

PPP LEGAL FRAMEWORK SNAPSHOT- ALBANIA

GENERAL INFORMATION

Capital: Tirana

Population: 2.89 million

GDP: USD 13,212 million

LEGAL AND INSTITUTIONAL FRAMEWORK

PPP Law and other applicable texts	Law No.125/2013 on Concessions and Public Private Partnership (PPP Law 2013)
Other applicable sectoral laws	Public Procurement Law, 2014
PPP Unit	Public Procurement Agency (PPA) (under Council of Ministers)
Definition (PPP Law 2013, art.3)	Pursuant to the Albania PPP Law 2013, "Concession", is a form of private public partnership agreement between the Contracting Authority and the economic operator. Three types of "Concession" are defined in the PPP Law 2013 i.e. "Public Works Concession", "Public Service Concession" and "Mixed Concession". (art.3)
General Principles (PPP Law 2013, art.9)	The procedure for awarding Concessions/PPP shall be implemented in accordance with the principles of transparency, non-discrimination, proportionality, efficiency, equal treatment, mutual recognition and legal certainty. (art.9)
Tendering and contracting process / Choice of the private partner (PPP Law 2013)	<ul style="list-style-type: none"> • The Contracting Authority may use competitive bidding, limited bidding or direct negotiation procedure for the selection of private partner, in accordance with the procurement law. (art.22.3) • The most economically viable offer will be awarded. (art.23.1) • The interested parties in the competitive bidding are entitled to request the change or correction of the standard documents in the tender documents. (art.24.3) • Unsolicited proposals. The Contracting Authority is authorized to review and accept unsolicited proposals. However, the original proponent shall participate in bidding without any preferential treatment. If it is not the winning bidder, the original proponent be reimbursed for its costs for the unsolicited proposal. (art.25)
Project Evaluation (PPP Law 2013)	<ul style="list-style-type: none"> • The Contracting Authority shall consider potential projects for Concessions/PPP proposed by the Prime Minister's Office, other Contracting Authorities from same level, local and international financial/development/scientific institutions and organizations and unsolicited propos. (art.17) • The Commission for Concessions/PPP set up by the Contracting Authority and Unit for Concessions/PPP is responsible to identify solicited or unsolicited projects and draft feasibility studies. (art.18) • For Concession with value less than 300 million Albanian Leks (USD 2.43 million approx.), the Contracting Authority may only prepare a summarized Concession award analysis instead of full feasibility study. (art.19.4)

**Rights and Obligations of
the public partner**
(PPP Law 2013)

- Projects requiring financial support shall require a prior approval by the Ministry of Finance with regard to fiscal affordability, sustainability and feasibility. (art.42)
- Right to conclude security agreements relating to the project with prior notification to the Ministry of Finance. (art.27.4)
- Obligation to keep and ensure validity of the guarantees and security instruments deposited by the Concessionaire throughout the duration of the contract. (art.28)
- Right to award Concessionaire additional works/services which were not included in the basic contract without conducting a new award procedure under certain circumstances. (art.33)
- Right to require the Concessionaire to subcontract minimum 30% of the total value of the Concession contract to third parties. (art.34)
- Right to terminate the Concession contract if the Concessionaire fails to perform its obligations, owing to insolvency, serious breach or failure to finance to project within certain period. (art.36)
- Obligation to resolve any unsolved property relations in a manner conducive to unhindered performance of the project if the government is the owner of the immovable property/public goods involved in the concession. (art.37)
- Contracting Authority provide binding assurances in relation to change in law in favor of the Concessionaire, such binding commitment shall be approved by the Council of Ministers upon the Contracting Authority's request. (art.41)

**Rights and Obligations of
the private partner**
(PPP Law 2013)

- Obligation to establish a special purpose vehicle as Concession Company. (art.26)
- Obligation to deposit performance guarantees and/or security instruments to the Contracting Authority prior to signing or entry into force of the Concession contract. (art.28.1)
- Obligation to pay a concession fee under certain circumstance. (art.29)
- Right to transfer, upon prior written consent by the Contracting Authority, the Concession contract to a suitable third person. For those Concession contracts that may impact or create risk to government budget, a prior approval from the Ministry of Finance shall be requested by the Contracting Authority. (art.32)
- Obligation for the Concessionaire to follow specific rules to subcontract its Concession contract to third parties. (art.35)
- Facilities constructed under a Concession contract, including additions and improvements, unless otherwise provided for in the contract, shall be owned by the Contracting Authority and the Concessionaire shall be obliged to transfer the ownership of the facilities following the termination of the contract. (art.38)
- Right to create security over its rights to any payments of any kind received or receivable by it pursuant to or in connection with a Concession contract. (art.40)
- Right to appeal the decision of the Contracting Authority, which is deemed to be unjustified during a competitive procedure, to the Public Procurement Commission. (art.43)

**Obligations and Rights of
Both Public and Private
Partners**
(PPP Law 2013)

- Right to modify the Concession contract in cases of endangering the national security, environment, nature and human health, Force Majeure, change of legal framework and other factual or legal changes. (art.31)
- Right to terminate the Concession contract when either party is unable to perform its obligation, or serious breach by the other party without proper timely rectification, or upon mutual consent. (art.36)

Applicable Law

Dispute resolution

(PPP Law 2013)

- The Concession/PPP contract shall be governed by the laws of the Republic of Albania. Any disputes between the Contracting Authority and the Concessionaire shall be settled through mutually agreed dispute settlement mechanisms, including international arbitration.
- The Concessionaire, its shareholders and other business partners shall be free to choose the law governing their mutual business relations and dispute settlement mechanisms. (art.46)

EXAMPLES OF PROJECTS STRUCTURED AS PPP

**Infrastructure sector -
Telecom**

Vodafone Albania

**Infrastructure sector -
Power**

Electricity Distribution Company of Albania (OSSH)

**Infrastructure sector -
Transport**

Tirana International Airport Concession