financial resources, knowledge and experience);

e) a public partner and a private partner share the responsibility and risks;

2) contractual public-private partnership (hereinafter – contractual partnership) – the type of public-private partnership where the co-operation between the public and private sector is carried out by the public and private partner entering into and executing a partnership procurement contract or a concession contract;

3) institutional public-private partnership (hereinafter – institutional partnership) – the type of public-private partnership where the co-operation between the public and private sector is carried out by establishing jointly a joint venture in accordance with the procedures laid down in this Law with which the public partner enters into a partnership procurement contract or a concession contract as with a private partner;

4) partnership procurement contract – a public works contract (if it also provides for the management of the constructed building) or a public service contract (if it also provides for construction works that are an insignificant part of the subject of this contract) entered into by a public partner and a private partner for the period of time that is longer than five years;

5) concession contract – a works concession contract or a service concession contract entered into by a public partner and a private partner;

¹ The Parliament of the Republic of Latvia

6) works concession contract – a contract according to which the private partner, by an order of a public partner, designs a building and performs the construction works referred to in Annex 1 to the Public Procurement Law or performs only the construction works referred to in Annex 1 to the Public Procurement Law obtaining the right to exploit the constructed building as remuneration or the most significant part of the remuneration (Clause 8 of this Section) but simultaneously the exploitation risks of this building (Clause 9 of this Section) or the most essential part thereof are transferred thereto;

7) service concession contract – a contract according to which the private partner, by an order of a public partner, provides the services referred to in Annex 2 to the Public Procurement Law and obtains the right to exploit such services (Clause 8 of this Section) as remuneration or the most significant part of the remuneration for the provision of such services but simultaneously the exploitation risks of such services (Clause 9 of this Section) or the most essential part thereof are transferred thereto. A service concession contract may also include performance of the construction works referred to in Annex 1 to the Public Procurement Law being the less significant part of the subject of this contract;

8) the right to exploit the building or services – the right to receive a payment from end-users of the building or service or the right to receive remuneration from the public partner whose amount depends on the demand of end-users for the building or service, or to receive both the payment from end-users of the building or service and the referred to remuneration from the public partner;

9) building or service exploitation risks – economic risks when revenue of a private partner depends on the demand of a building or service end-user for the building or service (demand risk) or on whether this building or service is being offered to an end-user in accordance with the requirements laid down in the entered into concession contract (availability risk), or on both the demand risk and availability risk;

10) end-user – a person, except for the public partner and the private partner that in the case when a concession contract is entered into, uses the building or service exploited by the private partner;

11) public-private partnership agreement – a partnership procurement contract or a concession contract;

12) partnership procurement procedures – the procedures for the award of a partnership procurement contract;

13) concession procedures – the procedures for the award of a concession contract;

14) public-private partnership procedures – the partnership procurement procedures and concession procedures;

15) public partner – one or several of the following subjects may act as a public partner:

a) the State as the initial legal person governed by public law,

b) a derived legal person governed by public law,

c) a public institution or a company of a public institution within the meaning of the Law On Public Service Provider Procurements,

d) a legal person acting as a public partner referred to in Clause 16 of this Section;

16) legal person acting as a public partner – a capital company or another legal person governed by private law simultaneously conforming to Sub-clause “a” and “b” or “c” of this Clause:

a) it is found or acting in order to meet general public needs having no commercial or industrial nature;

b) within the meaning of the Group of Companies Law it is under the direct or indirect decisive influence of the State, a derived public person or such a legal person that conforms to the criteria referred to in this Clause,

c) the activity thereof is financed, by more than 50 percent, by the State, a derived public person or such a legal person that conforms to the criteria referred to in this Clause;

17) general public needs having no commercial or industrial nature – needs that are not related to direct availability of goods and services on the market and that are important for meeting the public interests;

18) public partner representative:

a) the direct administration institution, the body of a public person or a natural person to whom the relevant State administration task is delegated in accordance with the procedures laid down in the State Administration Structure Law and that is determined in the decision of the Cabinet referred to in Section 16, Paragraph six of this Law if the public partner is the State as the initial legal person governed by public law;

b) the indirect administration institution, the body of a public person or a natural person to whom the relevant State administration task is delegated in accordance with the procedures laid down in the State Administration Structure Law and that is determined in the decision of the derived public person referred to in Section 16, Paragraph six of this Law if the public partner is a derived public person;

c) the board of directors of a capital company if the public partner is a State or local government capital company;

d) an institution of a legal person governed by private law that in accordance with the laws and regulations regulating the activity thereof is entitled to represent this legal person if the public partner is another legal person governed by private law that is not a State or local government capital company;

19) candidate – a person or an association of persons participating in a partnership procurement procedure or concession procedure;

20) lender's proposed candidate – a person proposed by the lender in accordance with the procedures laid down in this Law in order the public partner representative would enter into a new public-private partnership agreement therewith upon early termination of the initial contract;

21) private partner – a candidate or a special purpose entity established thereby (in case of contractual partnership) or a joint venture (in case of institutional partnership) with whom the public partner has entered into a public-private partnership agreement;

22) joint venture – a capital company established by the public partner and the candidate (the private shareholder) determined as a result of the public-private partnership procedure;

23) shareholder agreement – an agreement that, in case of institutional partnership, is entered into by shareholders or stockholders (hereinafter – shareholder) of a joint venture and that regulates the exercising of rights of the public partner and the private partner as shareholders of the joint venture in order to facilitate execution of the public-private partnership agreement;

24) lender – a person that grants financing to the private partner in order to ensure fulfilment of the obligations of the public-private partnership agreement;

25) information exchange agreement – an agreement entered into by the public partner and the lender in accordance with the procedures laid down in this Law and that governs the information exchange procedure between the public partner and the lender ensuring execution of the public-private partnership agreement and exercising of the lender's intervention right;

26) special purpose entity - a commercial company found by the candidate determined as a result of the public-private partnership procedure in the cases laid down in this Law in order the public partner would enter into a public-private partnership agreement with this commercial company;

27) Monitoring Institution – an institution determined by the Cabinet that performs the functions referred to in Section 9 of this Law;

28) Concession Procedure Commission – a commission established by a public partner representative or several public partner representatives for the performance of the concession procedure;

29) Application Review Commission – a commission established by the Procurement Monitoring Bureau in order to review applications regarding concession procedure violations;

30) public partner resources – tangible property or aggregation of property owned by the public partner that without separate payment is transferred to the private partner to usufruct or is invested in the equity capital of the joint venture in accordance with the public-private partnership agreement;

31) the most economically advantageous tender – the tender selection criterion, where such factors as delivery or agreement execution terms, exploitation expenses and other expenses, their efficiency, quality of construction works or services, aesthetic and functional description, conformity with the environmental protection requirements, technical advantages, availability of spare parts, delivery safety, price and other factors related to the subject of the concession contract that are to be particularly determined and objectively comparable or evaluated are taken into consideration; and

32) contract value – the total payment for the execution of a public-private partnership agreement (not taking into consideration the value added tax.). It also applies to the total amount of the financial resources (not taking into consideration the value added tax) the private partner would obtain by exercising the rights and duties ensuing from a public-private partnership agreement and that may also include payments of an end-user.

[25 August 2010; 5 September 2013]

Section 2. Purpose of this Law

(1) The purpose of this Law is to facilitate co-operation between the public and private sector using efficiently resources of the public partner and private partner for meeting public needs, ensuring publicity, free competition, equal and fair attitude in the implementation of the public-private partnership.

(2) The purpose of this Law is also to promote the fulfilment of the obligations of the entered into public-private partnership agreement until the expiry of the validity thereof by facilitating continuity of the construction works and services provided for in the public-private partnership agreement.

Section 3. Exceptions to the Application of this Law

(1) This Law shall not be applied to concession contracts if a concession contract is entered into in accordance with other laws and regulations and the concession contract is awarded in conformity with:

1) an international agreement entered into according to the European Union laws and regulations between a Member State of the European Union and one or several third countries on construction works or services related to participation of contracting countries in the implementation of some joint measure or the use of results thereof. Public partner shall inform the European Commission about every agreement of this kind;

2) an international agreement relating to the stationing of troops and undertakings of a Member State of the European Union or undertakings of a third country;

3) a particular procedure of an international organisation.

(2) This Law shall not be applied if:

1) the Cabinet, according to laws and regulations, sets the confidentiality regime to the information regarding the concession contract;

2) execution of a concession contract is related to special protection measures of the State secret; or

3) application thereof could harm protection of essential State interests. The Cabinet shall decide on protection of essential State interests in each particular case.

(3) This Law shall not be applied when entering into a concession contract whose main purpose is to ensure public electronic communication networks maintained by the public partner or one or several openly available electronic communication services provided by the public partner. This exception shall not apply to the television and radio broadcasting.

[25 August 2010]

Section 4. Legal Arrangements

(1) The Public Procurement Law shall be applied to partnership procurement contracts unless this Law lays down otherwise.

(2) Subjects of the Law On Public Service Provider Procurements shall apply the provisions of the referred to Law to the partnership procurement contracts unless this Law lays down otherwise.

(3) The provisions of this Law shall be applied to the concession contracts and institutional partnership.

(4) The provisions of the Commercial Law shall be applied to the foundation, activity and termination of activity of a joint venture unless this Law lays down otherwise.

(5) The procedures for management of the State and local government capital shares in a joint venture shall be regulated by the Law On the State and Local Government Capital Shares and Capital Companies.

(6) If several public partners enter into one public-private partnership agreement with a private partner, the provisions of the State Administration Structure Law regarding the co-operation in the State administration shall be applied as far as this Law does not prescribe otherwise.

(7) If some type of commercial activity aid is planned within the framework of public-private partnership, the Law On Control of Aid for Commercial Activity shall be applied for granting the aid.

(8) Provisions of Chapter XIV of this Law shall not be applied to the public partner who ensures financing of the public partnership from the financial resources thereof.

[25 August 2010]

Section 5. Scope of Application of this Law

(1) The Law prescribes:

1) the procedures by which public partners and public partner representatives shall act if they jointly enter into one public-private partnership agreement;

2) the procedures for taking the decision on inception of a public-private partnership procedure;

3) the information to be included in a public-private partnership agreement, as well as the procedures by which the public-private partnership agreement may be amended or terminated prior to the expiry thereof;

4) the compensation payment procedure when terminating a public-private partnership agreement prior to the expiry thereof;

5) the procedures for establishment of a special purpose entity and the procedures by which a public-private partnership agreement is entered into with a special purpose entity;

6) the procedures for entering into an information exchange agreement and exercising of the lender's intervention right;

- 7) the procedures for registration and availability of public-private partnership agreements;
 - 8) regulations for activities with the public partner resources transferred to a private partner.
- (2) In the field of concessions the Law prescribes:
- 1) exceptions to the application of this Law;
 - 2) the procedures for information exchange, concession procedure documentation and document preservation;
 - 3) the procedures for establishment of the Concession Procedure Commission and activity thereof;
 - 4) the procedures for establishment of the Application Review Commission and activity thereof;
 - 5) concession procedures and the procedure for the application thereof;
 - 6) special conditions for the works concession procedure.
- (3) In the field of institutional partnership the Law prescribes:
- 1) the procedures for selection of a private shareholder of a joint venture;
 - 2) the procedures for the establishment of a joint venture, particularities of the activity and the regulations for terminating the activity thereof;
 - 3) the procedures by which a public-private partnership agreement is entered into, amended or terminated in case of institutional partnership;
 - 4) the compensation payment procedure when terminating a public-private partnership agreement prior to the expiry thereof in case of institutional partnership;
 - 5) the procedures for entering into an information exchange agreement and exercising of the lender's intervention right in case of institutional partnership.
- (4) In the field of public-private partnership monitoring the Law prescribes:
- 1) the public-private partnership process monitoring institutions and the competence thereof in monitoring matters;
 - 2) the procedures for determining and financing of the Monitoring Institution and approval of the regulatory enactment governing the activity thereof;
 - 3) the functions, rights and duties of the Monitoring Institution;
 - 4) the procedures by which the Monitoring Institution operates as a public-private partnership competence centre;
 - 5) the procedures for control of execution of public-private partnership agreements.

Section 6. Joint Public-Private Partnership Agreements of the Public Partners

- (1) One public-private partnership agreement with a private partner may be entered into by several public partners.
- (2) If several public partners enter into one public-private partnership agreement, the public partner representatives thereof shall enter into a written agreement on the following:
 - 1) which public partner representative conducts the partnership procurement procedure or concession procedure;
 - 2) the procedures for taking decisions if a common decision of public partners or public partner representatives is required;
 - 3) the procedures for co-ordination of opinions if an individual decision of each public partner or representative thereof is required;
 - 4) which public partner representative enters into an information exchange agreement with the lender and the procedure for information exchange between public partner representatives required for the execution of this agreement unless the lender prefers entering into an information exchange agreement with each public partner representative;
 - 5) the procedures for covering the required expenses thereby;

6) the procedures according to which the public partner representative, who conducts the partnership procurement procedure or concession procedure, shall inform other public partner representatives on the course of the relevant procedure.

(3) The condition of Paragraph two, Clause 2 of this Section regarding taking of a joint decision by public partners or public partner representatives shall be applied if this Law does not prescribe that the decision shall be taken by each public partner (Section 16, Paragraph six; Section 36, Paragraph two; Section 61, Paragraph one; Section 72, Paragraph three; Section 86, Paragraph one, Clause 1; Section 87, Paragraph one, Clause 1; Section 103, Paragraphs three and four; Section 112, Paragraph four and Section 113, Paragraph three) or by each public partner representative (Section 33, Paragraph one; Section 47 Paragraph two; Section 61, Paragraph two; Section 64, Paragraph three; Section 73, Paragraph six; Section 74, Paragraph two; Section 79, Paragraph three; Section 90, Paragraphs one and two and Section 92, Paragraph three).

(4) The public partner representative who in accordance with Paragraph two, Clause 1 of this Section conducts the partnership procurement procedure or concession procedure:

1) shall establish the Concession Procedure Commission in accordance with the procedures laid down in this Law where the persons proposed by other public partner representatives are included;

2) shall provide information, notices or receive information that is provided for in the Public Procurement Law, this Law or the public-private partnership agreement;

3) shall preserve Concession Procedure Commission documents in accordance with the procedures laid down in Section 22 of this Law.

(5) If this Law lays down that the decision of the Concession Procedure Commission is binding on the public partner representative, such a decision shall be also binding on all public partner representatives who have signed the agreement referred to in Paragraph two of this Section.

(6) The public partner representative who in accordance with Paragraph two, Clause 1 of this Section conducts the concession procedure shall be determined in the Regulations of the Concession Procedure (hereinafter – Regulations) and, if necessary, also in other concession procedure documents, as well as the Monitoring Institution shall be informed thereof in writing.

(7) If in case of institutional partnership a public-private partnership agreement is entered into by several public partners, all such public partners or any of such public partners may become a shareholder of the joint venture.

(8) If in case of institutional partnership there are several public partners in a joint venture as shareholders of the joint venture, each public partner as a joint venture shareholder shall individually exercise the right laid down in this Law or perform the activities provided for in this Law unless this Law lays down that the relevant right shall be exercised or the relevant activities shall be performed jointly by all public partners of the joint venture.

(9) If several public partners enter into one public-private partnership agreement, the Monitoring Institution shall send opinions and other documents to each public partner representative.

Section 7. Selection of Institutional Partnership

(1) A joint venture may be established for execution of a public-private partnership agreement if the public partner wishes to perform reinforced control of the execution of the public-private partnership agreement and to take part in the management of the capital company, and conforms to the following provisions:

1) according to the State Administration Structure Law the commercial activity which will be performed by the joint venture according to the public-private partnership agreement may be performed by the public partner as well;

2) the joint venture will perform some administration task assigned to the public partner according to the laws and regulations or the procedures laid down in the State Administration Structure Law if it conforms to the delegation provisions.

(2) The public partner which wishes to establish a joint venture for execution of a public-private partnership agreement, shall specify it in the decision on inception the public-private procedure (Section 16, Paragraph six).

(3) If a joint venture is established, the private partner in co-operation with the public partner as a shareholder of the joint venture shall manage the joint venture in order the joint venture as a private partner would ensure execution of the public-private partnership agreement.

Chapter II

Monitoring of the Public-Private Partnership Process

Section 8. Competent Authorities

(1) The Ministry of Finance, the Procurement Monitoring Bureau and the Monitoring Institution shall monitor the public-private partnership process.

(2) The Ministry of Finance shall evaluate the expected impact of the conditions referred to in the financial and economic calculations on the amount of the long-term liabilities of the state budget and the government debt and shall give opinion thereof.

(3) The Procurement Monitoring Bureau:

1) shall monitor partnership procurement procedures in accordance with the procedures laid down in the Public Procurement Law and the Law On Public Service Provider Procurements;

2) shall review applications on concession procedure violations in accordance with the procedures laid down in Sections 28, 29, 30 and 31 of this Law;

3) shall draw up administrative violations protocols in the cases laid down in law and apply punishments for administrative violations in the field of public procurements and public-private partnerships.

(4) The Monitoring Institution shall be determined by the Cabinet.

(5) The State Audit Office of the Republic of Latvia and other competent authorities shall monitor the public-private partnership process within the competence thereof.

[25 August 2010; 5 September 2013]

Section 9. Functions, Rights and Duties of the Monitoring Institution

(1) The Monitoring Institution shall evaluate the assumptions included in the financial and economic calculations and risk allocation between the public partner and the private partner in the public-private partnership agreement and shall give opinion thereof.

(2) The Monitoring Institution shall give its opinions on the conformity of risk allocation between the public partner and the private partner with the concession contract within the meaning of this Law in the following cases:

1) on the Regulations and draft concession contract attached thereto in the case referred to in Section 33 of this Law;

2) on amendments to the Regulations in the case referred to in Section 35, Paragraph four of this Law;

3) on draft amendments to the concession contract in the case referred to in Section 64, Paragraph one of this Law;

4) on the draft new concession contract in the case referred to in Section 82, Paragraph three of this Law.

(3) If the Monitoring Institution has given a negative opinion on the assumptions included in the financial and economic calculations and the risk allocation between the public partner and

the private partner in the public-private partnership agreement, then the public partner representative shall not perform further activities provided for in this Law. If the Monitoring Institution has given an opinion that the risk allocation between the public partner and the private partner does not correspond with the concession contract within the meaning of this Law, the public partner representative shall not perform further activities provided for in this Law. In this case the public partner representative shall assign the Concession Procedure Commission to make the changes in the risk allocation that would correspond with the concession contract within the meaning of this Law, or to take a decision to suspend the concession procedure according to Section 36, Paragraph two of this Law.

(4) The Cabinet shall determine the procedures by which the Monitoring Institution shall give opinions referred to in Paragraph one of this Section, including the terms for giving the opinions, in conformity with the contract value and risk allocation between the public partner and the private partner provided for in the financial and economic calculations.

(5) In order for a public-private partnership agreement not make a negative impact on the amount of the long-term liabilities of the State budget and the government debt, the Monitoring Institution shall evaluate the conformity of the accounting rules of the public-private partnership assets with the provisions included in the opinion of the Ministry of Finance (Section 15, Paragraph two) in the following documents:

1) in the concession procedural documents (Paragraph two, Clauses 1, 2, 3 and 4 of this Section);

2) in the partnership procurement procedural documents (in by-law, draft partnership procurement contract and its amendments, as well as in a new draft partnership procurement contract in case if the norms of Chapter XVII of this Law are applied), unless it has been laid down in the opinion of the Ministry of Finance (Section 15, Paragraph two) that the evaluation of the Monitoring Institution in relation to the referred-to documents is not necessary;

3) in the reports on execution of the public-private partnership contract.

(6) If the Monitoring Institution has given an opinion that the accounting rules of the public-private partnership assets in the concession procedure documents referred to in Paragraph two, Clauses 1, 2, 3 and 4 of this Section do not comply with the conditions included in the opinion of the Ministry of Finance, the public partner representative shall not perform further activities provided for in this Law. In this case the public partner representative shall assign the Concession Procedure Commission to make changes in the accounting rules of the public-private partnership assets or take a decision to suspend the concession procedure according to Section 36, Paragraph two of this Law.

(6¹) If the Monitoring Institution has given an opinion that the accounting rules of the public-private partnership assets in the procurement procedure documents referred to in Paragraph five of this Section do not comply with the conditions included in the opinion of the Ministry of Finance, the public partner representative shall assign the Procurement Procedure Commission to make changes in the accounting rules of the public-private partnership assets in order for them to conform to the provisions included in the opinion of the Ministry of Finance or take a decision to discontinue the procurement procedure.

(7) If the Monitoring Institution has given an opinion that the accounting rules of the public-private partnership assets determined in the progress reports of the public-private partnership agreement do not comply with the conditions included in the opinion of the Ministry of Finance, the public partner representative shall perform activities in order to eliminate this non-compliance.

(8) When evaluating the progress reports of the public-private partnership agreement the Monitoring Institution shall prepare opinions on compliance of the construction works performed or services provided with the relevant agreement.

(9) The Monitoring Institution has the right:

1) to request and receive information related to the public-private partnership procedure from the Public-Private Partnership Procedure Commission or public partner representative;

2) to request and receive information necessary to give the opinions referred to in Paragraph one of this Section from the public partner representative;

3) to request and receive the entered into public-private partnership agreement, amendments thereto and the new public-private partnership agreement from the public partner representative (in the case referred to in Section 82 of this Law);

4) to request and receive the reports referred to in Section, 12 Paragraph one of this Law on the course of execution of the entered into public-private partnership agreement from the public partner representative;

5) to enter into contracts with experts to ensure performance of the functions laid down in this Law.

(10) The Monitoring Institution has the duty:

1) to comply with the laws and regulations of the European Union and Latvia in the public-private partnership field when performing the function laid down in Paragraph one of this Section;

2) once a year to submit the report on the entered into public-private partnership agreements to the Cabinet;

3) in cases when it identifies facts not conforming with the laws and regulations or the entered into public-private partnership agreements to inform about it the public partner representative, the supreme institution of the public partner representative (if it exists), the institution having delegated the relevant public administration task to the public partner representative, the holder of capital shares of the state or local government capital company, another institution governed by private law determined in the Articles of Association of the legal person, as well as the competent State authorities in the cases provided for in the laws and regulations.

(11) The Cabinet shall determine the procedures for submission of the report referred to in Section 12, Paragraph one of this Law and the information to be included thereto.

(12) The public partner representative, the Concession Procedure Commission, another person or institution may address to the Monitoring Institution also in other cases not referred to in this Law in order it evaluates the compliance of the assumptions and risk allocation between the public partner and the private partner included in the financial and economic calculations with the concession contract and gives an opinion thereon or gives an opinion whether the accounting rules of the public-private partnership assets determined in the progress reports of the agreement comply with the conditions included in the opinion of the Ministry of Finance.

[25 August 2010; 5 September 2013]

Section 10. Monitoring Institution Acting as the Competence Centre

The Monitoring Institution acting as the competence centre of the public-private partnership:

1) shall prepare proposals in order to facilitate public-private partnership development;

2) shall inform and consult on public-private partnership matters;

3) shall identify and facilitate implementation of the most appropriate foreign experience for Latvia in the public-private partnership field;

4) shall develop methodological materials in the public-private partnership field;

5) shall co-operate with other State administration institutions and non-governmental organisations in the public-private partnership field;

6) shall perform other tasks prescribed in the laws and regulations governing activity of the Monitoring Institution.

Section 11. Laws and Regulations Governing Activity of the Monitoring Institution

The Cabinet shall determine the procedures for the activity and financing of the Monitoring Institution.

Section 12. Agreement Execution Control

(1) Once a year following the entering into a public-private partnership agreement the public partner representative shall submit a report on the course of the agreement execution to the Monitoring Institution.

(2) Following the receipt of the progress report the Monitoring Institution shall evaluate conformity of the construction works or services referred to in the report with the public-private partnership agreement and shall prepare an opinion thereon.

(3) The Cabinet shall determine the procedure for submitting the progress reports of the agreement and the information to be included therein, as well as the procedures by which the Monitoring Institution shall prepare an opinion on the conformity of the construction works or services referred to in the reports with the public-private partnership agreement and shall send the referred to opinion to the public partner representative; and cases when the opinion shall be also sent to the State Audit Office and other competent authorities.

(4) The opinion referred to in Paragraph two of this Section shall be preserved for 10 years following the expiry of the relevant public-private partnership agreement.

(5) The public partner and the private partner shall have the duty to ensure a separate accounting of the public-private partnership project.

Chapter III

Inception of the Public-Private Partnership Procedure

Section 13. Determining the Expected Contract Value

(1) The expected contract value for the partnership procurement contracts shall be determined in accordance with the Public Procurement Law.

(2) The expected contract value for concession contracts shall be determined as the planned total payment of the public partner for execution of the concession contract. When planning the total payment the public partner shall take into consideration any available choice, any supplements to the concession contract and any third party payments, as well as the value of awards and payments if the concession procedures provide for assigning of awards or making payments to candidates. The expected contract value of the works concession contract shall include also the contract value of the supplies and services requested for execution of the works concession contract and which the public partner has intended to perform or provide for the private partner.

(3) It shall not be permitted to divide the public-private partnership projects into parts in order to avoid application of the concession procedure or the relevant conditions of the concession procedure. For determination of the expected contract value it shall not be permitted to use the method intended for non-application of the concession procedures or the relevant conditions of the concession procedures laid down in the Law.

(4) The expected contract value for the public-private partnership agreement shall be determined simultaneously when conducting financial and economic calculations.

Section 14. Conduct of Financial and Economic Calculations

(1) Financial and economic calculations shall be conducted in order to determine the compliance of the public-private partnership with the implementation of the particular project

from the point of view of rational and efficient use of financial resources of the public person and what type of a public-private partnership agreement is to be entered into in order to implement successfully the relevant project for performing construction works or providing services taking into consideration the impact of the potential public-private partnership agreement on the amount of the long-term liabilities of the State budget and the government debt.

(2) The Cabinet shall determine the procedures by which the type of a public-private partnership agreement is determined and financial and economic calculations are conducted, as well as the criteria for accounting the public-private partnership assets in order to determine the impact of the public-private partnership agreement on the amount of the long-term liabilities of the State budget and the government debt.

(3) The decision to conduct of the financial and economic calculations shall be taken:

1) if the public partner is the State – the member of the Cabinet who is responsible for the field where it is planned to implement the public-private partnership project;

2) if the public partner is a local government – the council of this local government;

3) if the public partner is a derived public person (except for the local government) – the body of this public person; or

4) if the public partner is a legal person – an institution of this legal person that is entitled to take such a decision.

(4) The decision to conduct the financial and economic calculations shall be sent by the public partner to the Monitoring Institution which following the receipt of the relevant decision shall put it on the web site of the Monitoring Institution in accordance with the procedures laid down by the Cabinet.

Section 15. Opinions of the Competent Authorities

(1) Following the conduct of the financial and economic calculations the referred to calculations shall be sent:

1) to the Ministry of Finance — in order to get an opinion on the expected impact of the conditions referred to in the financial and economic calculations on the amount of the long-term liabilities of the State budget and the government debt;

2) to the Monitoring Institution — in order to get an opinion on the assumptions and risk allocation between the public partner and the private partner in the public-private partnership agreement included in the financial and economic calculations.

(2) In its opinion the Ministry of Finance shall specify the accounting rules of the public-private partnerships assets referred to in the financial and economic calculations that are the basis for the conclusion that the public-private partnership agreement will not make negative impact on the amount of the long-term liabilities of the state budget and the government debt.

(3) The Cabinet shall determine the procedures by which the Ministry of Finance gives the opinion referred to in Paragraph one, Clause 1 of this Section.

Section 16. Taking A Decision On Inception of the Public-Private Partnership Procedure

(1) If it is established in the opinion of the Ministry of Finance that the potential public-private partnership agreement does not make negative impact on the amount of the long-term liabilities of the state budget or the government debt, the decision on inception of the public-private partnership procedure shall be taken by:

1) the Cabinet if a public-private partnership agreement is entered into by the State or a derived public person acting as a public partner (except the local government);

2) the council of the local government if a public-private partnership agreement is entered into by a local government acting as the public partner;

3) the decision-making body determined in the Articles of Association of the legal person if a public-private partnership agreement is entered into by a legal person acting as a public partner; or

4) the relevant institution referred to in Clause 1, 2 or 3 of this Paragraph if a public-private partnership agreement is entered into by a public institution or a company of a public institution within the meaning of the Law On Public Service Provider Procurements.

(2) If the Ministry of Finance indicates in its opinion that the potential public-private partnership agreement makes negative impact on the amount of the long-term liabilities of the state budget or the government debt, the decision on inception of the public-private partnership procedure shall be taken by the Cabinet.

(3) If the State or a derived public person have a decisive influence over a capital company within the meaning of the Group of Companies Law, then the institutions referred to in Paragraph one, Clauses 3 and 4 of this Section shall take the decision on inception of the public-private partnership procedure when receiving a prior written agreement of the holder of capital shares of the relevant State or derived public person.

(4) The institutions referred to in Paragraph one and two of this Section shall take the decision on inception of the public-private partnership procedure based on the financial and economic calculations and opinions of the Ministry of Finance and the Monitoring Institution.

(5) If the Monitoring Institution has given an opinion that the risk allocation between the public partner and the private partner does not correspond with the concession contract, the decision on inception of the concession procedure shall not be taken.

(6) Each public partner institution referred to in Paragraph one and two of this Section involved in a public-private partnership project shall include the following information in the decision on inception of the public-private partnership procedure:

1) the public-private partnership procedure for determination of a candidate with whom the public-private partnership agreement will be entered into;

2) a public partner representative;

3) the duration of the public-private partnership agreement ensuing from the financial and economic calculations and opinion of the Ministry of Finance;

4) public partner resources – to be transferred to a private partner or in case of institutional partnership – to be invested in a joint venture;

5) provisions determined in the opinion of the Ministry of Finance for the accounting of the public-private partnership assets;

6) in case of institutional partnership – the fact that the public partner representative will be the holder of capital shares or stocks (hereinafter – capital shares) owned by the public partner in the joint venture according to the Law On the State and Local Government Capital Shares and Capital Companies;

7) other public-private partnership implementation conditions important for meeting the public interests.

(7) If the Monitoring Institution determines in its opinion that it is impossible to make an exact conclusion from the financial and economic calculations on whether the risk allocation referred to therein corresponds to the concession contract, the public partner institution referred to in Paragraph one and two of this Section shall take a decision on how the partnership procurement contract is to be entered into and how the partnership procurement procedure is to be applied.

(8) The decision to enter into a public-private partnership agreement for a period of time that exceeds 30 years shall be taken by taking into consideration the condition referred to in Section 60, Paragraph three of this Law.

(9) If it is determined in the decision on inception of the public-private partnership procedure that a partnership procurement contract is to be entered into, the document preservation term prescribed in Section 22 of this Law shall be applied to the preservation of the decision on

inception of the public-private partnership procedure, the relevant financial and economic calculations and opinions of the competent authorities.
[25 August 2010]

Division B Concession Procedures

Chapter IV Types of Concession Procedures, Information Exchange and Documentation

Section 17. Types of Concession Procedures and the Application Thereof

(1) In order to determine the candidate to whom a concession contract will be awarded, the following concession procedures shall be applied:

- 1) a competition without selection of candidates;
- 2) a competition with selection of candidates; or
- 3) a competitive dialogue.

(2) The competitive dialogue procedure shall be applied if a concession contract is considered to be especially complicated and the Concession Procedure Commission is not able to define objectively appropriate requirements in the Regulations and if it is not possible to determine objectively legal or financial solution of a project.

(3) Within the meaning of Paragraph two of this Law the concession contract shall be considered especially complicated if the Concession Procedure Commission is not able:

- 1) to define objectively appropriate requirements in the Regulations;
- 2) to determine objectively legal or financial solution of a project.

(4) Chapters VII, VIII, IX and X of this Law shall be applied to a competition without selection of candidates, competition with selection of candidates and competitive dialogue procedure.

(5) If the contract value of a works concession contract is equal or greater than the contract value limit determined in Section 56 of this Law, Chapter XII of this Law shall be applied in addition to the chapters referred to in Paragraph four of this Section.

Section 18. Information Exchange

(1) Information exchange between the Concession Procedure Commission and candidates shall be carried out by post, fax or e-mail, depending on the choice of the Concession Procedure Commission.

(2) The Concession Procedure Commission shall select the means of information exchange that are accessible to the addressee and ensure the fastest possible receipt of information.

(3) If information technology and electronic means of communication are used in the information exchange, the means of communication that are publicly available and compatible with information and communication technology products in general use shall be selected, thereby eliminating the possibility to discriminate the candidates on this basis.

(4) The exchange and storage of information shall be carried out in such a way as to ensure that all data included in requests to participate and tenders are protected, and that other persons could examine the content of the requests to participate and tenders and in the cases and procedures laid down in the laws and regulations in the field of information publicity following the term determined for the submission thereof has expired.

(5) During the time period from the day of submission of the requests to participate or tenders until the opening day thereof the Concession Procedure Commission shall not provide information on the existence of other requests to participate or tenders. The Concession

Procedure Commission shall not provide information on the evaluation process during the evaluation of requests to participate and tenders until the publication of the results.

(6) The Concession Procedure Commission shall ensure confidentiality of the submitted information in accordance with the laws and regulations in the field of information publicity.

Section 19. Requirements for Receipt and Sending of Electronic Documents

When using information technologies and electronic communication devices for receipt and sending of documents in partnership procedures the following principles shall be complied with:

1) information on specifications related to electronic submission of the partnership procedure documents shall be available to all candidates;

2) documents shall be signed using an electronic signature and the time-stamp in accordance with the requirements of the Electronic Documents Law;

3) it shall be possible to determine the exact date and time when the relevant partnership procedure document has been submitted;

4) the Concession Procedure Commission shall ensure that nobody is able access the submitted information until the term laid down in laws and regulations in the field of information publicity has expired;

5) it shall be possible to detect the violation if someone has violated the prohibition referred to in Clause 4 of this Section;

6) only the Concession Procedure Commission may determine or change the time for opening of the received documents;

7) during different stages of the concession procedure access to the submitted documents or a part thereof may be possible only following simultaneous activities of the authorised persons of the Concession Procedure Commission (hereinafter – authorised persons);

8) the submitted documents may be accessed only on a certain date following the simultaneous activities of the authorised persons;

9) access to the submitted and opened documents shall remain only to those authorised persons to whom such an access is permitted.

Section 20. Notices, the Forms Thereof

(1) The Cabinet shall determine the content of the notices referred to in Section 38, Paragraph one, Section 53, Paragraph one and Section 53.¹ of this Law, the procedures for submission thereof to the Procurement Monitoring Bureau, and approve the sample notice forms.

(2) If the expected contract value of a works concession contracts is equal or greater than the contract value limits determined by the Cabinet, the sample notice form referred to in Section 57, Paragraph one of this Law shall be determined by the Commission Regulation (EC) No 1564/2005 of 7 September 2005 establishing standard forms for the publication of notices in the framework of public procurement procedures pursuant to Directives 2004/17/EC and 2004/18/EC of the European Parliament and of the Council.

[25 August 2010]

Section 21. Documentation of the Concession Procedure

(1) The Concession Procedure Commission shall ensure documentation of the concession procedure and each stage thereof.

(2) The decision on inception of the concession procedure, financial and economic calculations, opinions of the competent authorities, minutes of the Concession Procedure Commission, the Regulations, requests to participate following the official opening thereof,

the final report of the Concession Procedure Commission, other concession procedure documents, except for the tenders submitted by candidates, shall be generally accessible information within the scope and in accordance with the procedures laid down in this Law.

(3) The public partner representative or the Concession Procedure Commission shall provide the information referred to in Paragraph two of this Section within three working days following the receipt of a request.

Section 22. Preservation of Concession Procedure Documents

(1) The public partner representative shall preserve all the original copies of the documents referred to in Section 21, Paragraph two of this Law, as well as original copies of the tenders submitted by the candidates for 10 years following the expiry of a concession contract.

(2) If the concession procedure is terminated or suspended in accordance with the procedures laid down in this Law, the public partner representative shall preserve the relevant original copies of the documents referred to in Section 21, Paragraph two of this Law, as well as original copies of the tenders submitted by candidates for five years following the Concession Procedure Commission has taken the decision to terminate or suspend the relevant concession procedure.

(3) If the decision of the Concession Procedure Commission referred to in Paragraph two of this Section to terminate or suspend the relevant concession procedure is appealed in accordance with the procedures laid down in this Law, the public partner representative shall preserve original copies of the documents referred to in Section 21, Paragraph two of this Law, as well as original copies of the tenders submitted by the candidates for five years following the entering into effect of the court adjudication.

(4) The period for preservation of the minutes of the Application Review Commission and the information obtained during the review of an application shall be 10 years.

Section 23. Confidentiality

(1) The Concession Procedure Commission may determine conditions for protection of the information that is transmitted to candidates together with technical specifications, as well as determine such conditions during the subsequent concession procedure.

(2) When providing information to candidates, the Concession Procedure Commission is not entitled to disclose the information transmitted thereto as a commercial secret or confidential information by other candidates.

(3) If a candidate, when providing the information requested in this Law, considers it as confidential or a commercial secret, the candidate shall particularly specify it.

Chapter V Concession Procedure Commission

Section 24. Establishment of the Concession Procedure Commission

(1) The Concession Procedure Commission shall be established by the public partner representative. The public partner representative shall ensure the work of the Concession Procedure Commission established thereby and shall be responsible for the activity thereof.

(2) When establishing the Concession Procedure Commission, the public partner representative shall ensure that it would be competent in the field for entering into the concession contract.

(3) When performing its duties the Concession Procedure Commission is entitled to invite experts or competent persons in the field of public-private partnership that are not members of the Commission.

(4) The Concession Procedure Commission shall be composed of at least five members.

Section 25. Basic Principles for the Activity of the Concession Procedure Commission

(1) Members of the Concession Procedure Commission and the experts may not represent interests of the candidate, as well as may not be related to the candidate.

(2) Within the meaning of Paragraph one of this Section a member of the Concession Procedure Commission or an expert is related to a candidate if he or she is:

1) a current or a former employee, an official, a shareholder, a stockholder or a member of the merchant or legal person of the candidate or sub-contractor thereof and if such a relationship with the merchant or legal person ended during the last 24 months;

2) a father, a mother, a grandfather, a grandmother, a child, a grandchild, a brother, a sister, a stepbrother, a stepsister or spouse of a shareholder, a stockholder or a member owning at least 10 percent of the capital shares or an official thereof of the merchant or legal person of the candidate or sub-contractor thereof; or

3) a father, a mother, a grandfather, a grandmother, a child, a grandchild, a brother, a sister, a stepbrother, a stepsister or a spouse of the natural person of the candidate or sub-contractor thereof.

(3) Relationship of the members of the Concession Procedure Commission and the experts with a candidate also refers to cases when a candidate is an association of persons whose members are merchants, natural or legal persons with whom a member of the Commission or an expert has a relationship referred to in Paragraph two of this Section.

(4) Prior to review of a tender the members of the Concession Procedure Commission and the experts shall sign a declaration that there are no any circumstances that would suggest that they are concerned in selection or activity of any particular candidate, or that they are related to therewith within the meaning of Paragraph two of this Section.

Section 26. Activity of the Concession Procedure Commission

(1) The Concession Procedure Commission shall ensure development of the concession procedure documents, record the course of the concession procedure and shall be responsible for the process of the procedure thereof.

(2) The Concession Procedure Commission shall evaluate candidates, tenders and other documents submitted thereby in accordance with this Law, the concession procedure documents, as well as other laws and regulations. The decision of the Concession Procedure Commission shall be binding on the public partner representative when entering into a concession contract.

(3) The Chairman of the Concession Procedure Commission shall organise and conduct the work thereof, determine the place, the time and the agenda of the Commission meetings, call and chair the Commission meetings.

(4) The Chairman of the Concession Procedure Commission shall be appointed by the public partner representative.

(5) The public partner representative may also appoint a vice-chairman of the Concession Procedure Commission who shall perform duties of the Chairman during a lasting absence of the Chairman (e.g. illness, vacation and business trip) or upon assignment of the Chairman.

Section 27. Procedures for Decision Taking of the Concession Procedure Commission

(1) The Concession Procedure Commission shall take decisions at the meetings.

(2) The Concession Procedure Commission has legal power if at least two thirds of the Commission members participate in the meeting.

(3) The Concession Procedure Commission shall take decisions by simple majority of votes of the attending Commission members. If the votes are split equally, the vote of the Chairman of the Commission meeting shall be decisive.

Chapter VI

Application Review Commission

Section 28. Establishment of the Application Review Commission

(1) The Procurement Monitoring Bureau shall establish an Application Review Commission composed of three members.

(2) Members of the Application Review Commission shall be officials of the Public Procurement Bureau.

(3) In order to review applications, the Procurement Monitoring Bureau is also entitled to invite experts from the relevant sector or competent persons in the field of public-private partnership. The expert and the competent person shall not have the right of voting at the Application Review Commission meetings but shall have the right to express an independent professional opinion on the facts found during the application review or to give an opinion on questions asked by the Application Review Commission.

(4) The Application Review Commission shall be chaired by the Chairman who meets the following criteria:

1) he or she has a higher legal education (has completed academic law program or second level higher professional study law program by obtaining lawyer qualification);

2) he or she has at least two year work experience in the review of applications on procurement procedure violations and knowledge of public-private partnership.

(5) At least one more member of the Application Review Commission shall meet at least the criterion referred to in Paragraph four, Clause 1 of this Section.

(6) The member of the Application Review Commission shall not be a person and the Commission shall not invite to a meeting an expert or competent person who:

1) previously advised on the concession procedure referred to in the application addressed to the Application Review Commission;

2) is interested in the award of a concession contract; or

3) is related to the applicant or other candidate participating in the concession procedure.

(7) Within the meaning of Paragraph six of this Section a member of the Application Review Commission, an expert or competent person is related to the applicant or other candidate if he or she is:

1) a current or a former employee, an official, a shareholder, a stockholder or a member of the merchant or legal person of the candidate or sub-contractor thereof and if such a relationship with the merchant or legal person ended during the last 24 months;

2) a father, a mother, a grandfather, a grandmother, a child, a grandchild, a brother, a sister, a stepbrother, a stepsister or a spouse of a shareholder, a stockholder or a member owning at least 10 percent of the capital shares or an official thereof of the merchant or legal person of the candidate or sub-contractor thereof; or

3) a spouse or a relative being in kinship with this person referred to in Clause 2 of this Paragraph of the natural person of the candidate or sub-contractor thereof.

(8) Relationship of the members of the Concession Procedure Commission, the experts or competent persons with an applicant or another candidate also refers to cases when a candidate is an association of persons whose members are merchants, natural or legal persons with whom a member of the Commission, an expert or a competent person has a relationship referred to in Paragraph seven of this Section.

(9) Prior to review of an application all members of the Application Review Commission, the experts and competent persons shall sign a declaration that there are no conditions referred to in Paragraph sixth of this Section and that they are not related to the applicant or another candidate.

(10) The Application Review Commission has legal power if all its members participate in the review of the relevant issue. The decision is taken if the majority of the Commission members votes for it. The Application Review Commission shall take decisions by voting “for” or “against”. When taking a decision the Commission members shall be independent and subjected only to the law.

[25 August 2010]

Section 29. Submission of an Application

(1) A person, who is or has been interested in the award of a concession contract and who in relation to the relevant concession procedure governed by this Law considers that his or her right is infringed or infringement of the right thereof is possible due to probable violation of the European Union laws and regulations or other laws and regulations, is entitled to submit an application on the candidate selection provisions, technical specifications and other requirements relating to the particular concession procedure or on the activity of the public partner, public partner representative or Concession Procedure Commission during the concession procedure.

(2) Except for the case referred to in Paragraph three of this Section, the application on violations referred to in Paragraph one of this Section may be submitted to the Procurement Monitoring Bureau prior to entering into a concession contract in the following terms:

1) within 10 days following the day when the information referred to in Section 43, Paragraph one, Section 45, Paragraph one or Section 53 of this Law has been sent to the relevant person by fax or electronically using a secure electronic signature, or transmitted in person;

2) within 15 days following the day when the information referred to in Section 43, Paragraph one, Section 45, Paragraph one or Section 53 of this Law has been sent to the relevant person by post; or

3) within 10 days following the day when the notice referred to in Section 53¹, Paragraph one of this Law has been published on the website of the Public Procurement Bureau in the Internet or in the Official Journal of the European Union if the contract value of a works concession is equal or greater than the contract value limits determined by the Cabinet.

(3) The application on the requirements included in the Regulations of a competition without selection of candidates, the notice of invitation to participate in a competition without selection of candidates and the Regulations of a competition with selection of candidates, as well as the application on the requirements included in the invitation to participate in a competitive dialogue procedure may be submitted to the Procurement Monitoring Bureau not later than 10 days prior to the end of the term for submission of tenders. The application on the selection provisions referred to in the Regulations of a competition with selection of candidates, the requirements included in the notice of invitation to participate in a competition without selection of candidates and competitive dialogue procedure and the competitive dialogue procedure documents may be submitted to the Procurement Monitoring Bureau not later than 10 days prior to the end of the term for submission of requests to participate.

(4) The application shall be submitted in writing and the following information shall be included therein:

1) applicant’s name (company) and address;

2) name and address of the public partner representative, Concession Procedure Commission on which the application is submitted;

- 3) facts on which the application is submitted specifying the violation;
 - 4) legal substantiation of the application;
 - 5) applicant's claim.
- (5) Within one working day following the receipt of the application on the concession procedure violations the Procurement Monitoring Bureau shall put the information thereon on its website specifying the applicant, the public partner, the public partner representative or the Concession Procedure Commission and the concession procedure whose legality is appealed by the applicant, as well as shall inform the public partner representative about the initialization of an administrative matter by sending a notice on the received application and a copy of the application to the fax number or e-mail address indicated by the public partner representative and the public partner shall not enter into the concession contract while the decision of the Application Review Commission on the results of the application review or termination of the administrative matter is not received.
- (6) If an application is submitted on the activity of the public partner, the public partner representative or the Concession Procedure Commission in relation to the legality of the concession procedure and an application on the same concession procedure has been submitted previously by another applicant but it has not yet been reviewed, these applications may be joined and reviewed together.
- (7) An applicant is entitled to withdraw his or her application in writing at any time while the Application Review Commission has not taken a decision thereon.
- (8) The Procurement Monitoring Bureau is entitled to leave the application without reviewing in any of the following cases:
- 1) the application does not comply with requirements of Paragraph one, two, three or four of this Section;
 - 2) an application has already been submitted and reviewed on the same subject and on the same basis regarding the concession procedure; or
 - 3) the information contained in the application is obviously insufficient to satisfy the claim of the applicant or the application shall be clearly rejected on the merits.
- (9) The decision referred to in Paragraph eight of this Section may be appealed in the court according to the procedures laid down in law. The appeal against the decision does not suspend its validity.
- [25 August 2010]

Section 30. Review of an Application

- (1) The Application Review Commission shall review an application in accordance with the procedures laid down in the Administrative Procedure Law unless this Law lays down otherwise.
- (2) Following the review of the application on violations of the concession procedure, the Application Review Commission with a decision thereof may:
- 1) allow to enter into a concession contract and maintain valid the requirements laid down in the concession procedure documents or the decision of the public partner, the public partner representative or Concession Procedure Commission if the application is unreasonable or substantiated but the violations found by the Application Review Commission cannot affect the decision on the concession contract award;
 - 2) prohibit to enter into a concession contract if the requirements of Section 43, Section 45, Paragraph one or Section 53, Paragraphs one and four of this Law are not observed;
 - 3) prohibit to enter into a concession contract and fully or partially cancel the requirements laid down in the concession procedure documents or the decision of the public partner, the public partner representative or Concession Procedure Commission if the

application is substantiated and violations found by the Application Review Commission may affect the decision on the concession contract award;

4) maintain valid the decision of the public partner, the public partner representative or Concession Procedure Commission on termination or suspension of a concession procedure if the application is unreasonable; or

5) cancel the decision of the public partner, the public partner representative or Concession Procedure Commission on termination or suspension of a concession procedure if the application is substantiated.

(3) In cases referred to in Paragraph two, Clauses 2, 3 and 5 of this Section the Application Review Commission may decide on measures for prevention of the found violations. The Application Review Commission may assign the public partner or the public partner representative to suspend the concession procedure only in case if the violations of the concession procedure committed by the public partner, the public partner representative or the Concessions Procedure Commission cannot be prevented otherwise.

(4) If during the review of an application the Application Review Commission finds that the application shall be left without review, it may take a decision on termination of the administrative matter. If the applicant withdraws the application, the relevant administrative procedure shall be considered terminated.

(5) The Application Review Commission shall invite to the application review meeting the applicant, the public partner representative, the members of the Concession Procedure Commission, the candidate whose tender is selected in accordance with the determined tender selection criterion (hereinafter in this Section – participants). The Application Review Commission shall invite participants to the application review meeting at least three working days in advance.

(6) The Application Review Commission shall listen to the views of all participants. Following the hearing of the participants it shall continue the work without participants being present.

(7) The Application Review Commission shall evaluate the application on the basis of the facts and explanations provided by participants, as well as views or opinions of the experts or competent persons. If the participants have not arrived to the application review meeting, the Application Review Commission shall review the application on the basis of the facts available thereto. The Application Review Commission shall take a decision and within three working days following the taking of the decision send it to the applicant, the public partner representative, as well as to other participants who have participated at the application review meeting.

(8) In addition to the requirements of the Administrative Procedure Law the Application Review Commission shall include the following information in its decision:

- 1) substantiation for the establishment of the Commission;
- 2) the Commission members, the experts and the competent persons who have participated in the application review meeting;
- 3) the applicant, the public partner representative, the members of the Concession Procedure Commission and the representatives of other participants who have participated in the application review meeting;
- 4) facts on which the application is submitted and the applicant's claim;
- 5) the most important arguments of the applicant and the public partner representative;
- 6) substantiation of the decision;
- 7) the applied legal provisions;
- 8) duties delegated to the public partner representative or the Concession Procedure Commission and the term within which it should be fulfilled if the Application Review Commission decides on the measures for prevention of the violations;
- 9) prohibition or permission to enter into the concession contract;
- 10) where and in what term this decision may be appealed.

(9) If the Application Review Commission has taken a decision on the measures for prevention of the found violations, the public partner representative or Concession Procedure Commission shall prevent the violations and perform further activities prescribed by this Law.

(10) The Concession Procedure Commission shall send all information on prevention of the violations found by the Application Review Commission to the Procurement Monitoring Bureau not later than on the day when the notice of the Concession Procedure Commission on the results of the concession procedure is published according to the procedures laid down in Section 53 of this Law.

[25 August 2010]

Section 31. Appeal of the Decisions of the Application Review Commission

(1) The applicant, the public partner or the candidate whose tender is selected in accordance with the specific tender selection criterion may appeal the decision of the Application Review Commission to the Administrative District Court in the procedures laid down by the Administrative Procedure Law. The matter shall be heard by the court composed of three judges.

(2) The judgement of the Administrative District Court may be appealed, by way of cassation procedure, to the Administrative Matter Department of Supreme Court Senate. Other court adjudications may be appealed according to the Administrative Procedure Law.

(3) Appeal of the decision of the Application Review Commission shall not suspend the validity thereof.

[25 August 2010]

Chapter VI.¹

Recognition of a Concession Contract as Invalid, Amendment, Cancellation of the Provisions of a Concession Contract or Reduction of the Term of a Contract, and the Procedure for Compensation of Losses

[25 August 2010]

Section 31.¹ Submission of an Application on Recognition of a Concession Contract as Invalid, on Amendment or Cancellation of the Provisions Thereof or on Reduction of the Term of a Concession Contract, and Review of the Relevant Case

(1) An application on recognition of a concession contract as invalid, on amendments to or cancellation of the provisions thereof or on reduction of the term of a concession contract may be submitted by the persons referred to in Section 29, Paragraph one of this Law.

(2) The application shall be submitted to the Administrative District Court where the matter is heard by three judges. The provisions of the Administrative Procedure Law shall be applied to the proceedings regarding the application and the matter, including provisions regarding the hearing of a public law contract in the court, unless this Law lays down otherwise.

(3) The application on violations referred to in Section 31², Paragraph one of this Law may be submitted by the following deadlines:

1) within six months following the day when the concession contract was entered into, except for the case referred to in Clause 2 of this Paragraph; or

2) within one month following the day when the public partner or the public partner representative informed the relevant candidate on entering into the concession contract specifying the information referred to in Section 53, Paragraph four, Clause 1 or 2 of this Law, or on entering into the concession contract specifying the reasons for rejection of the application submitted thereby.

(4) Simultaneously with submission of the application or during hearing of the matter the applicant may, in the cases and procedures laid down in the Administrative Procedure Law, ask to apply provisional regulation envisaging prohibition of certain activities related to execution of the concession contract.

(5) The judgement of the Administrative District Court may be appealed, by way of cassation procedure, to the Administrative Matter Department of Supreme Court Senate. Other court adjudications may be appealed according to the Administrative Procedure Law.

(6) A claim on recognition of a concession contract as invalid that is not substantiated by the conditions referred to in Section 31² of this Law, shall be submitted to the court of general jurisdiction in conformity with the procedures laid down in the Civil Procedure Law.

Section 31.² Cases When a Concession Contract May Be Recognised As Invalid, the Provisions Thereof Amended or Cancelled or the Term of a Concession Contract Reduced

(1) The Court may recognise the concession contract as invalid, amend or cancel the provisions thereof or reduce the term of the concession contract in any of the following cases:

1) the concession contract was entered into without application of the concession procedures laid down in Section 17, Paragraph one of this Law;

2) the concession contract was entered into disregarding the term laid down in Section 54 of this Law; or

3) the concession contract was entered into disregarding the prohibition to enter into a concession contract laid down in Section 29, Paragraph five of this Law.

(2) In the case referred to in Paragraph one, Clause 1 of this Section the concession contract may not be recognised as invalid, the provisions thereof amended or cancelled or the term of the contract reduced if all of the following conditions are observed:

1) the public partner or the public partner representative has published the notice referred to in Section 53.¹, Paragraph one of this Law;

2) the concession contract was entered into not earlier than 10 days and one additional working day following the day when the notice referred to in Section 53.¹, Paragraph one of this Law was published on the website of the Public Procurement Bureau in Internet or in the Official Journal of the European Union in case when the contract value of a works concession is equal or greater than the contract value limits determined by the Cabinet;

3) the prohibition to enter into a concession contract laid down in Section 29, Paragraph five of this Law has been observed.

[Paragraph two of Section 312 came into force on 1 October 2010, see Clause 13 of Transitional Provisions]

Section 31.³ Judgement of the Court on a Concession Contract

(1) If the court finds that the concession contract was entered into disregarding the provisions of this Law and concludes that the application shall be satisfied, it may choose one of the following types of the judgements to its own discretion in accordance with conditions of this Law:

1) recognizes the concession contract invalid from the moment of the entering into thereof;

2) amends or cancels the provisions of the concession contract. By this judgment the court also reduces the term of the concession contract; or

3) reduces the term of the concession contract.

(2) When passing a judgment, the Court shall not be limited to the subject of the application and limits of the claim determined by the applicant.

(3) If choosing the type of judgement referred to in of Paragraph one, Clause 1 or 2 of this Section the court shall evaluate which one of them is sufficiently proportional, effective and preventive in the particular case in order to ensure that in future the public partner or the public partner representative will not tolerate violations of this Law. The court shall make the judgement referred to in Paragraph one, Clause 3 of this Section only in cases laid down in Paragraphs four and five of this Section.

(4) The Court shall not pass the judgement referred to in Paragraph one, Clause 1 or 2 of this Section if it is important to maintain the consequences of the concession contract due to public interests. Financial consequences (for example, due to delay of making a payment, change of a contractor, sanctions or other legal obligations) alone shall not be considered a sufficient basis for non-passing of the judgement referred to in Paragraph one, Clause 1 or 2 of this Section.

(5) If a concession contract has been entered into disregarding the deadline prescribed in Section 54 of this Law or violating the prohibition to enter into a concession contract laid down in Section 29, Paragraph five of this Law, and it is found that the concession procedure until the moment when a decision was taken on determination of the winner has been carried out in accordance with the requirements of this Law, and the referred to decision has not affected the chances of the candidate, who has submitted the application, for the award of a contract, the court shall pass the judgement referred to in Paragraph one, Clause 2 or 3 of this Section.

(6) A copy of the judgement shall be sent to the Procurement Monitoring Bureau.

Section 31.⁴ Compensation of Losses

(1) Losses caused within the framework of administrative proceedings shall be compensated in accordance with the Administrative Procedure Law and the Law On Compensation of Losses Caused by Public Administration Institutions. Matters about compensation of losses shall be examined by the Administrative District Court composed of three judges according to the procedure of judicial proceedings.

(2) If losses have been caused outside the administrative proceedings, the court shall decide on the compensation thereof upon the request of an applicant by reviewing the relevant application and passing one of the judgements referred to in Section 31.³, Paragraph one of this Law. The duty to prove the existence of such losses and the amount of compensation rests on the applicant. Following the day when the judgment enters into effect the compensation of such losses may be claimed according to the civil law procedure.

(3) When submitting an application to the Procurement Monitoring Bureau according to Section 29 of this Law, the compensation of losses shall not be claimed. Compensation of losses caused by the public partner or the public partner representative may be requested simultaneously submitting an application to the court or addressing the public partner in accordance with the procedures laid down by the Law On Compensation of Losses Caused by Public Administration Institutions. The Procurement Monitoring Bureau shall not be liable for losses caused by the public partner or the public partner representative.

Chapter VII General Issues for Conduct of the Concession Procedures

Section 32. Stages of the Concession Procedures

(1) When the concession procedure – a competition without selection of candidates is applied, it shall be carried out in the following stages:

- 1) development of a Regulations (Section 33);

- 2) drawing up of an opinion of the Monitoring Institution on the Regulations and the draft concession contract (Section 34);
 - 3) publication of a notice on invitation to participate in a concession procedure (Section 38);
 - 4) submission of the candidates' tenders for the award of a concession contract (hereinafter –tender) (Section 48);
 - 5) opening of the candidates' tenders (Section 49);
 - 6) evaluation of the candidates' tenders (Section 50);
 - 7) negotiations with the candidates on the draft concession contract (Section 52);
 - 8) publication of the results of the competition without selection of candidates (Section 53);
 - 9) entering into a concession contract (Section 54).
- (2) When the concession procedure – a competition with selection of candidates is applied, it shall be carried out in the following stages:
- 1) development of a Regulations (Section 33);
 - 2) drawing up of an opinion of the Monitoring Institution on the Regulations and the draft concession contract (Section 34);
 - 3) publication of a notice on invitation to participate in a concession procedure (Section 38);
 - 4) submission of the candidates' tenders for a competition with selection of candidates (Section 40);
 - 5) opening of the candidates' requests to participate (Section 41);
 - 6) selection of candidates (Section 42);
 - 7) information of the candidates on the selection results and invitation to submit tenders (Section 43);
 - 8) submission of candidates' tenders for the award of a concession contract (Section 48);
 - 9) evaluation of the candidates' tenders (Section 50);
 - 10) negotiations with candidates on the draft concession contract (Section 52);
 - 11) publication of the results of the competition with selection of candidates (Section 53);
 - 12) entering into a concession contract (Section 54).
- (3) When the concession procedure – a competitive dialogue is applied, it shall be carried out in the following stages:
- 1) development of a Regulations (Section 33);
 - 2) drawing up of an opinion of the Monitoring Institution on the Regulations and the draft concession contract (Section 34);
 - 3) publication of a notice on inception of a competitive dialogue (Section 38);
 - 4) submission of the requests to participate in a competitive dialogue (Section 44);
 - 5) selection of candidates to be invited to negotiations (Section 44);
 - 6) invitation of candidates to negotiations (Section 45);
 - 7) conduct of individual negotiations with each selected candidate (Section 46);
 - 8) closing of the negotiations and invitation to submit tenders for the award of a concession contract (Section 47);
 - 9) submission of candidates' tenders for the award of a concession contract (Section 48);
 - 10) evaluation of the candidates' tenders (Section 50);
 - 11) negotiations with candidates on the draft concession contract (Section 52);
 - 12) publication of the results on the competitive dialogue (Section 53);
 - 13) entering into a concession contract (Section 54).
- (4) Following the taking of a decision to enter into a concession contract (Section 52) or taking of a decision to terminate or suspend the concession procedure (Section 36) the

Concession Procedure Commission shall prepare the final report on the concession procedure (hereinafter –final report) (Section 55).

Section 33. Development of the Regulations

(1) The Concession Procedure Commission shall develop the Regulations of the relevant concession procedure in conformity with the decision on inception of the public-private partnership procedure. The referred-to Regulations shall be approved by each public partner representative.

(2) If a competition without selection of candidates is applied to the concession procedure the following information shall be determined in the Regulations:

1) name (company) of a public partner and representative thereof, legal address and other required requisites;

2) date, time, place and procedure for submission and opening of candidates' tenders;

3) requirements as regards validity period of a candidate's tender, drawing up and submission, form of a financial tender, as well as information on the language or languages a tender is to be submitted;

4) conditions for elimination of candidates in accordance with Section 37 of this Law, as well as the information to be submitted that is necessary in order to evaluate a candidate in accordance with the requirements of the referred to Section;

5) requirements as regards possibilities of a candidate to perform professional activity, requirements as regards economic and financial standing of a candidate, technical and professional capabilities, as well as the information to be submitted that is necessary in order to evaluate a candidate in accordance with the referred to requirements;

6) information on the subject of a concession contract specifying requirements determined for construction works and services, including the expected quality level of construction works or services, the purpose of construction works or services, the time and the place for the performance thereof and, if necessary, the methods and resources to be used in performance of construction works or provision of services;

7) conditions for environmental protection (if such are to be determined);

8) conditions for social protection (if such are to be determined);

9) the period of time within which the Concession Procedure Commission plans to review the tenders;

10) tender evaluation criteria in accordance with Section 51 of this Law, as well as a reference whether a candidate may submit several tenders;

11) date, time and manner the results of a competition without selection of candidates will be notified to the candidates;

12) conditions according to which tenders shall be considered incompatible with the Regulations;

13) term within which, following determination of the results, the final agreement with the winner of the competition without selection of candidates procedure shall be reached regarding entering into a concession contract;

14) provisions of the draft concession contract that may not be amended during the harmonisation of the concession contract;

15) means of communication through which the information is to be exchanged between the Concession Procedure Commission and the candidates;

16) other information provided for in this Law or considered by the Concession Procedure Commission as necessary to be included in the Regulations.

(3) If a competition with selection of candidates is applied to the concession procedure, the following information shall be provided in the Regulations in addition to the information referred to in Paragraph two of this Section:

- 1) time and place where a candidate may submit a request on readiness to participate in a competition with selection of candidates;
- 2) list of documents and information to be submitted;
- 3) common criteria a candidate shall meet in order to invite the candidate to submit a tender in accordance with Section 40, Paragraph two of this Law;
- 4) date, time, place and procedures by which the Concession Procedure Commission will open candidate tenders;
- 5) period of time within which the Concession Procedure Commission plans to carry out selection of candidates;
- 6) date, time and manner the results of the candidate selection will be published;
- 7) planned time schedule for carrying out other stages of the procedure of the competition with selection of candidates;
- 8) other information related to the candidate selection.

(4) If a competition with selection of candidates is applied to the concession procedure, the Regulations may include the condition that the Concession Procedure Commission retains the right to request that only a limited number of candidates who meet the candidate selection criteria best may submit tenders. In this case the number of candidates may not be less than three.

(5) If a competitive dialogue is applied to the concession procedure, the following information shall be determined in the Regulations in addition to the information referred to in Paragraph two of this Section:

- 1) time and place where a candidate may submit a request on readiness to participate in a competitive dialogue procedure;
- 2) list of documents and information to be submitted;
- 3) common criteria a candidate shall meet in order to invite the candidate to negotiations in accordance with Section 40, Paragraph two of this Law;
- 4) period of time within which the Concession Procedure Commission plans to carry out evaluation of candidates in order to invite them to negotiations;
- 5) needs and requirements of a public partner regarding which the negotiations with candidates will be carried out;
- 6) information on the time and place of inception of the negotiations, as well as the language planned to be used in negotiations with candidates;
- 7) date, time and manner the candidates will be invited to negotiations;
- 8) stages of negotiations if it is planned that the negotiations with candidates will be held in stages;
- 9) date, time and manner the candidates will be informed on the results of the negotiations;
- 10) planned time schedule for carrying out other stages of the competitive dialogue procedure;
- 11) amount and assigning of awards or making of payments to the participants of the negotiations, as well as manner and terms of presentation to the candidates who have participated in the negotiations referred to in Section 46 of this Law (if it is planned that there will be awards or payments for the participation in the negotiations);
- 12) other information on the course of the competitive dialogue procedure.

(6) If the information referred to in Paragraph two of this Section is not objectively compatible with the information referred to in Paragraph three or five of this Section, only the information referred to in Paragraph three or five of this Section shall be included in the Regulations.

(7) If any type of granting of the aid determined in the Law On Control of Aid for Commercial Activity is provided for the execution of a concession contract, the Concession Procedure Commission shall specify the referred to information in the Regulations simultaneously prescribing the procedure for granting such an aid.

(8) If it is planned to attract financing of the European Union Funds for execution of a concession contract, the Concession Procedure Commission shall indicate the referred-to information in the Regulations simultaneously laying down the procedure for using such a financing.

(9) It shall be determined in the Regulations whether a candidate with whom it is planned to enter into a concession contract, may found a special purpose entity for the execution of the contract or the candidate is obliged to found it.

(10) It may be requested in the Regulations that a candidate shall specify the parts of the concession contract that will be transferred to sub-contractors for execution, as well as all planned sub-contractors.

(11) The draft concession contract shall be attached to the Regulations. The draft concession contract may be not attached to the Regulations in case of the competitive dialogue procedure.

Section 34. Opinion of the Monitoring Institution on the Regulations and the Draft Concession Contract

(1) The Concession Procedure Commission shall send the Regulations and the draft concession contract attached thereto to the Monitoring Institution in order to receive an opinion on conformity of risk allocation between the public partner and the private partner with the concession contract.

(2) If it is determined in the opinion of the Monitoring Institution that it ensues from the information provided in the Regulations and the draft concession contract that the risk allocation between the public partner and the private partner corresponds with the concession contract, the Concession Procedure Commission shall send the notice regarding the invitation to participate in the concession procedure referred to in Section 38, Paragraph one of this Law to the Procurement Monitoring Bureau.

(3) If it is determined in the opinion of the Monitoring Institution that it ensues from the information provided in the Regulations and the draft concession contract that the risk allocation between the public partner and the private partner does not correspond with the concession contract, the Concession Procedure Commission shall inform the public partner representative thereof, and shall prepare a new Regulations and draft concession contract based on written instructions of the public partner representative or suspend the concession procedure by taking the decision referred to in Section 36, Paragraph two of this Law.

(4) If the Concession Procedure Commission prepares a new Regulations and draft concession contract based on the instructions of the public partner representative, the Commission shall send them to the Monitoring Institution in accordance with Paragraph one of this Section.

Section 35. Making Amendments to the Regulations

(1) The Concession Procedure Commission may make amendments to the Regulations if they do not change significantly the requirements included in the Regulations. Significant changes in the requirements included in the Regulations shall be especially considered the changes as a result of which the scope of persons who may participate in the concession procedure and submit a tender is changed, the determined risk allocation between the public partner and the private partner is changed or the content of the tender, the proposed contract value and conditions are changed, or it becomes impossible to prepare the tender in the determined term or other significant requirements included in the Regulations.

(2) Amendments to the Regulations shall be approved by the public partner representative.

(3) Amendments to the Regulations may be made only if the term for submitting the relevant request to participate or tender referred to in Section 39 of this Law has not expired.

(4) The Concession Procedure Commission shall send the amendments to the Regulations to the Monitoring Institution for giving an opinion in accordance with the procedures laid down in Section 34 of this Law.

Section 36. Termination or Suspension of the Concession Procedure

(1) The Concession Procedure Commission shall take a decision to terminate the relevant concession procedure if:

1) not any request to participate or tender is submitted by a candidate for this concession procedure;

2) not any of the submitted tenders corresponds with the requirements included in the Regulations;

3) not any of the candidates corresponds with the requirements determined for qualification, candidate selection or competitive dialogue procedures laid down in the Regulations; or

4) the Concession Procedure Commission do not reach an agreement regarding the concession contract with any of the candidates in the negotiations on the draft concession contract in accordance with the procedures laid down in Section 52 of this Law and wherewith the concession contract with a private partner is not entered into.

(2) The Concession Procedure Commission may suspend the relevant concession procedure with its decision at any time if there is an objective substantiation and a consent of each public partner is received.

(3) If a decision is taken on termination or suspension of the concession procedure, the Concession Procedure Commission shall send the information referred to in Section 53, Paragraph five of this Law to all candidates, submit for publication the notice referred to in Section 53, Paragraph one of this Law and prepare the final report (Section 55).

[25 August 2010]

Section 37. Provisions for Elimination of a Candidate

(1) The Concession Procedure Commission shall eliminate a candidate from further participation in the relevant concession procedure, as well as shall not review the candidate's tender in any of the following cases:

1) a candidate or a person, having the right to represent the candidate or to take a decision or supervise in relation to this candidate, has been found guilty of committing criminal offences of corruptive nature, fraudulent activities in the field of finances, laundering of criminal proceeds or participation in a criminal organisation by such a judgement of a court or a punishment prescription of a prosecutor that has entered into effect and is non-disputable;

2) a candidate, by such a decision of a competent authority or a judgment of a court which has entered into effect and has become non-disputable, has been found guilty of a significant violation of employment rights which means:

a) employment of one or more citizens or nationals of the third countries if they reside in the territory of the European Union Member States illegally; or

b) employment of one person without entering into a written employment contract if it is determined repeatedly within a period of one year, or employment of two or more persons simultaneously without entering into a written employment contract;

3) a candidate, by such a decision of a competent authority or a judgment of a court which has entered into effect and has become non-disputable, has been found guilty of violation of competition rights manifested as a vertical agreement aimed at restricting the opportunity of a purchaser to determine the resale price, or horizontal cartel agreement, except

for the case when the relevant authority, upon determining violation of competition rights, has released the candidate from a fine;

4) insolvency proceedings have been declared for the candidate, the economic activity of the candidate has been suspended or discontinued, legal proceedings have been initiated regarding the bankruptcy of the candidate or it is determined that the candidate will be wound up until fulfilment of the expected expiry date of the contract;

5) if a candidate has tax debts in Latvia and a country where it is registered or permanently residing, including debts of mandatory payments of the State social insurance in total exceeding EUR 150 in each country;

6) a candidate is not registered, licensed or certified in accordance with the requirements of the laws and regulations of the country where the candidate resides;

7) a candidate has not provided information or has provided false information for the evaluation of qualification thereof; or

8) the provisions referred to in Clauses 1, 2, 3, 4, 5, 6 and 7 of this Paragraph shall be applied to the person the candidate refers to in order to certify that the qualification thereof conforms to requirements laid down in the notice on invitation to participate in the concession procedure or concession procedure documents.

(2) If a bailout or similar set of measures is applied within insolvency proceedings of a candidate or a person referred to in Paragraph one, Clause 8 of this Section oriented towards prevention of possible bankruptcy and restoration of solvency of the debtor, the Concession Procedure Commission may decide on non-elimination of the relevant candidate from the concession procedure in accordance with Paragraph one, Clause 4 of this Section by assessing potential economic risks and taking into account the subject of the contract.

(3) The elimination conditions referred to in Paragraph one, Clauses 1, 2 and 3 of this Section shall not be applied to the candidate and the person referred to in Paragraph one, Clause 8 of this Section if:

1) three years have passed from the day when the relevant judgement of a court, the punishment prescription of a prosecutor or a decision taken by another competent authority regarding violations referred to in Paragraph one, Clause 1 and Clause 2, Sub-clause "a" of this Section became non-disputable till the day when the request to participate or tender was submitted;

2) 18 months have passed from the day when the relevant judgement of a court or a decision taken by another competent authority regarding violations referred to in Paragraph one, Clause 2, Sub-clause "b" of this Section became non-disputable till the day when the request to participate or tender was submitted; or

3) 12 months have passed from the day when the relevant judgement of a court or a decision taken by another competent authority regarding violations referred to in Paragraph one, Clause 3 of this Section became non-disputable till the day when the request to participate or tender was submitted.

(4) If the Concession Procedure Commission is not able to obtain information referred to in Paragraph one, Clauses 4 and 5 of this Section from public databases, it shall request the candidate to submit the following:

1) a statement issued by a competent authority in Latvia or an equivalent authority in another country where the candidate or the person referred to in Paragraph one, Clause 8 of this Section is registered (permanently residing) and that certifies that:

a) an insolvency proceedings have not been initiated regarding the candidate and the person referred to in Paragraph one, Clause 8 of this Section and they are not in the winding up stage;

b) the candidate and the person referred to in Paragraph one, Clause 8 of this Section are registered, licensed or certified in the cases laid down in the Law and in accordance with the procedures laid down in laws and regulations;

2) a statement issued by the State Revenue Service or a local government in Latvia and an equivalent tax administration authority in another country where the candidate and the person referred to in Paragraph one, Clause 8 of this Section are registered (permanently residing) and that certifies that the candidate and the person referred to in Paragraph one, Clause 8 of this Section have no tax debts, including debts of mandatory payments of the State social insurance in total exceeding EUR 150 in each country.

(5) In order to evaluate the candidate and the person referred to in Paragraph one, Clause 8 of this Section in accordance with Paragraph one, Clause 2 of this Section, the Concession Procedure Commission shall obtain information from the State Labour Inspectorate whether the candidate and the person referred to in Paragraph one, Clause 8 of this Section have not been penalized for such violations of employment rights that are related to employment of persons without entering into a written employment contract in Latvia or abroad.

(6) In the case referred to in Paragraph one, Clause 7 of this Section the Concession Procedure Commission shall eliminate the relevant candidate from further participation in the concession procedure if the candidate has not submitted the requested information or the Concession Procedure Commission itself, by using the information at the disposal of the competent authorities that is verifiable and has public credibility, determines that the candidate has provided false information.

(7) If such documents by which the candidate may certify that the conditions determined in Paragraph one of this Section do not refer to him or her and the person referred to in Paragraph one, Clause 8 of this Section, are not issued or they are not sufficient to certify that the conditions determined in Paragraph one of this Section do not refer to him or her and the person referred to in Paragraph one, Clause 8 of this Section, these documents may be replaced by an attestation or if the attestation is not envisaged in regulatory acts of the relevant country — by a certification of the candidate and the person referred to in Paragraph one, Clause 8 of this Section to a competent executive or judicial authority, a sworn public notary or a competent organisation of the relevant field in the country of the registration (permanent residence) thereof.

[25 August 2010; 19 September 2013]

Section 38. Publication of a Notice on Invitation to Participate in a Concession Procedure

(1) The Concession Procedure Commission shall send a notice on invitation to participate in a concession procedure to the Procurement Monitoring Bureau for publication.

(2) The Procurement Monitoring Bureau shall publish the notice on the web site of the Procurement Monitoring Bureau in the Internet within three working days following the receipt thereof.

(3) If the amendments referred to in Section 35 of this Law are made to the Regulations, the Concession Procedure Commission shall repeatedly send the notice on invitation to participate in a concession procedure referred to in Paragraph one of this Section to the Procurement Monitoring Bureau for publication specifying the amendments made to the Regulations.

(4) In the case referred to in Paragraph three of this Section the Concession Procedure Commission shall also send the notice by a registered letter to the candidates, who have already submitted the request to participate in the concession procedure, within the same period of time it sends it to the Procurement Monitoring Bureau for publication.

(5) On the next day following the publication of the notice referred to in Paragraph one of this Section on the web site of the Procurement Monitoring Bureau in the Internet the notice on invitation to participate in a concession procedure shall be also published on the web site of each public partner representative in the Internet.

(6) The Concession Procedures Commission is entitled to submit the notice on invitation to participate in the concession procedure to the Procurement Monitoring Bureau for publication in the Official Journal of the European Union.

[25 August 2010]

Section 39. Terms for Submission of the Candidates' Requests to Participate and Tenders

(1) When determining the terms for submission of requests to participate or tenders, the Concession Procedure Commission shall take into consideration the level of complexity of the potential concession contract and the time required for the preparation of the requests to participate or tenders, as well as the limits of the terms prescribed in this Section.

(2) If a competition without selection of candidates is applied to a concession procedure, the term for submission of the candidate tenders shall be at least 30 days following the publication of the notice referred to in Section 38, Paragraph one of this Law on the web site of the Procurement Monitoring Bureau in the Internet.

(3) If a competition with selection of candidates or a competitive dialogue is applied to a concession procedure, the term for submission of candidate requests to participate shall be at least 25 days following the publication of the notice referred to in Section 38, Paragraph one of this Law on the web site of the Procurement Monitoring Bureau in the Internet.

(4) If a competition with selection of candidates is applied to a concession procedure, the term for submission of the candidate tenders shall be at least 25 days following the sending of the invitation to submit tenders to the candidates who have passed the candidate selection (Section 43).

(5) If a competitive dialogue is applied to a concession procedure, the Concession Procedure Commission shall agree on the term for submission of tenders with all the selected candidates who have participated in the negotiations but, if it is not possible to agree, the term shall be determined not less than 30 days from the day when the invitation to submit tenders is sent to the candidates (Section 47, Paragraph seven).

(6) The Concession Procedure Commission is entitled to extend the terms for submission of requests to participate or tenders referred to in this Section by publishing the same notice as the information on the submission of requests to participate or tenders has been initially published (Section 38, Paragraph one). Such an extension of terms shall not be considered as amendments to the Regulations within the meaning of Section 35 of this Law.

(7) If, for any reason, technical specifications and other documents or additional information is requested but is not delivered in the term provided for in Section 48, Paragraph eight of this Law or if the tender may be prepared only following an on-the-spot check of the concession implementation site or on-the-spot acquaintance with additional concession procedure documents, the Concession Procedure Commission shall extend the tender submission deadline, allowing candidates to learn all the information necessary for preparing the tender.

(8) If amendments are made to the Regulations (Section 35) and a half of the time period referred to in Paragraphs two and three of this Section or more has passed, the term for submission of a request to participate or tenders following the repeated notice on invitation to participate in the concession procedure is published on the web site of the Procurement Monitoring Bureau in the Internet shall not be less than 15 days.

[25 August 2010]

Chapter VIII

Selection of Candidates

Section 40. Submission of Candidates' Requests to Participate

(1) If in accordance with the Regulations a competition with selection of candidates is organised, a candidate shall submit a written request on readiness to participate in the candidate selection procedure to the Concession Procedure Commission within the term determined in the notice on invitation to participate in this concession procedure where shall certify the conformity thereof with the candidate selection criteria determined in the Regulations.

(2) In the case referred to in Paragraph one of this Section a candidate shall meet the following requirements:

- 1) appropriate and sufficient professional qualification;
- 2) equipment and other devices requested for performance of all activities planned within the scope of a concession contract are available or the candidate shall provide evidence that he or she will obtain the requested equipment and other devices following the entering into the concession contract;
- 3) appropriate financial resources are available for the performance of all activities planned within the scope of a concession contract (own resources or a written certification of a lender);
- 4) appropriate management and organisational experience;
- 5) other requirements laid down in the Regulations and that are important for the execution of a particular concession contract.

Section 41. Opening of the Candidates' Requests to Participate

(1) The Concession Procedure Commission shall arrange opening of the requests to participate on the date and at the time and place determined in the Regulations. Opening of requests to participate shall be public.

(2) Candidate requests to participate shall be opened according to the submission sequence thereof. Following the opening of a request to participate the Concession Procedure Commission shall name the candidate, the date and the time of submission of the tender and enter this information in the minutes of the Commission meeting.

Section 42. Selection of Candidates

(1) Within the time period provided for in the Regulations the Concession Procedure Commission shall evaluate the information and documents submitted by the candidates in order to determine the conformity thereof with the candidate selection criteria prescribed in the Regulations.

(2) The Concession Procedure Commission is entitled to verify the required information in a competent authority, publicly available databases or other publicly available sources. If the Concession Procedure Commission has acquired information in the referred to manner and the information does not correspond with the actual situation, a candidate is entitled to submit a statement or another document on the relevant fact.

(3) If the Concession Procedure Commission doubts whether the submitted document is an authentic original derivation, it shall request the candidate to present the original of the relevant document.

(4) If the Regulations includes a condition that the Concession Procedure Commission shall retain the right to request tenders only from a limited number of candidates, the Commission shall prepare the list of the candidates who will be invited to submit the tenders.

Section 43. Notification of Candidates on Selection Results

(1) Within three working days following the taking of the decision the Concession Procedure Commission shall inform simultaneously all candidates about the decision taken on the results of the candidate selection (the rejected candidate shall be also informed about the reasons for rejection of the submitted request to participate thereby) and invite the selected candidates to submit tenders. The Concession Procedure Commission shall inform all candidates about the deadline by which the person according to Section 29, Paragraph two, Clause 1 or 2 of this Law may submit an application on violations of the concession procedure to the Procurement Monitoring Bureau. Within the meaning of this Section it shall be considered that the information is passed to all candidates simultaneously if the information is passed to them on the same day.

(2) The Concession Procedure Commission shall send the information on the results of the candidate selection by mail, fax or electronically using a secure electronic signature, or transmit in person.

(3) When informing regarding the results of the candidate selection the Concession Procedure Commission shall keep evidence about the information sending or submission date and manner.

[25 August 2010]

Chapter IX Process of a Competitive Dialogue

Section 44. Submission of Requests to Participate and Selection of the Candidates to be Invited to the Negotiations

(1) In order to participate in a competitive dialogue procedure, a candidate shall submit a written request on readiness to participate in the competitive dialogue procedure to the Concession Procedure Commission within the term determined in the notice on invitation to participate in this concession procedure.

(2) The Concession Procedure Commission shall select candidates to be invited to negotiations within the terms provided for in the Regulations.

(3) In order to invite a candidate to negotiations, the candidate shall meet the requirements laid down in Section 40, Paragraph two of this Law.

Section 45. Invitation of the Candidates to the Negotiations

(1) The Concession Procedure Commission shall inform, according to the procedures laid down in Section 43 of this Law, all candidates who have submitted the requests to participate referred to in Section 44, Paragraph one of this Law on the results of the candidate selection specifying the candidates who are invited to the negotiations and other information referred to in Section 43, Paragraph one of this Law.

(2) It may be determined in the Regulations that, in case the number of candidates exceeds the number of candidates provided for in the Regulations, the Concession Procedure Commission shall invite only a certain number of candidates to the negotiations. In this case the number of candidates may not be less than three.

(3) In the case referred to in Paragraph two of this Section the Concession Procedure Commission shall invite the number of candidates provided for in the Regulations to the negotiations.

(4) At least the negotiation inception date, time and place shall be determined in the invitation to negotiations, as well as the language to be used in the competitive dialogue.
[25 August 2010]

Section 46. Negotiations with the Candidates

(1) On the date, at the time and place determined in the invitation to negotiations the invited candidate shall submit the solution thereof to the public partner needs and requirements determined in the Regulations to the Concession Procedure Commission.

(2) The task of the negotiations is to elaborate one or more alternative solutions that meet the requirements of the Regulations, based on which the candidates invited to the negotiations will be invited to submit tenders.

(3) The Concession Procedure Commission shall conduct negotiations with each invited candidate individually.

(4) During the negotiations the Concession Procedure Commission is entitled to discuss all aspects related to a concession contract with the invited candidates.

(5) During the negotiations the Concession Procedure Commission shall ensure equal treatment to all candidates without creating more advantageous conditions to any of the candidates than to others.

(6) When conducting negotiations with candidates the Concession Procedure Commission shall not disclose solutions offered by other candidates, as well as any confidential information provided by a candidate participating in the negotiations, unless the relevant candidate has definitely agreed with that.

(7) If it is provided for in the Regulations, the Concession Procedure Commission is entitled to organise negotiations in several consecutive stages in order to reduce the number of solutions to be discussed during the negotiations.

(8) The Concession Procedure Commission shall continue negotiations with candidates until the moment when a solution or solutions are elaborated that meet the public partner needs and requirements determined in the Regulations.

Section 47. Closure of the Negotiations and Invitation to Submit Tenders

(1) If a solution that meets the public partner needs and requirements determined in the Regulations is elaborated during the negotiations, the Concession Procedure Commission shall inform each public partner representative thereof in writing by sending the elaborated solution thereto.

(2) If each public partner representative accepts in written form the solution elaborated during the negotiations, the Concession Procedure Commission shall send the solution and the draft concession contract to the Monitoring Institution in order to receive an opinion on the risk allocation between the public partner and the private partner.

(3) If it is determined in the opinion of the Monitoring Institution that it ensues from the solution elaborated during the negotiations and the draft concession contract that the risk allocation between the public partner and the private partner corresponds with the concession contract, the Concession Procedure Commission shall close the negotiations.

(4) If it is determined in the opinion of the Monitoring Institution that it ensues from the solution elaborated during the negotiations and the draft concession contract that the risk allocation between the public partner and the private partner does not correspond with the concession contract, the Concession Procedure Commission shall inform the public partner representative thereof and continue the negotiations with candidates taking into consideration written instructions of the public partner representative or terminate the concession procedure by taking the decision referred to in Section 36, Paragraph two of this Law.

- (5) If it is determined in the opinion of the Monitoring Institution that it ensues from the draft concession contract that the risk allocation between the public partner and the private partner does not correspond with the concession contract, the Concession Procedure Commission shall elaborate a new draft concession contract.
- (6) In the cases referred to in Paragraphs four and five of this Section the Concession Procedure Commission shall act in accordance with Paragraph one and two of this Section.
- (7) The Concession Procedure Commission shall inform all candidates who participated in the negotiations on closure of the negotiations and invite these candidates to submit tenders within the term laid down in accordance with Section 39, Paragraph five of this Law.
- (8) At least the following information shall be included in the invitation to submit tenders:
- 1) the solution elaborated during the negotiations with candidates;
 - 2) term for submission of tenders, address to which the tenders are to be sent and the language the tender is to be submitted in;
 - 3) tender validity period.
- (9) The Concession Procedure Commission shall specify in the invitation that a tender shall include all the required elements that are included in the solution elaborated during the negotiations.
- (10) The draft concession contract shall be attached to the invitation. The provisions of the draft concession contract that are immutable shall be determined in the invitation.
- (11) If it is provided for in the Regulations that awards are assigned or payments made to the candidates for participation in the negotiations, the awards shall be assigned and payments made in accordance with the procedure provided for in the Regulations.

Chapter X

Determination of the Winner of a Concession Procedure

Section 48. Submission of Candidates' Tenders

- (1) If a competition without selection of candidates is organised, the candidate shall submit a tender within the term that is determined in the notice referred to in Section 38, Paragraph one of this Law published on the web site of the Procurement Monitoring Bureau in the Internet.
- (2) If a competition with selection of candidates is organised, the candidate who has received the invitation to submit a tender referred to in Section 43 of this Law shall submit a tender within the term determined in the invitation.
- (3) If a competitive dialogue is organised, the candidate who has received the invitation to submit a tender referred to in Section 47, Paragraph seven of this Law shall submit a tender within the term determined in the invitation.
- (4) The candidate shall specify the following in the tender:
- 1) the offered technical solution in accordance with the safety, environmental protection and other conditions determined in the Regulations;
 - 2) the offered financial and commercial solution of the concession;
 - 3) other information determined in the Regulations or invitation to submit a tender.
- (5) If a tender is submitted by a candidate who has participated in the competitive dialogue, the tender shall also include all the required elements that are included in the solution elaborated during the negotiations.
- (6) If the tender evaluation criterion is the most economically advantageous tender, it may be provided for in the Regulations that candidates may submit several tenders.
- (7) Candidates are entitled to request from the Concession Procedure Commission explanations regarding the Regulations and other information on the concession procedure if such a request is submitted no later than nine days prior to the expiry of the term for submission of tenders.

(8) The Concession Procedure Commission shall reply to the requests for information referred to in Paragraph seven of this Section within five working days.

Section 49. Opening of Candidates' Tenders

(1) The Concession Procedure Commission shall open the submitted tenders following the expiry of the tender submission term on the date and at the time and place determined in the Regulations. Opening of tenders shall be public.

(2) Tenders shall be opened according to the submission sequence thereof by naming the candidate, the tender submission time, the offered contract value and other information that describes the tender and this information shall be entered in the minutes of the Commission meeting.

(3) Upon request of a candidate the Concession Procedure Commission shall present the financial tender where the offered contract value is determined in accordance with the requested form of a financial tender.

Section 50. Evaluation of the Tender of a Candidate

(1) If according to the Regulations a competition without selection of candidates is organised, the Concession Procedure Commission shall verify conformity of a candidate with the qualification requirements determined in the Regulations, evaluate the candidate's tender in accordance with the evaluation criteria selected in the Regulations and select a tender in accordance with the tender selection criterion laid down in the Regulations.

(2) If according to the Regulations a competition with selection of candidates is organised the Concession Procedure Commission shall evaluate the candidate's tender in accordance with the evaluation criteria selected in the Regulations and select a tender in accordance with the tender selection criterion laid down in the Regulations.

(3) If according to the Regulations a competitive dialogue is organised, the Concession Procedure Commission shall verify conformity of a tender with the requirements determined in the solution elaborated during the negotiations and select the economically most advantageous tender.

(4) If a tender is submitted by a candidate who has participated in the negotiations in the competitive dialogue, the candidate is entitled to explain, update and harmonize the tender upon request of the Concession Procedure Commission. However, such an explanation, updating, harmonization and provision of additional information may not change the main elements of the tender or invitation to submit a tender, hence limiting the competition and facilitating discrimination.

(5) During the evaluation of the tenders the Concession Procedure Commission shall verify whether there are no arithmetical errors in the tender. If the Concession Procedure Commission determines such errors, it shall correct these errors. The Concession Procedure Commission shall inform the candidate whose errors have been corrected on the correction of errors and the adjusted tender value. When evaluating the financial tender the Concession Procedure Commission shall take into consideration the corrections made.

(6) If the most economically advantageous tender is determined as the tender selection criterion, each member of the Concession Procedure Commission shall individually evaluate the tender in accordance with all evaluation criteria prescribed in the Regulations. The most economically advantageous tender shall be considered the tender that obtains the highest evaluation summarizing individual evaluations of the Commission members.

(7) Following the evaluation of the candidate tenders the Concession Procedure Commission shall prepare a list of all candidates who have submitted tenders listing them according to the scores and enter it in the minutes of the Concession Procedure Commission meeting.

Section 51. Criteria for Evaluation of the Candidates' Tenders

(1) The Concession Procedure Commission shall determine the tender evaluation criteria in the Regulations taking into consideration the conditions referred to in this Section, goals of the concession project and other conditions that are significant for the execution of a particular concession contract.

(2) For comparison and evaluation of tenders the Concession Procedure Commission shall select one of the following criteria:

- 1) the most economically advantageous tender;
- 2) the tender with the lowest contract value.

(3) If the most economically advantageous tender is selected in a concession procedure, all evaluation criteria in the sequence of their importance, specific weights of the criteria and the quantitative values thereof shall be determined in the Regulations, as well as the tender selection algorithm in accordance with the referred to criteria and the description of how each of the determined evaluation criteria is to be evaluated. The quantitative values attributed to the criteria may be determined within a certain range.

(4) The following conditions may be used for the evaluation criteria of non-financial and non-commercial aspects of a tender:

1) technical evaluation provided in the tender (the minimum tender for implementation of the standard of technical design or service provision or the improvement thereof prescribed in the Regulations));

2) exploitation and management evaluation provided in the tender (the procedure, the method and conformity with the determined standards of exploitation and management of the planned building);

3) quality of services and the manners for ensuring the continuity thereof;

4) safety and environmental protection aspects;

5) other conditions important for the execution of a particular concession contract.

(5) The following conditions may be used for the evaluation criteria of financial and commercial aspects of a tender:

1) the amount of any payments to be made by a public partner within the scope of a concession contract;

2) the amount of any payments to be made by a private partner within the scope of a concession contract;

3) the offered design and construction costs, annual exploitation and maintenance costs, as well as the offered financing procedure;

4) the amount of any financial support (if such is planned) that is expected from a public partner or any other State or local government institution;

5) substantiation of the financing offered in accordance with the submitted documentation and the conditions determined therefore;

6) other conditions important for the execution of a particular concession contract.

Section 52. Negotiations on the Draft Concession Contract

(1) The Concession Procedure Commission shall invite the candidate who according to Section 50, Paragraph one, two or three of this Law has obtained the highest scoring by the Concession Procedure Commission (hereinafter – winner of the competition) to the negotiations on the draft concession contract.

(2) Negotiation may be held only regarding those provisions of the draft concession contract that are not determined as immutable in the Regulations. The provisions of the draft concession contract according to which the evaluation of candidate tenders has been carried out and the winner of the competition has been determined may not be changed.

(3) If the Concession Procedure Commission reaches an agreement with the winner of the competition on the concession contract, it shall take a decision to enter into a concession contract with the winner of the competition.

(4) If the Concession Procedure Commission does not reach an agreement with the winner of the competition on the concession contract and this candidate refuses to enter into a concession contract with the public partner, the Commission is entitled to invite the candidate who stands next in the list referred to in Section 50, Paragraph seven of this Law to the negotiations if it is agreed with the public partner representative or terminate the concession procedure without selecting any tender.

(5) If the Concession Procedure Commission agrees upon the concession contract with the candidate with the next highest scoring in accordance with the procedure referred to in Paragraph four of this Section, it shall take a decision to enter into the concession contract with this candidate.

Chapter XI

Termination of the Concession Procedure

Section 53. Notice On the Results and Arrangement of the Concession Procedures by which Candidates Shall Be Informed Regarding the Results

(1) The Concession Procedure Commission shall inform simultaneously all candidates about the decision taken on the entering into the concession contract. The referred-to information shall be sent not later than on the day when the notice of the Concession Procedure Commission on the results of the concession procedure is published on the website of the Procurement Monitoring Bureau in the Internet in accordance with Paragraph two of this Section. Within the meaning of this Section it shall be considered that the information is passed to all candidates simultaneously if the information is passed to them on the same day.

(2) The Concession Procedure Commission shall send the notice on the results of the concession procedure to the Procurement Monitoring Bureau for publication. Within three working days following the receipt of the notice the Procurement Monitoring Bureau shall verify the compliance of its content with the requirements of this Law and publish it on its website in the Internet. The public partner representative shall ascertain that the notice is published on the website of the Procurement Monitoring Bureau in the Internet.

(3) The notice on the results of the concession procedure shall be published on the website of each public partner representative.

(4) The Concession Procedure Commission shall announce the name of the selected candidate by specifying:

1) reasons for refusal of the submitted tender to the rejected candidate;

2) characteristics and relative advantages of the selected tender to the candidate who has submitted an appropriate tender if the most economically advantageous tender was defined as a selection criterion;

3) the term within which a candidate, taking into consideration Section 29, Paragraph two, Clause 1 or 2 of this Law, may submit an application on violations of the concession procedure to the Procurement Monitoring Bureau.

(5) If the concession procedure is terminated or suspended, the Concession Procedure Commission shall inform simultaneously all candidates about all reasons due to which the concession procedure is terminated or suspended within three working days following the taking of the decision. The Concession Procedure Commission shall inform all candidates on the term by which the person, taking into consideration Section 29, Paragraph two, Clause 1 or 2 of this Law, may submit an application on violations of the concession procedure to the Procurement Monitoring Bureau.

(6) When informing on the results, the Concession Procedure Commission is entitled not to disclose the relevant information if it may harm public interests or by the disclosure thereof the legitimate commercial interests of the candidate or fair competition rules would be violated.

(7) The Concession Procedure Commission shall send the information on the results by mail, fax or electronically using a secure electronic signature, or transmit in person.

(8) When informing regarding the selection results, the Concession Procedure Commission shall keep evidence about the information sending or submission date and manner.

[25 August 2010]

Section 53.¹ Voluntary Notice on the Results of the Concession Procedure

(1) In the cases referred to in Section 3 of this Law the public partner or the public partner representative may submit a voluntary notice on the results of the concession procedure for publication.

(2) The voluntary notice on the results of the concession procedure shall be published in order the interested parties could appeal the validity of the concession procedure which is carried out without publication of a notice on invitation to participate in the concession procedure or validity of application of the relevant concession procedure, as well as to prevent the consequences referred to in Section 31.³, Paragraph one of this Law.

[25 August 2010]

Section 54. Entering into the Concession Contract

(1) The public partner or the public partner representative shall enter into a concession contract with a private partner no sooner than on the next working day following the end of the waiting period if an application on violations of the concession procedure has not been submitted to the Procurement Monitoring Bureau according to the procedures laid down in Section 29 of this Law.

(2) The waiting period referred to in Paragraph one of this Section is:

1) 10 days following the day when the information referred to in Section 53, Paragraph four of this Law is sent to all candidates by fax or electronically using a secure electronic signature, or transmitted in person, and one additional working day;

2) 15 days following the day when the information referred to in Section 53, Paragraph four of this Law is sent to at least one candidate by mail, and one additional working day.

(3) Concession contract may be entered into disregarding Paragraph one of this Section if the concession contract is awarded to the only candidate and there are no other interested persons who would be entitled to submit an application according to the procedures laid down in Section 29 of this Law.

[25 August 2010]

Section 55. Final Report of the Concession Procedure Commission

(1) The Concession Procedure Commission shall prepare the final report no later than on the day when the notice on the results of the concession procedure referred to in Section 53 of this Law is sent to candidates.

(2) The final report of the Concession Procedure Commission is a report of the Commission reflecting the course of the concession procedure and including all the most significant events and stages of the concession procedure.

(3) If according to the Regulations a competition without selection of candidates is organised, the following information shall be included in the final report of the Concession Procedure Commission:

1) date when the notice on the results of the concession procedure was published on the web site of the Procurement Monitoring Bureau in the Internet and in the Official Journal of the European Union (if it was necessary);

2) composition of the Concession Procedure Commission and the substantiation for the establishment thereof;

3) subject of the concession contract and the short description thereof;

4) tender selection criteria;

5) the tender submission date, time and place, validity period of tenders;

6) the tender opening date, time and place;

7) name, surname and position of the persons present at the opening of tenders;

8) list of the submitted tenders where name of each candidate, tender submission time, offered contract value and other information describing the tender are determined;

9) tender evaluation criteria and the tender selection algorithm;

10) evaluations by the members of the Concession Procedure Commission regarding each tender;

11) general report of the Concession Procedure Commission on the comparison and evaluation of tenders;

12) name of the candidate with whom it is decided to enter into the concession contract;

13) substantiation of the decision if the Concession Procedure Commission has rejected all tenders and has taken the decision to terminate the concession procedure without selecting any tender;

14) substantiation of the decision if the winner of the competition has not signed the concession contract and the Concession Procedure Commission has taken the decision to enter into the concession contract with another candidate whose tender according to Section 50, Paragraph seven of this Law has the next highest scoring;

15) requests received to explain the concession procedure or the Regulations, answers provided, as well as references on whether all candidates have been informed on questions and answers in the same scope;

16) substantiation of the decision if a candidate tender has been declared as not corresponding with the requirements referred to in the Regulations or the candidate has been rejected;

17) cases when arithmetical errors were corrected in the candidate tenders.

(4) If according to the Regulations a competition with selection of candidates is organised, the following information shall be included in the final report of the Concession Procedure Commission in addition to the information referred to in Paragraph three of this Section,:

1) time and place of submission of a request on readiness to participate in the concession procedure;

2) common criteria that are to be met by a candidate in order to be invited to submit a tender;

3) place, time and procedures by which the Concession Procedure Commission has opened the candidate requests to participate;

4) list of the submitted requests to participate specifying the name of each candidate, time of submission of the request to participate, as well as other information describing the request to participate;

5) date, time and place the results of the candidate selection have been announced.

(5) If according to the Regulations a competitive dialogue is organised, the following information shall be included in the final report of the Concession Procedure Commission in addition to the information referred to in Paragraph one of this Section:

- 1) time and place of submission of a request on readiness to participate in the competitive dialogue procedure;
 - 2) common criteria that are to be met by a candidate in order to be invited to negotiations;
 - 3) needs and requirements of a public partner determined in the Regulations on which negotiations have been carried out with candidates;
 - 4) place and time of inception of the negotiations, as well as the language that has been used in the negotiations;
 - 5) time and manner the candidates have been invited to the negotiations;
 - 6) stages of negotiation if the negotiations with candidates were held in stages;
 - 7) procedure and time of the course of the negotiations;
 - 8) time and manner the results of the negotiations have been announced to the candidates;
 - 9) amount of the awards or payments to the participants of the negotiations for participation in the negotiations, manner and terms for assigning the awards or manner and terms for making the payments (if it was planned that there would be awards or payments for participation in the negotiations).
- (6) The Concession Procedure Commission shall attach the Regulations, original copies of the candidate tenders, the notice or the copies thereof sent to the Procurement Monitoring Bureau and the Official Journal of the European Union (if it was necessary), original copies of the opinions of the Monitoring Institution and original copies of the minutes of the Concession Procedure Commission meetings to the final report.

Chapter XII

Special Conditions for the Works Concession Procedure

Section 56. General Conditions for the Award of a Works Concession Contract

- (1) This Chapter includes special conditions that refer to the works concessions the contract value of which is equal or greater than the contract value limit determined by the Cabinet (hereinafter in this Chapter – major works concession).
- (2) The Cabinet shall determine the limit of the contract value referred to in Paragraph one of this Section at least once in two years within a period of one month following the European Commission announces the limit of the relevant contract value in the Official Journal of the European Union.
- (3) Provisions of this Law for the award of a concession contract shall be also applied to the major works concession unless this Chapter prescribes otherwise.

Section 57. Publication of the Notice

- (1) In addition to the referred to in Section 38 of this Law, the Concession Procedure Commission shall send a notice on inception of the procedure for the award of the major works concession contract to the Procurement Monitoring Bureau for publication in the Official Journal of the European Union.
- (2) The Procurement Monitoring Bureau shall send the notice referred to in Paragraph one of this Section for publication in the Official Journal of the European Union and simultaneously publish it on its web site in the Internet.
- (3) The Concession Procedure Commission shall ascertain that the notice referred to in Paragraph one of this Section is published in the Official Journal of the European Union and on the web site of the Procurement Monitoring Bureau in the Internet.

Section 58. Tender Submission Terms

(1) If a concession procedure is organised as a competition with selection of candidates or as a competitive dialogue, the term for submitting the requests to participate in the major works concession following the notice referred to in Section 57 of this Law is published on the web site of the Procurement Monitoring Bureau in the Internet may not be less than 37 days.

(2) If a concession procedure is organised as a competition without selection of candidates, the term for submitting the tenders of the major works concession following the notice referred to in Section 57 of this Law is published on the web site of the Procurement Monitoring Bureau in the Internet may not be less than 52 days.

(3) If a concession procedure is organised as a competition with selection of candidates, the term for submitting the tenders of the major works concession following the invitation to submit tenders is sent to the selected candidates may not be less than 40 days.

(4) If the concession procedure is organised as a competitive dialogue, the tender candidate of the major works concession who has received the invitation to submit the tender referred to in Section 47, Paragraph seven of this Law shall submit it within the term indicated in the invitation.

(5) The Concession Procedure Commission is entitled to extend the terms for submitting requests to participate and tenders determined in this Section by publishing the same notice as the information on the submission of requests to participate or tenders has been initially published. Such an extension of terms shall not be considered as amendments to the Regulations within the meaning of Section 35 of this Law.

(6) If amendments are made to the Regulations (Section 35) and half or more of the term referred to in Paragraphs one and three of this Section has passed, the term for submitting requests to participate or tenders following the repeated notice on invitation to participate in the concession procedure is published on the web site of the Procurement Monitoring Bureau in the Internet may not be less than 21 days from the day of publication, and in the case referred to in Paragraph two of this Section – less than 26 days.

Section 59. Specific Conditions for Entering into a Contract on the Performance of Construction Works with Third Parties

(1) If a private partner conforms to the definition of a contracting authority within the meaning of the Public Procurement Law and it is provided for that construction works will be performed by a third party, the private partner shall, when entering into a major concession contract, apply the requirements of the Public Procurement Law.

(2) If a private partner does not comply with the definition of a contracting authority within the meaning of the Public Procurement Law but the expected contract value of construction works is equal or greater than the contract value limit determined by the Cabinet and it is provided for that construction works will be performed by a third party then:

1) the private partner shall send a notice on the works that will be available to third parties to the Procurement Monitoring Bureau for publication in the Official Journal of the European Union. Simultaneously the Procurement Monitoring Bureau shall also publish the notice on its web site in the Internet. The Cabinet shall determine the form and content of the notice. The notice is not required if a works contract conforms to the conditions of the Public Procurement Law regarding negotiation procedures without publishing of the notice on the contract;

2) the term for submission of requests to participate in performance of construction works may not be less than 37 days but the term for submission of tenders – less than 40 days following the notice on the contract is published on the web site of the Procurement Monitoring Bureau in the Internet.

(3) Persons who have joined together into an association of persons in order to submit a request to participate or a tender for participation in the concession procedure or persons related to such an association of persons within the framework for execution of a major concession contract shall not be considered third parties. The list of such persons shall be included in the candidate's request to participate or tender. If members change in the referred to association of persons, the private partner shall inform in writing thereof the public partner representative within one month and is entitled to continue the concession contract if a written consent of the public partner representative is received.

(4) Within the meaning of Paragraph three of this Section related persons are considered the persons over which the private partner has direct or indirect decisive influence within the meaning of the Group of Companies Law or the persons who have decisive influence over the private partner, or who as the private partner are under decisive influence of another person.

(5) In case of a major works concession the Concession Procedure Commission may in the Regulations:

1) determine that the private partner shall grant at least 30 percent of the total amount of construction works to third parties simultaneously maintaining the possibility for the candidates to increase the percentage amount of the total amount of the construction works that will be performed by third parties. The minimum limit of the percentage amount of the total amount of the construction works that will be performed by third parties shall be determined in the major works concession contract;

2) request the candidates to specify in percentages in the submitted tenders what amount from the total amount of the construction works they plan to transfer to third parties for performance.

Division C

Public-Private Partnership Agreements, Special Purpose Entities, Information Exchange Agreement, Activities with Public Partner Resources and Lender's Intervention Right

Chapter XIII

Entering into, Amendment, Early Termination and Registration of a Public-Private Partnership Agreement

Section 60. Terms of a Public-Private Partnership Agreement

(1) A partnership procurement contract is a civil contract that may be entered into for a period of time that exceeds 5 years but does not exceed 30 years, except for the case determined in Paragraph three of this Section.

(2) A concession contract is a civil contract that may be entered into for a period of time up to 30 years, except for the case determined in Paragraph three of this Section.

(3) A public-private partnership agreement may be entered into for a time period that exceeds 30 years if it is necessary for the purpose of the agreement and the results to be achieved that are substantiated by financial and economic calculations.

Section 61. Contracting Parties of the Public-Private Partnership Agreement

(1) A public-private partnership agreement shall be entered into by each public partner and the candidate to whom the relevant agreement is awarded as a result of the public-private partnership procedure.

(2) Each public partner representative shall sign an agreement on behalf of the public partner.

(3) The public partner representative shall send the entered into public-private partnership agreement to the Monitoring Institution.

Section 62. Information to be Included in the Public–Private Partnership Agreement

The following information shall be included in a public–private partnership agreement:

- 1) subject of the agreement including the amount, content, quality and manner of construction works or services;
- 2) financial conditions of the agreement;
- 3) set of rights each public partner transfers to the private partner;
- 4) public partner resources each public partner transfers to the private partner and the procedure for transferring such resources;
- 5) property rights of the contracting parties to the tangible property newly created during the validity period of the agreement, as well as intangible assets related thereto – licences, permits and other documentation.
- 6) validity period of the agreement;
- 7) terms for performance of construction works or provision of services and the conditions for the revision thereof;
- 8) the procedures by which the public partner resources and the property newly created during the execution of the agreement requested for further provision of services or management of property, will be transferred to the public partner in case of early termination of the agreement or upon expiry of the agreement;
- 9) restrictions or conditions referring to changes in the equity capital of the private partner or to the decisive influence of the private partner in the commercial company, or to any changes in the commercial companies over which the private partner has a decisive influence;
- 10) risks each public partner transfers to the private partner;
- 11) payments the contracting parties make to each other during the validity period of the agreement and the conditions for the revision thereof (if such are provided for);
- 12) the right (if it is necessary) for the private partner to collect payments from end-users for any services, the amount of the payment of the service recipient for the relevant service during the validity period of the agreement and the conditions for the revision thereof ;
- 13) duties of the private partner (if necessary) to ensure an uninterrupted access to third parties to the object used or service provided during the validity period of the agreement;
- 14) the right of the contracting parties to transfer their rights and duties within the framework of the agreement to third parties and conditions that restrict such a right;
- 15) a condition regarding the fact whether the private partner is obliged to acquire an insurance for the risks related to execution of the agreement and if such is required – the risks and the amount thereof to be insured;
- 16) duties of the private partner as regards environmental protection and cultural heritage protection (if it is necessary);
- 17) duties of the contracting parties as regards ensuring, transfer or purchase of real estate, equipment and other property requested for execution of the agreement and other conditions referring to these duties (if such are provided for);
- 18) the procedures by which each public partner will verify execution of the agreement;
- 19) *force majeure* circumstances and action of the contracting parties if such have occurred;
- 20) cases of early termination of the agreement in accordance with Section 65 of this Law, procedures for early termination of the agreement in accordance with Section 66 of this Law, procedure for determination of the amount of compensations for the contracting parties and the payment thereof in these cases in accordance with Section 67 of this Law;

21) cases when a contracting party may unilaterally demand early termination of the agreement in accordance with Section 65, Paragraph one, Clause 1 and Paragraph two, Clause 1 of this Law;

22) intervals for amendment to the provisions of the agreement, the permissible limits and the procedure;

23) relation of the agreement to other previously entered into agreements (or obligations against third parties if such exist), the obligations to be taken over from such agreements;

24) conditions, upon occurrence of which the public partner or the lender may take over execution of any duties of the private partner in order to ensure efficient and uninterrupted performance of construction works or provision of services provided for in the agreement;

25) a certification on the right of the public partner representative to receive information from the lender on private partner financing conditions and on the fact that the private partner conforms to the financing conditions;

26) procedures by which the agreement shall be continued if the legal person as a public partner terminates the activity (if the legal person is a public partner) in accordance with Section 65, Paragraphs five and six of this Law;

27) dispute settlement procedure;

28) other provisions ensuing from the Public Procurement Law or this Law or that are considered by the contracting parties as necessary and that are not in contradiction to laws and regulations.

Section 63. Amendment to the Public–Private Partnership Agreement

(1) A public-private partnership agreement may be amended only in the cases provided for in the agreement or this Law.

(2) Either of the contracting parties is also entitled to request amendment to a public-private partnership agreement in cases when significant unforeseen changes have occurred in:

1) laws and regulations referring to execution of the public-private partnership agreement; or

2) economic and financial conditions that affect execution of the public-private partnership agreement;

(3) In the cases referred to in Paragraph two of this Section the public-private partnership agreement may be amended if:

1) changes occur following the entering into a public-private partnership agreement;

2) changes are significant; or

3) changes are inevitable and beyond the will and control of the contracting parties.

(4) In the cases referred to in Paragraph two of this Section the public-private partnership agreement shall be amended in order to preserve the agreement and ensure the conformity thereof with the new conditions.

(5) Amendments to a concession contract may not be such that result in changes in the risk allocation of the concession contract.

(6) If a public-private partnership agreement may be continued only if the accounting rules of the public-private partnership assets previously determined in the agreement change (Section 16, Paragraph six, Clause 5), the public partner representative shall, in order to sign the amendments to the agreement, receive the opinion of the Ministry of Finance on the impact of the amendments on the amount of the long-term liabilities of the State budget and the government debt. If it is determined in the opinion of the Ministry of Finance that the amendments to the public-private partnership agreement will have negative impact on the amount of the long-term liabilities of the State budget and the government debt, the Cabinet shall take the decision on the amendments to the agreement.

(7) The public partner representative shall send the amendments to the public-private partnership agreement signed by the contracting parties to the Monitoring Institution.

Section 64. Opinion of the Monitoring Institution on the Harmonized Amendments to the Concession Contract

(1) If amendments to a concession contract may affect the risk allocation between the public partner and the private partner, the public partner representative shall, following the contracting parties have harmonized the amendments to the concession contract in the cases determined in Section 63 of this Law, send the harmonized draft amendments to the concession contract to the Monitoring Institution in order to receive an opinion whether the risk allocation between the public partner and the private partner corresponds with the concession contract.

(2) If it is determined in the opinion of the Monitoring Institution that it ensues from the information included in the draft amendments to the concession contract that the risk allocation between the public partner and the private partner corresponds with the concession contract, each public partner representative shall sign an agreement on the relevant amendments to the concession contract.

(3) If it is determined in the opinion of the Monitoring Institution that it ensues from the information included in the draft amendments to the concession contract that the risk allocation between the public partner and the private partner does not correspond with the concession contract, the public partner representative shall inform the private partner thereon and the contracting parties shall repeatedly harmonize the amendments to the concession contract.

(4) The public partner representative shall send the new harmonized draft amendments to the concession contract to the Monitoring Institution in order to receive the opinion referred to in Paragraph one of this Section.

(5) If the contracting parties are not able to agree upon the amendments to the concession contract where the risk allocation between the public partner and the private partner corresponds with the concession contract, the concession contract shall not be amended or shall be terminated prior to the expiry thereof in accordance with Section 65, Paragraph three of this Law.

Section 65. Early Termination of the Public–Private Partnership Agreement

(1) The public partner has the right to terminate unilaterally a public-private partnership agreement prior to the expiry thereof by sending a written notice to the private partner in the following cases:

- 1) in the cases provided for in the agreement;
- 2) it is necessary for the purpose of the State security, environmental protection or public health and security;
- 3) the public partner has submitted an application to a Commercial Register Office on termination of the activity thereof; or
- 4) if a decision has been taken on inception of bankruptcy proceedings of a private partner in accordance with the procedures laid down in the Insolvency Law.

(2) The private partner has the right to terminate unilaterally a public-private partnership agreement prior to the expiry thereof by sending a written notice to the public partner in the following cases:

- 1) in cases of violations of the agreement provided for in the agreement;
- 2) if all legal persons as public partners have submitted an application to a Commercial Register Office on termination of the activity thereof; or

3) if a decision has been taken on inception of bankruptcy proceedings against all legal persons as a public partner in accordance with the procedures laid down in the Insolvency Law.

(3) The contracting parties may also terminate a public-private partnership agreement prior to the expiry thereof upon agreement of the contracting parties.

(4) A public-private partnership agreement may be also terminated in cases of *force majeure* circumstances in accordance with the Civil Law. Within the meaning of this Law the *force majeure* shall not be considered laws and regulations adopted during the validity of the public-private partnership agreement, action of the public administration institutions and the documents adopted thereby.

(5) A legal person as a public partner may take a decision on termination of the activity thereof (Section 65, Paragraph two, Clause 2) during the validity of the public-private partnership agreement only in case the founder or shareholder of this legal person:

1) has established a new legal person or transferred the duty to fulfil the public partner obligations ensuing from the entered into public-private partnership agreement to another legal person where he or she is the only founder or shareholder; or

2) continues himself or herself to fulfil the public partner obligations ensuing from the entered into public-private partnership agreement.

(6) If according to the procedures laid down in the Insolvency Law, a decision was taken on inception of bankruptcy proceedings regarding the legal person as a public partner (Section 65, Paragraph two, Clause 3), the founder or shareholder of this legal person shall:

1) establish a new legal person or transfer the duty to fulfil the public partner obligations ensuing from the entered into public-private partnership agreement to another legal person where he or she is the only founder or shareholder;

2) continue himself or herself to fulfil the public partner obligations ensuing from the entered into public-private partnership agreement.

Section 66. Procedures for Early Termination of the Agreement

(1) If in the case referred to in Section 65, Paragraph one, Clause 1 or Paragraph two, Clause 1 of this Law any of the cases determined in the public-private partnership agreement has occurred due to which the public partner or the private partner may unilaterally terminate the agreement and other contracting party may prevent it, the relevant public partner or private partner shall warn in written form the other contracting party that, if it does not prevent the violation of the agreement within the term laid down in the warning, respectively the public partner or the private partner will exercise the right to terminate the agreement prior to the expiry thereof provided for in Section 65, Paragraph one, Clause 1 or Paragraph two, Clause 1 of this Law. The term for prevention of the violation determined in the warning shall be such that the particular violation could be prevented within this term.

(2) If in the case referred to in Paragraph one of this Section the relevant contracting party is not able to prevent the cause for termination of the agreement determined in the public-private partnership agreement at all or does not prevent the violation of the agreement within the term indicated in the warning, the other contracting party shall inform in writing thereto on early termination of the public-private partnership agreement.

(3) The decision on early termination of the agreement, if it is necessary for the purpose of the State security, environmental protection or public health and security, shall be taken by each public partner institution that has taken the decision on inception of the procedure for the award of a public-private partnership agreement in the cases referred to in Section 16, Paragraphs one and two of this Law.

(4) If the institution referred to in Paragraph three of this Section has taken a decision on unilateral early termination of a public-private partnership agreement, the public partner representative shall inform in writing the private partner that the public partner exercises the

right to terminate unilaterally the agreement prior to the expiry thereof provided for in Section 65, Paragraph one, Clause 2 of this Law.

(5) Prior to the private partner or the public partner takes a decision on termination of the activity thereof, it shall inform timely the other contracting party on this decision, as well as immediately following the submission of an application to a Commercial Register Office on termination of its activity and when the Commercial Register Office has taken a decision on termination of the activity thereof.

(6) The contracting party that has received the decision referred to in Paragraph five of this Section shall send to the other contracting party a notice on unilateral early termination of the public-private partnership agreement in accordance with the right provided for in Section 65, Paragraph one, Clause 3 and Paragraph two, Clause 2 of this Law.

(7) Prior to the private partner or the public partner takes a decision on submission of a petition on insolvency proceedings, it shall inform timely the other contracting party thereof, as well as immediately following the submission of the petition to the court and following the court has taken the decision on declaring insolvency proceedings thereof.

(8) The contracting party that has received the court decision on insolvency of the other contracting party referred to in Paragraph seven of this Section shall send a notice on unilateral early termination of the public-private partnership agreement to the other party in accordance with the right provided for in Section 65, Paragraph one, Clause 4 or Paragraph two, Clause 3 of this Law.

(9) A public-private partnership agreement may be terminated prior to the expiry thereof upon agreement of the contracting parties only if the decision on it is taken by each public partner institution that in the cases referred to in Section 16, Paragraphs one and two of this Law has taken the decision on inception of the procedure for the award of a public-private partnership agreement.

(10) In the public-private partnership agreement the contracting parties shall foresee the term within which the agreement terminates following the receipt of a written notice of the public partner representative in the cases referred to in Paragraphs two, four, six and seven of this Section.

(11) In cases of *force majeure* circumstances a public-private partnership agreement shall be terminated prior to the expiry thereof in the cases and in accordance with the procedure provided for in the Civil Law and the public-private partnership agreement.

(12) The public partner representative shall send the notices referred to in this Section on unilateral early termination of the public-private partnership agreement or a consent on early termination of the agreement to the Monitoring Institution.

Section 67. Compensation in Case of Early Termination of the Agreement

(1) In a public-private partnership agreement the contracting parties shall agree upon the procedure for determination and payment of a compensation when terminating the agreement prior to the expiry thereof which is not in contradiction to the provisions of this Law and the Civil Law observing the conditions of this Section.

(2) If a public-private partnership agreement is terminated prior to the expiry thereof in the cases referred to in Section 65, Paragraph one, Clauses 1 (if early termination of the agreement is not related to a violation of the agreement committed by the private partner) and 2 of this Law, the private partner shall receive a compensation consisting of:

1) payments for investments made by the private partner according to the conditions of the agreement;

2) payment for early termination of the agreement according to the conditions of the agreement;

3) other payments provided for in the agreement.

(3) If a public-private partnership agreement is terminated prior to the expiry thereof in the cases referred to in Section 65, Paragraph one, Clauses 1 (if early termination of the agreement is related to a violation of the agreement committed by the private partner), 3 and 4 and Paragraph two of this Law, the contracting party unilaterally terminating the agreement prior to the set term shall receive a compensation calculated according to the conditions of the agreement and that may also include payments for investments made by the private partner.

(4) In the public-private partnership agreement the public partner may not undertake accidental risk regarding early termination of the agreement in the case referred to in Section 65, Paragraph four of this Law.

Section 68. Availability of the Agreements

(1) Generally accessible information of a public-private partnership agreement shall be the information that is not a commercial secret according to the Commercial Law.

(2) The complete public-private partnership agreement shall be available to the Monitoring Institution, the State Audit Office, the Ministry of Finance, the Ministry of Economics, as well as the competent State authorities in cases and in accordance with the procedures laid down in laws and regulations.

Section 69. Registration of the Agreements

(1) Information on the entered into public-private partnership agreement, the amendments thereto and the termination shall be recorded in the public-private partnership agreement register (hereinafter –Agreement Register).

(2) The Cabinet shall determine the information on the partnership procurement contract or the concession contract to be recorded in the Agreement Register, as well as the procedure for registration and accounting of agreements.

(3) The Agreement Register shall be public.

(4) The Register of Enterprises shall manage the Agreement Register.

Chapter XIV

Foundation of a Special Purpose Entity, Entering into Contracts with the Special Purpose Entity and Lender's Intervention Right

Section 70. Application of Legal Provisions in Case of a Special Purpose Entity

If a special purpose entity is found in accordance with the procedures laid down in this Law, provisions of Chapter XIII of this Law shall be applied for entering into, amendment or termination of the public-private partnership agreement observing the provisions of this Chapter.

Section 71. Foundation of a Special Purpose Entity

(1) A special purpose entity shall be found if it is provided for in the public-private partnership procedure documents that the candidate determined as a result of this procedure shall found a special purpose entity or that the candidate may found a special purpose entity.

(2) In the case referred to in Paragraph one of this Section each candidate shall specify the following in the tender thereof:

1) type of a commercial company and the shareholders or members thereof if it is provided for in the public-private partnership procedure documents that the candidate shall found a special purpose entity;

2) whether he or she will found a special purpose entity and if will found – type of a commercial company and the shareholders or members thereof if it is provided for in the public-private partnership procedure documents that the candidate may found a special purpose entity.

(3) A special purpose entity shall be found in accordance with the Commercial Law. If a special purpose entity is a joint stock company, all stocks of the company shall be registered stocks.

(4) If the candidate is one person, only this candidate may be the founder of the special purpose entity. If the candidate is an association of persons, only the persons that are members of such an association of persons may be the founders of the special purpose entity.

(5) The founders shall prepare documents of incorporation of the special purpose entity in such a way that replacement of the shareholder or member of the special purpose entity with the new shareholder or member of the special purpose entity proposed by the lender and approved by the public partner is ensured in the cases referred to in Section 73, Paragraph one of this Law.

(6) The founders of the company may submit the application for registration of a special purpose entity in the Commercial Register provided for in the Commercial Law no sooner than following 15 from the day when the notice on results of the public-private partnership procedure is published on the web site of the Procurement Monitoring Bureau in the Internet.

Section 72. Entering into the Public-Private Partnership Agreement with a Special Purpose Entity

(1) The public partner representative shall enter into a public-private partnership agreement with a special purpose entity following the Register of Enterprises as a Commercial Register Office has announced the record on registration of a special purpose entity in the Commercial Register in accordance with the procedures laid down in the Commercial Law observing the provisions of Paragraph two of this Section.

(2) The public partner representative shall sign the public-private partnership agreement with a special purpose entity following the founders of the special purpose entity have fulfilled the requirements of Section 71, Paragraph five of this Law.

(3) In case of foundation of a special purpose entity, each public partner and the special purpose entity shall enter into a public-private partnership agreement.

(4) The public-private partnership agreement on behalf of the special purpose entity shall be entered into by the officials of the special purpose entity in accordance with the Commercial Law.

Section 73. Procedure for Early Termination of the Public-private Partnership Agreement Entered into with a Special Purpose Entity and Calculation of a Compensation

(1) In addition to the provisions of Section 65, Paragraph one of this Law, the public partner may also terminate the public-private partnership agreement entered into with a special purpose entity prior to the expiry thereof in the following cases:

1) if the only shareholder of the special purpose entity has submitted an application on termination of the activity thereof to the Commercial Register Office; or

2) a court has declared insolvency of the only shareholder of the special purpose entity.

(2) Prior to taking the decision on termination of its activity any shareholder or member of the special purpose entity shall inform timely the public partner and the special purpose entity thereof, as well as immediately following the submission of the application on termination of

the activity thereof to a Commercial Register Office and following the Commercial Register Office has taken a decision on termination of the activity thereof.

(3) Having received the decision from the only shareholder of the special purpose entity on termination of the activity thereof referred to in Paragraph two of this Section, the public partner shall inform the lender of the private partner thereof in order to ensure him or her the possibility to exercise the intervention right referred to in Section 79, Paragraph one of this Law. If in accordance with the procedures laid down in Section 80, Paragraph one of this Law the lender informs that he or she does not wish to exercise the intervention right, the public partner shall send a notice on unilateral early termination of the public-private partnership agreement to the private partner in accordance with Paragraph one, Clause 1 of this Section.

(4) Prior to taking a decision on submission of a petition to a court in order the court would declare his or her insolvency, any shareholder or member of the special purpose entity shall inform timely the public partner and the special purpose entity on this decision, as well as immediately following the submission of the petition to the court and following the court has taken a decision on insolvency of this shareholder.

(5) Having received the court decision on insolvency of the only shareholder referred to in Paragraph four of this Section, the public partner shall inform the lender of the private partner thereof in order to ensure him or her the possibility to exercise the intervention right referred to in Section 79, Paragraph one of this Law. If in accordance with the procedures laid down in Section 80, Paragraph one of this Law the lender informs that he or she does not wish to exercise the intervention right, the public partner shall send a notice on unilateral early termination of the public-private partnership agreement to the private partner in accordance with Paragraph one, Clause 2 of this Section.

(6) If in the cases referred to in Paragraph one of this Section the special purpose entity does not ensure replacement of the shareholder or member of the special purpose entity with the new shareholder or member of the special purpose entity proposed by the lender and approved by the public partner in the cases referred to in Section 74 of this Law, each public partner representative shall take a decision on termination of the public-private partnership agreement in accordance with Paragraph one, Clause 1 or 2 of this Section and inform the private partner, the lender and the Monitoring Institution thereof.

(7) If the public-private partnership agreement is terminated prior the expiry thereof in the case referred to in Paragraphs three and four of this Section, the provisions of Section 67, Paragraph three of this Law shall be applied for calculation of the compensation.

Section 74. Replacement of Shareholders of the Special Purpose Entity

(1) Cases when a shareholder or a member of the special purpose entity discontinues to be a shareholder or a member of this entity or another person becomes a shareholder or a member of the special purpose entity and procedure for making thereof shall be determined in the public-private partnership agreement in conformity with the Commercial Law observing the provisions of this Section.

(2) If the public-private partnership agreement provides for that the private partner shall perform construction works, the replacement of the shareholders or members of the special purpose entity until the moment when the building provided for in the agreement is put into operation by the certificate of acceptance-delivery may be made only following the receipt in advance of a written consent of each public partner representative.

(3) If the public-private partnership agreement provides for that the private partner shall continue management of the constructed building, the consent of the public partner representative is not required for the replacement of the shareholders or members of the special purpose entity following the putting into operation of the building provided for in the agreement unless the public-private partnership agreement prescribes otherwise.

(4) If the public-private partnership agreement is a public service contract or a service concession contract not providing for construction works, the replacement of the shareholders or members of the special purpose entity may be made only following the receipt in advance of a written consent of each public partner representative unless the public-private partnership agreement prescribes otherwise.

Chapter XV

Information Exchange Agreement

Section 75. Entering into an Information Exchange Agreement

(1) If the private partner has submitted an application of his or her lender including a draft information exchange agreement to the public partner, the public partner shall enter into an information exchange agreement simultaneously with the public-private partnership agreement.

(2) The information exchange agreement shall remain valid until the private partner fulfils all the obligations ensuing from the financing agreement towards the lender unless the contracting parties agree otherwise.

Section 76. Information to be Included in the Information Exchange Agreement

The following information shall be determined in the information exchange agreement:

1) procedures by which the contracting parties shall inform each other on violations of the obligations of the public-private partnership agreement;

2) procedures by which the lender informs the public partner on violations of the obligations of the credit agreement of the private partner;

3) procedure for exercising the intervention right of the lender of the public-private partnership agreement according to Sections 79, 80, 81, 82 and 83 of this Law;

4) procedure determined in the public-private partnership agreement according to which the execution of the agreement is continued until entering into the new public-private partnership agreement referred to in Section 82 of this Law if the lender exercises the intervention right;

5) action if the lender waives the intervention right or fails to find such a private partner with whom the public partner could enter into a new public-private partnership agreement;

6) action upon early termination of the public-private partnership agreement in the cases prescribed in Section 65, Paragraph one, Clause 2 and Paragraphs two, three and four of this Law;

7) procedures by which the contracting parties exchange other information;

8) other provisions that are considered as necessary by the contracting parties.

Chapter XVI

Activities with the Public Partner Resources

Section 77. Action with the Public Partner Resources

(1) The private partner may not alienate the public partner resources determined in the public-private partnership agreement that have been transferred to the private partner for use, including invest in equity capital of other capital companies, pledge or encumber in another way or carry out any other activities as a result of which these resources could become property of another person.

(2) If the court has declared the private partner insolvency proceedings in accordance with the Insolvency Law, the public partner resources referred to in Paragraph one of this Section shall be the property of third parties and shall not be included in the property of the private partner as debtor to which the creditors' claims are to be made in the insolvency proceedings.

(3) In case of non-fulfilment of obligations of the private partner, the recovery according to executive documents shall not be enforced to the public partner resources referred to in Paragraph one of this Section unless the international documents prescribe otherwise.

(4) If activity of the private partner is terminated, the liquidator may prepare the liquidation closing financial account and the property division plan only following the public partner resources referred to in Paragraph one of this Section are transferred back to the public partner or the new private partner in accordance with the procedures laid down in the public-private partnership agreement.

(5) If a public-private partnership agreement is terminated prior to the expiry thereof or the validity of the agreement expires, the public partner resources referred to in Paragraph one of this Section shall be transferred back to the public partner in accordance with the procedures laid down in the public-private partnership agreement.

(6) If a public-private partnership agreement is terminated prior to the expiry thereof or the validity of the agreement expires, the property newly created during the execution of the public-private partnership agreement shall be transferred to the public partner in the cases and in accordance with the procedures laid down in the public-private partnership agreement.

Section 78. Fixing of Property Rights to the Public Partner Resources

(1) For the validity period of a public-private partnership agreement the private partner may fix the public-private partnership agreement or individual encumbrances ensuing from the agreement to the immovable property being the public partner resources referred to in Section 77, Paragraph one of this Law in the Land Register.

(2) If a public-private partnership agreement expires in the term provided for therein, the fixing referred to in Paragraph one of this Section in the Land Register shall be expunged based on the application of the relevant public partner representative.

(3) If a public-private partnership agreement is terminated prior to the expiry thereof in the cases referred to in Section 65 or Section 73, Paragraph one of this Law, the fixing in the Land Register referred to in Paragraph one of this Section shall be expunged based on the application of the relevant public partner representative to which the document referred to in Section 66 or Section 73, Paragraph six of this Law shall be attached that has been the basis for the early termination of the agreement.

Chapter XVII

Lender's Intervention Right and Procedure for Entering into a New Agreement

Section 79. Intervention Right

(1) In order to ensure continuation of a public-private partnership agreement in the cases referred to in Section 65, Paragraph one, Clauses 1, 3 and 4 and Section 73, Paragraph one of this Law and to allow the lender to continue financing of the execution of the public-private partnership agreement and to recover the funds lent to the private partner for this intention, the lender shall have the intervention right by proposing the following to the public partner:

1) a new private partner in the cases referred to in Section 65, Paragraph one, Clauses 1, 3 and 4 of this Law; or

2) a new private partner in the cases referred to in Section 73, Paragraph one of this Law.

(2) Exercising of the intervention right referred to in Paragraph one of this Section may be initiated following the public partner representative has taken the decision to terminate the relevant public-private partnership agreement prior to the expiry thereof in the cases referred to in Section 65, Paragraph one, Clauses 1, 3 and 4 and has informed the private partner and the lender thereof. In cases when the relevant public-private partnership agreement is entered into by several public partners, the agreement may be terminated by the common decision of all public partner representatives.

(3) It may be provided for in a public-private partnership agreement and information exchange agreement that the lender shall also have the intervention right when any shareholder or member of a special purpose entity is replaced. In this case the procedures by which the lender uses the intervention right and each public partner representative gives the consent to the replacement of a shareholder or member of the special purpose entity shall be also provided for in the agreement.

Section 80. Procedure for Using the Intervention Right

(1) If the public partner representative has informed the private partner and the lender thereof on the decision referred to in Section 79, Paragraph two of this Law or the notice referred to in Section 73, Paragraph three or five of this Law, within one month the lender shall inform the public partner representative whether he or she wishes to use the intervention right.

(2) The lender shall exercise the intervention right in accordance with the procedure and within the terms determined in the information exchange agreement. The term laid down in the information exchange agreement for exercising the lender's intervention right observing the provisions of Section 81, Paragraph five of this Law, may not exceed six months from the day when the notice of the public partner referred to in Section 79, Paragraph two of this Law is received.

Section 81. Candidate Selected by the Lender and the Evaluation Thereof

(1) The candidate selected by the lender shall meet the requirements and criteria determined for the candidates in the partnership procurement procedure or concession procedure taking into consideration the stage of execution of the particular public-private partnership agreement.

(2) The requirements and criteria to be met by the lender's proposed candidate taking into consideration the stage of execution of the particular public-private partnership agreement, as well as the documents to certify conformity of the candidate with these requirements and criteria shall be determined by the public partner in the notice referred to in Section 79, Paragraph two or Section 73, Paragraph three or five of this Law.

(3) The public partner representative shall evaluate the documents submitted by the lender's proposed candidate in accordance with the same procedure as such documents were evaluated when determining a candidate with whom the public partner entered into a public-private partnership when the documents of the lender's proposed candidate were evaluated.

(4) The public partner representative may refuse to enter into a new public-private partnership agreement with the lender's proposed candidate only if the candidate does not meet the requirements and criteria referred to in Paragraph two of this Section.

(5) If in the case referred to in Paragraph four of this Section the public partner representative refuses to enter into a new public-private partnership agreement with the lender's proposed candidate, the lender may propose another candidate one more time within one month following the refusal referred to in Paragraph four of this Section is received.

Section 82. Entering into a New Public-Private Partnership Agreement

- (1) The new public-private partnership agreement shall be entered into on the same subject of the agreement and in accordance with the same provisions as the initial public-private partnership agreement taking into consideration the stage of execution of the particular agreement.
- (2) The public partner representative shall attach the new draft public-private partnership agreement to the notice referred to in Section 79, Paragraph two of this Law specifying the immutable provisions of the agreement in order the lender's proposed candidate could get acquainted with the draft agreement taking into consideration the provisions of Paragraph one of this Section.
- (3) Prior to sending the new draft concession contract to the lender, the public partner representative shall send the draft contract to the Monitoring Institution in order to receive an opinion on the conformity of risk allocation between the public partner and the private partner with the concession contract. The Monitoring Institution shall give its opinion on the new draft concession contract in accordance with the procedures laid down in Section 34 of this Law.
- (4) Negotiations with the lender's proposed candidate on the draft public-private partnership agreement shall be conducted in accordance with the procedures laid down in Section 52 of this Law.
- (5) The public partner representative shall send the new public-private partnership agreement signed by the contracting parties to the Monitoring Institution.

Section 83. Ensuring the Execution of a Public-Private Partnership Agreement

- (1) In the public-private partnership agreement the contracting parties shall agree upon the procedures by which the execution of the agreement shall be continued until:
 - 1) entering into the new public-private partnership agreement referred to in Section 82 of this Law if a lender uses the intervention right;
 - 2) termination of the agreement in the cases referred to in Section 65 and Section 73, Paragraph one of this Law.
- (2) In the case referred to in Paragraph one, Clause 1 of this Section the contracting parties shall agree that the private partner or the public partner shall continue fulfilling the duties of the private partner determined in the public-private partnership agreement until the entering into a new agreement.
- (3) In the case referred to in Paragraph one, Clause 1 of this Section the contracting parties may agree that the lender shall continue fulfilling the duties of the private partner determined in the public-private partnership agreement until the entering into a new agreement if it is also provided for in the information exchange agreement.

Division D Institutional Partnership

Chapter XVIII General Provisions of the Institutional Partnership

Section 84. Establishment of a Joint Venture

A joint venture shall be established:

- 1) by the public partner and the private shareholder founding a new capital company in accordance with the Commercial Law and observing the State Administration Structure Law; or

2) by the private shareholder acquiring the capital shares in a State or local government capital company in accordance with the provisions on attraction of private capital of the Law On State and Local Government Capital Shares and Capital Companies by paying for capital shares in cash (hereinafter – reorganisation of a State or local government capital company).

Section 85. Application of Legal Provisions in Case of a Joint Venture

(1) If the public partner enters into a partnership procurement contract with a joint venture as a private partner, the provisions on open competition, closed competition or competitive dialogue of the Public Procurement Law shall be applied for determination of the private shareholder of the joint venture observing the provisions of this Division.

(2) If the public partner enters into a concession contract with a joint venture as a private partner, the concession procedures referred to in Section 17, Paragraph one of this Law shall be applied for determination of the private shareholder of the joint venture observing the provisions of this Division.

(3) In case of institutional partnership, the provisions of Division C of this Law shall be applied observing the provisions of this Division.

(4) Following the establishment of a joint venture the public-private partnership procedures shall not be applied again for entering into a public-private partnership agreement.

Chapter XIX

Determination of the Private Shareholder of a Joint Venture

Section 86. Application of Partnership Procurement Procedures in Case of Institutional Partnership

(1) If a public partner applies the provisions of the Public Procurement Law for determination of a private shareholder of a joint venture, the following shall be determined in the relevant documents in addition to the information determined in the Public Procurement Law:

1) that for execution of a partnership procurement contract the public partner (one or several) and the private shareholder found a capital company or reorganise a State or local government capital company into a joint venture with which each public partner as a private partner enters into a partnership procurement contract;

2) provisions as regards allocation of capital shares in the joint venture;

3) conditions as regards activity of the joint venture and the potential thereof to undertake additional tasks during the execution of the partnership procurement contract;

4) action with the assets of the joint venture following the expiry of the partnership procurement contract;

5) provisions for termination of the activity of the joint venture;

6) provisions of the draft documents referred to in Paragraph two or three of this Section that may not be amended during the harmonization thereof.

(2) If for execution of a partnership procurement contract the public partner and the private partner found a capital company, the following shall be attached in addition to the relevant document determined in the Public Procurement Law:

1) draft Memorandum of Association of the joint venture;

2) draft Articles of Association of the joint venture;

3) draft agreement of the shareholders;

(3) If for execution of a partnership procurement contract the public partner and the private partner reorganise a State or local government capital company, the following shall be attached in addition to the relevant document determined in the Public Procurement Law:

- 1) provisions for increasing the equity capital of the State or local government capital company;
- 2) draft Articles of Association of the joint venture;
- 3) draft agreement of the shareholders;

Section 87. Regulations of the Concession Procedures in Case of Institutional Partnership

(1) If a public partner applies any of the concession procedures referred to in Section 17, Paragraph one of this Law for determination of a private shareholder of a joint venture, the following shall be determined in the Regulations in addition to the information referred to in Section 33 of this Law:

- 1) that for execution of a concession contract the public partner (one or several) and the private shareholder found a joint venture or reorganise a State or local government capital company into a joint venture with which each public partner as a private partner enters into a concession contract;
- 2) provisions as regards allocation of capital shares in the joint venture;
- 3) conditions as regards activity of the joint venture and the potential thereof to undertake additional tasks during the execution of the concession contract;
- 4) action with the assets of the joint venture following the expiry of the concession contract;
- 5) provisions for termination of the activity of the joint venture;
- 6) provisions of the draft documents referred to in Paragraph two or three of this Section that may not be amended during the harmonization thereof.

(2) If for execution of a concession contract the public partner and the private partner found a joint venture, the following shall be attached to the Regulations in addition to the referred to in Section 33, Paragraph eleven of this Law:

- 1) draft Memorandum of Association of the joint venture;
- 2) draft Articles of Association of the joint venture;
- 3) draft agreement of the shareholders;

(3) If for execution of a concession contract the public partner and the private partner reorganise a State or local government capital company, the following shall be attached to the Regulations in addition to the referred to in Section 33, Paragraph eleven of this Law:

- 1) provisions for increasing the equity capital of the State or local government capital company;
- 2) draft Articles of Association of the joint venture;
- 3) draft agreement of the shareholders;

(4) If a public partner applies a competitive dialogue for determination of a private shareholder of a joint venture, the documents referred to in Paragraph two and three of this Section may be not attached to the Regulations. In this case the referred to documents shall be attached to the invitation referred to in Section 47, Paragraph eight of this Law specifying the provisions of the referred to draft documents that may not be amended during the harmonization thereof.

Section 88. Termination or Suspension of a Concession Procedure in Case of Institutional Partnership

If a public partner wishes to enter into a public-private partnership agreement with a joint venture, the Concession Procedure Commission shall take a decision to terminate the relevant concession procedure (Section 36, Paragraph one) also in the following cases:

- 1) if during the negotiations on the draft concession contract and the documents attached to the Regulations referred to in Section 87, Paragraph two or three of this Law the

Concession Procedure Commission does not reach an agreement on any of these documents with any of the candidates in accordance with the procedures laid down in Section 55 of this Law; or

2) if a joint venture is not found following the reaching of the agreement on the documents referred to in Section 87, Paragraph two and three of this Law in accordance with the procedures laid down in Section 89 of this Law.

Section 89. Negotiations on the Draft Concession Contract and Other Documents

(1) When conducting negotiations on a draft concession contract in accordance with the procedures laid down in Section 52 of this Law, negotiations on the documents referred to in Section 87, paragraph two or three of this Law shall be conducted simultaneously.

(2) The negotiations may be held only regarding those provisions of the draft documents referred to in Paragraph one of this Section that are not determined as immutable in the Regulations.

Section 90. Entering into a Memorandum of Association of a Joint Venture and a Public-Private Partnership Agreement

(1) Each public partner representative shall enter into the Memorandum of Association of the joint venture with a private partner no sooner than 15 days following the day the notice on the results of the concession procedure is published on the web site of the Procurement Monitoring Bureau in the Internet.

(2) Each public partner representative shall enter into a public-private partnership agreement with a joint venture following the Register of Enterprises as a Commercial Register Office has published the record on registration of the joint venture in the Commercial Register in accordance with the procedures laid down in the Commercial Law.

Section 91. Final Report of the Commission in Case of Institutional Partnership

In addition to the documents referred to in Section 55, Paragraph six of this Law, the Concession Procedure Commission shall also attach the documents referred to in Section 87, Paragraph two or three of this Law to the final report.

Chapter XX

Public-Private Partnership Agreement in Case of Institutional Partnership

Section 92. Public-Private Partnership Agreement in Case of Institutional Partnership

(1) In case of institutional partnership the following shall be determined in a public-private partnership agreement in addition to the information determined in Section 62 of this Law:

1) that upon expiry of the public-private partnership agreement (if it is also terminated prior to the expiry thereof according to the procedure determined in this Law) the activity of the joint venture shall be terminated in accordance with the procedures laid down in the Articles of Association thereof;

2) allocation of capital shares in the joint venture and the manner according to which and the date until which such a capital share allocation will be achieved;

3) conditions as regards activity of the joint venture and the potential thereof to undertake additional tasks during execution of the public-private partnership agreement;

4) action with the assets of the joint venture following the public-private partnership agreement is executed or upon early termination thereof;

5) procedures for determination of the liquidation quota of the joint venture observing Section 96, Paragraph two of this Law;

6) procedures for payment of compensations if upon termination of the activity of the joint venture, the liquidation quota does not cover the amount of compensation ensuing from this agreement; and

7) procedures by which the private shareholder of the joint venture shall be reimbursed for decrease in the liquidation quota in the case referred to in Section 117, Paragraph two of this Law.

(2) The public-private partnership agreement shall be signed on behalf of the joint venture by its board of directors.

(3) In accordance with Section 61, Paragraph two of this Law each public partner representative shall sign the public-private partnership agreement on behalf of the public partner.

Section 93. Amendment to the Agreement in Case of Institutional Partnership

Amendment to a public-private partnership agreement in case of institutional partnership shall be made in accordance with Sections 63 and 64 of this Law.

Section 94. Early Termination of the Agreement in Case of Institutional Partnership

In case of institutional partnership the public partner has the right to terminate unilaterally the public-private partnership agreement prior to the expiry thereof also in the following cases in addition to the cases referred to in Section 65, Paragraph one of this Law:

1) if the only private shareholder of the joint venture has submitted an application to a Commercial Register Office on termination of the activity thereof; or

2) if the court has declared the insolvency proceedings of the only private shareholder of the joint venture.

Section 95. Procedures for Early Termination of the Agreement in Case of Institutional Partnership

(1) Prior to the private partner of the joint venture takes a decision on termination of the activity thereof, he or she shall inform timely the public partner on this decision, as well as immediately following the submission of an application to a Commercial Register Office on termination of the activity thereof and when the Commercial Register Office has taken a decision on termination of the activity of this shareholder.

(2) Having received the decision from the private shareholder of the joint venture on termination of the activity thereof referred to in Paragraph one of this Section, the public partner shall inform the lender of the private partner thereof in order to ensure him or her the possibility to exercise the intervention right. If in accordance with the procedures laid down in Section 100, Paragraph one of this Law the lender informs that he or she does not wish to exercise the intervention right, the public partner shall send a notice on unilateral early termination of the public-private partnership agreement to the private partner according to Section 94, Clause 1 of this Law.

(3) Prior to taking a decision on submission of a petition to a court in order the court would declare his or her insolvency, the private shareholder of the joint venture shall inform timely the public partner on this decision, as well as immediately following the submission of the petition to the court and following the court has taken a decision on declaration of insolvency of this shareholder.

(4) Having received the court decision on declaration of insolvency of the private shareholder of the joint venture referred to in Paragraph three of this Section, the public partner shall

inform the lender of the private partner thereof in order to ensure him or her the possibility to exercise the intervention right. If in accordance with the procedures laid down in Section 100, Paragraph one of this Law the lender informs that he or she does not wish to exercise the intervention right, the public partner shall send a notice on unilateral early termination of the public-private partnership agreement to the private partner according to Section 94, Clause 2 of this Law.

Section 96. Compensation for Early Termination of the Agreement in Case of Institutional Partnership

(1) If a public-private partnership agreement is terminated prior to the expiry thereof in the cases referred to in Sections 65 and 94 of this Law, determination and payment of compensation shall be made by paying the joint venture liquidation quota to the shareholders in accordance with the Commercial Law.

(2) When determining the liquidation quota of a joint venture in the case referred to in Paragraph one of this Section, substantiation of the early termination of the public-private partnership agreement, investments of the shareholders in the equity capital of the joint venture and the provisions of Section 67 of this Law shall be taken into consideration.

Section 97. Availability of the Agreements and other Documents

(1) Memorandum of Association of a joint venture and provisions for increasing the equity capital of a State or local government capital company shall be generally accessible in accordance with the procedures laid down in the Commercial Law.

(2) Agreement of shareholders shall be accessible to the institutions determined in Section 68, Paragraph two of this Law.

Chapter XXI

Information Exchange Agreement and Lender's Intervention Right in Case of Institutional Partnership

Section 98. Information Exchange Agreement in Case of Institutional Partnership

(1) In case of institutional partnership an information exchange agreement shall be entered into by a public partner and a lender in accordance with the procedures laid down in Sections 75 and 76 of this Law.

(2) In case of institutional partnership the following shall be determined in an information exchange agreement:

- 1) information referred to in Section 76, Clauses 1, 2, 5, 6, 7 and 8 of this Law;
- 2) procedure for exercising the intervention right of the public-private partnership agreement according to Section 100 of this Law;
- 3) action if the lender waives the intervention right or fails to find a new private shareholder of a joint venture.

Section 99. Intervention Right in Case of Institutional Partnership

(1) In addition to the cases referred to in Section 79, Paragraph one of this Law, the lender shall also have the intervention right by proposing a new private shareholder of a joint venture to the public partner also in the cases referred to in Section 94 of this Law.

(2) In order to ensure exercising of the lender's intervention right, the public partner representative shall send a notice and offer the lender to exercise the intervention right in the

cases referred to in Section 94 of this Law in accordance with the procedures laid down in Section 95, Paragraph two or four of this Law.

Section 100. Procedure for Exercising the Intervention Right in Case of Institutional Partnership

(1) The lender shall exercise the intervention right in the cases referred to in Section 79 Paragraph one of this Law in accordance with the procedures laid down in Section 80 of this Law.

(2) In the cases referred to in Section 94 of this Law the lender shall inform the public partner representative whether he or she wishes to exercise the intervention right within one month following the receipt of the notice referred to in Section 95, Paragraph two or four of this Law.

(3) In case of institutional partnership the lender shall exercise the intervention right in accordance with the procedure and within the terms determined in the information exchange agreement observing Section 80, Paragraph two of this Law.

Section 101. Lender's Proposed Private Shareholder and the Evaluation thereof

(1) The lender's proposed private shareholder shall meet the requirements and criteria determined for the candidates of a private shareholder of the joint venture who have been determined in a partnership procurement procedure or concession procedure taking into consideration the stage of execution of the particular public-private partnership agreement.

(2) The public partner shall specify the requirements and criteria the lender's proposed private shareholder shall meet taking into consideration the stage of execution of the public-private partnership agreement, as well as the documents that shall certify the conformity of a candidate with these requirements and criteria in the notice referred to in Section 99, Paragraph two of this Law.

(3) The public partner representative shall evaluate the documents submitted by the lender's proposed private shareholder in accordance with the same procedure the documents were evaluated when the private shareholder with whom the public partner found a joint venture was determined taking into consideration legal provisions in force on the day when the documents of the lender's proposed private shareholder were evaluated.

(4) The public partner representative may refuse the lender's proposed private shareholder becoming a shareholder of the joint venture only if he or she does not meet the requirements and criteria referred to in Paragraph two of this Section.

(5) If in the case referred to in Paragraph four of this Section the public partner representative does not agree that the lender's proposed private shareholder becomes a shareholder of the joint venture, the lender may propose another private shareholder one more time within one month following the receipt of the refusal referred to in Paragraph four of this Section.

Section 102. Replacement of a Private Shareholder of a Joint Venture

(1) If the public partner representative has no objections against the lender's proposed private shareholder, the public partner representative shall take a decision that the lender's proposed private shareholder becomes the private shareholder of the joint venture and shall inform it to:

- 1) the lender;
- 2) the lender's proposed private shareholder;
- 3) the private shareholder of the joint venture;
- 4) the board of directors of the joint venture;
- 5) the Monitoring Institution.

- (2) The lender's proposed private shareholder shall become a shareholder of the joint venture by meeting the requirements determined in Section 112 of this Law.
- (3) The lender's proposed private shareholder shall become a shareholder of the joint venture in accordance with the procedures laid down in the Commercial Law by signing an agreement of shareholders of the joint venture and an agreement on joining the documents of incorporation of the joint venture.
- (4) The public partner shall attach the draft agreement on amendments to the Memorandum of Association and the draft agreement of shareholders to the notice referred to in Section 99, Paragraph two of this Law in order the lender's proposed private shareholder could get acquainted with the amendments to the Memorandum of Association and agreement of shareholders.

Chapter XXII

Establishment of a Joint Venture

Section 103. Provisions for Foundation of a Joint Venture

- (1) When founding a joint venture, the entire equity capital of the joint venture determined in the Memorandum of Association of the joint venture shall be signed and paid up until submitting the application for registration.
- (2) Until submitting the application for registration to the Commercial Register the equity capital of the joint venture shall be paid only in cash.
- (3) Each public partner and the private shareholder shall invest the resources with which they participate in the execution of a public-private partnership agreement in the equity capital of the joint venture following the joint venture is registered in the Commercial Register if it is provided for in the relevant agreement.
- (4) Each public partner and the private shareholder as shareholders of the joint venture shall also sign the agreement of shareholders simultaneously with documents of incorporation of the joint venture (Memorandum of Association and Articles of Association).

Section 104. Attraction of the Private Capital to a State or Local Government Capital Company

- (1) Attraction of the private capital to a State or local government capital company shall be carried out in accordance with the provisions of the Law On the State and Local Government Capital Shares and Capital Companies observing the conditions of this Section.
- (2) If when taking a decision on inception of a public-private partnership procedure, the institution referred to in Section 16, Paragraph one, Clauses 1 and 2 of this Law wishes to establish a joint venture by attracting the private capital to a State or local government capital company, it shall specify in the decision referred to in Section 16, Paragraph six of this Law the State or local government capital company to which the private capital will be attracted.
- (3) The decision referred to in Paragraph two of this Section shall replace the decision of the Cabinet or the council of a local government on attraction of the private capital to a State or local government capital company provided for in the Law On the State and Local Government Capital Shares and Capital Companies.
- (4) Following the registration of the joint venture in the Commercial Register the private shareholder of the joint venture together with each public partner as a shareholder of the joint venture shall sign the agreement of shareholders.

Section 105. Memorandum of Association of a Joint Venture

The following shall be determined in the Memorandum of Association of a joint venture in addition to the provisions of the Commercial Law:

- 1) purpose of establishment of a joint venture – the joint venture is found for execution of the public-private partnership agreement that will be entered into by the public partner and the joint venture;
- 2) harmonized provisions of the draft public-private partnership agreement the execution of which depends on the activities of the private partner of the joint venture;
- 3) that the activity of the joint venture shall be terminated if the public-private partnership agreement entered into by it expires, (also if it is terminated prior to the expiry thereof in accordance with the procedures laid down in this Law), as well as the procedures by which the joint venture shall take a decision on termination of its activity;
- 4) that in case of termination of the activity of the joint venture, the liquidation quota of each shareholder shall be determined in accordance with the procedure determined in the public-private partnership agreement in case of execution or early termination of this agreement;
- 5) procedures laid down in Section 102 of this Law according to which the private shareholder of the joint venture shall be replaced if the lender exercises the intervention right in accordance with the procedures laid down in Section 100 of this Law and proposes another private shareholder instead of the existing private shareholder of the joint venture.

Section 106. Articles of Association of a Joint Venture

(1) The following shall be determined in the Articles of Association of a joint venture in addition to the provisions of the Commercial Law:

- 1) purpose of the activity of the joint venture prescribed in Section 105, Paragraph one of this Law;
- 2) types of commercial activities of the joint venture that meet the provisions of the public-private partnership agreement;
- 3) information referred to in Section 105, Clauses 2, 3, 4 and 5 of this Law;
- 4) that in case of the death of the private shareholder the capital shares shall be transferred to the joint venture.

(2) If a joint venture is established by reorganising a State or local government capital company, the information referred to in Paragraph one of this Section shall be also determined in the amendments to the Articles of Association of the State or local government capital company.

Section 107. Agreement of Shareholders of a Joint Venture

(1) The following shall be determined in the agreement of shareholders of a joint venture:

- 1) information referred to in Section 105, Clauses 2, 3, 4 and 5 of this Law;
- 2) action of the shareholders of the joint venture in order to ensure observance of Sections 108, 109, 110, 111, 112, 113, 114, 115, 116, 117 and 118 of this Law in the activity of the joint venture;
- 3) exercising of the right of the shareholders of the joint venture in order to facilitate execution of the public-private partnership agreement;
- 4) other provisions considered by the shareholders as necessary to be included in the agreement that are not in contradiction with this Law, Memorandum of Association of the joint venture and Articles of Association.

(2) The agreement of shareholders of a joint venture shall become invalid if any of the contracting parties is no longer a shareholder of the joint venture.

Chapter XXIII

Particularities of the Activity of a Joint Venture

Section 108. Activity of a Joint Venture

(1) During execution of a public-private partnership agreement the joint venture is entitled to be engaged in other types of commercial activity not provided for in the agreement if it does not impede successful execution of the public-private partnership agreement and taking into consideration the provisions of the State Administration Structure Law.

(2) If during execution of a public-private partnership agreement the joint venture wishes to perform other types of commercial activity and it corresponds with the provisions of Paragraph one of this Section, a decision thereon shall be taken by the meeting of shareholders of the joint venture. The decision shall be considered taken if all shareholders of the joint venture pass their votes for it.

Section 109. Capital Shares and Shareholders of a Joint Venture as a Limited Liability Company

If a joint venture is a limited liability company:

1) the private shareholder of a joint venture may only encumber his or her capital shares only in favour of the lender, if encumbering of shares is not prohibited in the Articles of Association;

2) in case of the death of a private shareholder of the joint venture his or her capital shares shall be transferred to the joint venture and the heirs of this shareholder shall receive compensation for the capital shares in accordance with the procedures laid down in the Commercial Law;

3) a shareholder of a joint venture may not be excluded from the company.

Section 110. Securities of a Joint Venture as a Joint Stock Company

If a joint venture is a Joint Stock Company:

1) all shares of the company shall be registered shares;

2) the company may not issue preference shares;

3) it may not issue convertible bonds or other securities that may be exchanged to the shares of this company.

Section 111. Transfer of the Capital Shares of the Private Shareholder to the Joint Venture

(1) If the lender exercises the intervention right referred to Section 99, Paragraph one of this Law and proposes another private shareholder instead of the existing private shareholder of the joint venture in accordance with the procedures laid down in Section 100, Paragraph two of this Law in order the private partner would continue execution of a public-private partnership agreement, the capital shares of such a private shareholder of the joint venture shall be transferred to the joint venture.

(2) Following the receipt of the decision referred to in Section 102, Paragraph one of this Law the board of directors of the joint venture shall make a record in the shareholder register or stockholder register of the joint venture (hereinafter - shareholder register) on the transfer of the capital shares to the joint venture in accordance with the procedures laid down in the Commercial Law.

(3) In the case referred to in Paragraph one of this Section the joint venture has the duty to pay compensation to the former shareholder of the joint venture in accordance with the liquidation quota he or she would receive if the activity of the joint venture were terminated at the moment of transferring the capital shares.

(4) The liquidation quota referred to in Paragraph three of this Section shall be calculated in accordance with the procedures laid down in Section 96 of this Law.

Section 112. Alienation of Capital Shares of a Joint Venture to the New Private Shareholder

(1) A joint venture shall alienate the capital shares referred to in Section 111, Paragraph one of this Law to the lender's proposed private shareholder determined in the decision referred to in Section 102, Paragraph one of this Law by entering into an agreement with him or her where the following information shall be determined:

- 1) amount to be paid for the capital shares;
- 2) term of payment;
- 3) other provisions of the agreement.

(2) Following the entering into the agreement referred to in Paragraph one of this Section the board of directors of the joint venture shall register the new private shareholder in the shareholders register of the joint venture in accordance with the procedures laid down in the Commercial Law.

(3) The new private shareholder shall pay the amount corresponding to the liquidation quota referred to in Section 111, Paragraph three of this Law for the capital shares referred to in Paragraph one of this Section.

(4) Prior to registration of the joint venture in the shareholder register each public partner of the joint venture and the new private shareholder shall sign the agreement on joining the documents of incorporation and the new agreement of shareholders.

Section 113. Meeting of Shareholders of a Joint Venture

(1) A meeting of shareholders of a joint venture shall have legal power when all shareholders of the joint venture participate in it.

(2) Each capital share of a joint venture shall grant one vote to the shareholder.

(3) A meeting of shareholders of a joint venture may take a decision on making amendments to the Articles of Association of a joint venture, changes in the equity capital, reorganisation of a joint venture, entering into, amendment or termination of a group of companies agreement, merging of a company, agreement upon merging and termination or continuation of the activity by the votes determined in the Articles of Association if each public partner as a shareholder of the joint venture pass his or her vote for it.

Section 114. Representation of the Public Partner in the Management Bodies of a Joint Venture

(1) Irrespective of the amount of the owned capital shares in a joint venture each public partner shall have at least one seat as a member of the board of directors and, if there is a council in the joint venture, at least one seat as a member of the council.

(2) The procedures by which the joint venture ensures the provisions referred to in Paragraph one of this Section shall be determined in the Articles of Association of the joint venture.

Chapter XXIV

Termination of the Activity of a Joint Venture

Section 115. Basis for Termination of the Activity of a Joint Venture

Activity of a joint venture is terminated:

- 1) by a court adjudication;
- 2) upon initiating bankruptcy proceedings;
- 3) if the public-private partnership agreement entered into by the public partner and the joint venture expires.

Section 116. Closing Financial Account and Property Division Plan

The liquidation closing financial account of a joint venture and the plan for division of the remainder of the property of the company shall be verified by a certified auditor.

Section 117. Division of the Remainder of the Property of a Joint Venture

(1) Upon termination of the activity of a joint venture the property of the company shall be divided within the framework of the liquidation quota so that the public partner resources the public partner has invested in the equity capital of the joint venture would be returned to the public partner together with the permanent investments.

(2) If the value of the liquidation quota pertaining to the public partner is smaller than the value of the public partner resources and the permanent investments referred to in Paragraph one of this Section, the procedure for compensation of the decrease of the liquidation quota to the private shareholder of the joint venture shall be provided for in the public-private partnership agreement.

Section 118. Continuation of the Activity of a Joint Venture

Shareholders of a joint venture may take a decision on continuation of the activity of the joint venture only if the institution referred to in Section 16, Paragraph one or two of this Law has taken previously a decision thereon and all shareholders of the joint venture agree thereto.

Transitional Provisions

1. With the coming into force of this Law, the Concession Law (*Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs*, 2000, No 4; 2003, No 2) is repealed.

2. Provisions of the Public Procurement Law shall be applied in the public-private partnership procedures that according to the provisions of the Public Procurement Law have been initiated prior to coming into force of this Law.

3. If in accordance with the procedures laid down in the Concessions Law the Cabinet or the council of the relevant local government has taken a decision on transfer of the concession resources for concession and has approved the concession granting conditions, the provisions of the Concessions Law shall be applied for further activities.

4. The Cabinet shall take the decision referred to in Section 16, Paragraph six of this Law if in case of institutional partnership it is foreseen that the joint stock companies referred to in Section 17, Paragraph one of the Law On the Completion of the Privatisation of the State and Local Government Property and the Use of Privatisation Certificates will no longer own 100% of the capital shares in the capital companies referred to in Section 17, Paragraph two of the same Law or will no longer have the decisive influence over the capital companies referred to in Paragraph three (within the meaning of the Group of Companies Law).

5. The Cabinet shall determine the Monitoring Institution in accordance with Section 8, Paragraph four of this Law by 1 October 2009.

6. According to Section 11 of this Law the Cabinet shall approve the regulatory enactment regulating the activity of the Monitoring Institution and the procedure for financing of the activity of the Monitoring Institution by 1 October 2009.

7. The Cabinet shall submit amendments to other laws that are required as regards adoption of this Law to the *Saeima* by 1 September 2009.

8. The Cabinet shall issue the regulations referred to in Section 9, Paragraph four; Section 12, Paragraph three; Section 14, Paragraph two; Section 15, Paragraph three; Section 20, Paragraph one and Section 69, Paragraph two of this Law by 1 October 2009.

9. The effective records of the Concession Contract Register shall be included in the new Agreement Register without changing the scope of the information and not requesting re-registration.

10. The Register of Enterprises shall make a record on termination of the concession in the Concession Contract Register if the contract validity period has expired for the concession on the day of coming into force of this Law.

11. The provisions for elimination of a candidate referred to in Section 37, Paragraph one, Clauses 2 and 3 of this Law becoming effective on 7 September 2010 shall be applied to a candidate or person the candidate refers to in order to certify that the qualification thereof conforms to the requirements determined in the invitation to participate in the concession procedure or the concession procedure documents if the relevant violation has been committed or continues following 6 September 2010.

[25 August 2010]

12. The condition of Section 37, Paragraph one, Clause 5 of this Law, which became effective on 7 September 2010 shall be applied also to the concession procedures which were announced until 6 September 2010 unless the candidate is not eliminated from participation in a concession procedure until 6 September 2010.

[25 August 2010]

13. The amendment to Section 20, Paragraph one, Section 53.¹ and Section 29, Paragraph two, Clause 3 regulating a voluntary notice on the results of the concession procedure, as well as Section 31² Paragraph two shall become effective on 1 October 2010.

[25 August 2010]

14. The Cabinet shall issue new regulations referred to in Section 20, Paragraph one by 1 October 2010.

[25 August 2010]

15. The new edition of Section 31 of this Law that became effective on 7 September 2010 shall not be applied if the application on the appeal of the decision taken by the Application Review Commission of the Procurement Monitoring Bureau has been submitted to the court prior to 6 September 2010.

[25 August 2010]

16. The application referred to in Section 31¹, Paragraph one of this Law may be submitted if the right to enter into a concession contract has arisen following 6 September 2010.

[25 August 2010]

17. Matters on the recovery of losses in the court proceedings the hearing of which has already been started but has not been finished by 6 September 2010 shall be considered according to laws and regulations which were in force prior to 6 September 2010.

[25 August 2010]

18. Until making of the relevant amendment to the Latvian Administrative Violations Code a decision of the Procurement Monitoring Bureau to determine an administrative punishment for an administrative violation in the field of public procurements and public-private partnership – revocation of the right to hold offices of a public official – shall be executed in accordance with the following procedures:

1) after the decision has become indisputable and not subject to appeal the Procurement Monitoring Bureau shall inform all the institutions regarding the decision taken, in which the punished person holds offices of public official, as well as the higher institutions of such institutions (except the case when there is no higher institution or if the Cabinet is the higher institution) or owners or holders of capital shares, if the relevant institution is a capital company;

2) after the decision has become indisputable and not subject to appeal the punished person has a duty not to hold such offices of public official until the time period indicated in the decision, whose duties include taking of decisions in the field of public procurements and public-private partnership or entering into procurements contracts, framework agreements, partnership procurement contracts or concession contracts, as well as not to take relevant decision and not to enter into relevant contracts. The punished person shall resign from such offices of public official within one month from the day when the decision became indisputable and not subject to appeal.

[5 September 2013]

19. Amendments to Section 37, Paragraph one, Clause 5 and Paragraph four, Clause 2 of this Law, by which the number and word “LVL 100” is replaced with the number and word “EUR 150”, shall come into force on 1 January 2014.

[19 September 2013]

20. If the financial and economic calculations are submitted until 31 December 2013, the competent authorities shall indicate in the opinions referred to in Section 15, Paragraph one of this Law information from the financial and economic calculations, which include sums in lats, in sums in euros performing the recalculation in accordance with the principles of rounding laid down in Section 6 of the Law On the Procedure for Introduction of Euro.

[19 September 2013]

21. The concession procedures referred to in Section 17, Paragraph one of this Law proclaimed until 31 December 2013 shall be completed, including contested or appealed, in accordance with the provisions of this Law which were in force on the day when the relevant concession procedure was proclaimed, in conformity with the conditions referred to in Clauses 22, 23 and 24 of these Transitional Provisions.

[19 September 2013]

22. Amendment to Section 37, Paragraph one, Clause 5 of this Law, which comes into force on 1 January 2014 and replaces the number and word “100 lats” with the number and word “150 euros, shall be applied to an applicant and other persons referred to in Section 37, Paragraph one, Clause 8 of this Law, if the existence of tax debts is verified in relation to a day after 31 December 2013, regardless of the provisions included in the notification regarding an invitation to participate in a concession procedure or in the documents of the concession procedure.

[19 September 2013]

23. If the sums of money in a tender, on the basis of which a contract is entered into after 31 December 2013, are indicated in lats, the public partner shall express the relevant information to be included in the contract in euros in accordance with the principles of rounding laid down in Section 6 of the Law On the Procedure for Introduction of Euro.

[19 September 2013]

24. In publishing a notification after 31 December 2013, the public partner shall recalculate the sum indicated in lats in euros in accordance with the principles of rounding laid down in Section 6 of the Law On the Procedure for Introduction of Euro and shall indicate the relevant information in the notification in euros.

[19 September 2013]

25. A public-private partner is entitled to amend a public-private partnership contract in order to convert the sums laid down therein to euros in accordance with Section 4, Paragraph two of the Law On the Procedure for Introduction of Euro.

[19 September 2013]

Informative Reference to EU directives

[25 August 2010]

The Law contains legal provisions arising from:

1) Council Directive of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (89/665/EEC);

2) Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts;

3) Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors;

4) Directive 2005/75/EC of the European Parliament and of the Council of 16 November 2005 correcting Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts;

5) Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts;

6) Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

This Law shall come into force on 1 October 2009.

This Law has been adopted by the Saeima on 18 June 2008.

President

V.Zatlers

Rīga, 9 July 2009.