

NEWSLETTER

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Law on Amendments to the

Law on Public-Private Partnership and Concessions

("Official Gazette of RS", no. 15/2016)



On February 24, 2016, the National Assembly of Republic of Serbia on the Sitting of the Sixth Extraordinary Session in 2016, adopted the Law on Amendments to the Law on Public-Private Partnership and Concessions („Official Gazette of RS“, no. 16/2016, hereinafter: „Law“), which entered into force on March 4, 2016.

The Law conducts harmonization of the regulations with the regulations of the European Union, as well as strengthening the role of the Ministry of finance in the procedures for realization of public-private partnership (hereinafter: “PPP”) projects, with and without elements of concessions, and a legal frame is being established for application of Article 4 of the Decision on forming of the Commission for public-private partnership (“Official Gazette of RS”, no. 13/2012, 108/2012, 44/2013, 64/2013, 104/2013, 115/2013, 20/2014 and 15/2015) which determines that for the conduct of public-private partnership project, it is necessary to obtain positive opinion of the Commission for PPP, and such opinion must be given along with a positive vote of the member of Commission for PPP who represents the Ministry of finance.

The foundation of the special purpose vehicle is an obligation prescribed by the Law, which previously was optional, and public bodies no longer have the right to demand from the groups of business entities which submit offers or act as participants in the procedure to have the specific legal form.

Additionally, Article 19 of the Law on Public-Private Partnership and Concessions is amended and it is stipulated that in case of granting the agreement to other person different from the person that submitted the unsolicited proposal, the value of the documentation produced by the initiator of the project shall be compensated by the public body, and Article 20 stipulates that the public agreement now shall be concluded as a public-private partnership agreement or as a concession agreement.

By the amendments the obligation to publish the public invitation in one international newspaper is deleted, having in mind that the public invitation is already being published in Tenders Electronic Daily.

The suggestion of the PPP project is extended by a new element, so that now it also contains the financial effect of the suggested project on the budget of the Republic of Serbia, respectively on the budget of the autonomous province or local government unit during the lifetime of the project. The obligation of obtaining an opinion of the Ministry of finance is also prescribed, if the Republic of Serbia or other public body of the Republic of Serbia is the proposer of public-private partnership project or the concession grantor, respectively, when public bodies are the subject of the concession in the competence of the Republic of Serbia, and if the estimated value of that project is higher than EUR 50 million. By new Article 29a it is determined that the Ministry of Finance gives the opinion based on the compliance of immediate financial obligations of the public body contained in the proposal of private-public partnership project, i.e. in the proposal of concession act, with budget and fiscal projections, conditions and limitations determined by special regulations.

Public agreement can no longer contain the provisions which predict mechanisms for increasing the fees paid to the private partner having in mind the quality of his services/objects. Now only the mechanism for reduction of the fees can be agreed in case of the lower quality of services/objects of private partner.

Further, the Law defines that the guarantee instruments can be requested starting from the phase of choosing the best bidder, and the public partner is obliged to collect them on the day of entering into force of the public agreement. Earlier solution predicted that the guarantee instruments are being collected exclusively before signing the public agreement.

Provisions regarding the stabilization clause are also amended. Namely, the Law determines that in case of amendments of the regulations after conclusion of the public agreement which worsen the position of the private or public partner, the agreement can be amended without limitations, and in the scope necessary for the private, i.e. public partner to be in the position in which he was at the moment of the conclusion of the public agreement. Duration of the public-private partnership project, i.e. concession, is limited to a maximum of 50 years.

Regarding the return of the objects after the completion of the public agreement, the obligation of returning the objects and devices which are the subject of a concession or public-private

partnership in functional condition and free of any encumbrance by the concessionaire, i.e. private partner is prescribed. Also, other objects which are built in accordance with the provisions of the Law on Public-Private Partnership and Concessions that predicts the possibility for the public partner to allow the private partner to perform commercial business activity within the realization of PPP, only in case that it is not possible to provide the necessary level of profitability of realization of the public-private partnership project and return of the invested resources, and which are not in the function of the subject of the public agreement (public object, public service, public infrastructure, etc.), remain in the property of the private partner.

The provisions of the Article 70 regarding the ownership of the real estate are defined. The Law stipulates that if the Republic of Serbia is the owner of a real estate predicted for performance of the concession business activity, i.e. for realization of the public-private partnership project, and the concession grantor, i.e. proposer of the PPP project, is an autonomous province or a local government unit, the consent on the suggestion of rendering of concession act, respectively, on the PPP project shall be given by the Government on the proposal of the Ministry of Finance. If the owner of the real estate predicted for the performance of concession business activity is, i.e. realization of PPP project, is a private or other person, the expropriation of that real estate shall be conducted in accordance with the law that regulates expropriation.

Additionally, the Law prescribes that the procedures initiated by the day of entry into force of the Law shall be finalized in accordance with the regulations under which they have been initiated.