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LAW ON CONCESSIONS and other types of public-private partnership

CHAPTER 1

GENERAL PROVISIONS

Article 1

Scope

This Law shall regulate the conditions, mode and procedure for granting concessions, contents of the concession contract, rights and obligations of the grantor and the concessionaries and the legal protection in the procedure of granting concession; the mode and procedure for awarding contracts for other types of public-private partnership, contents of the public-private partnership contract, rights and the obligations of the private and the public partner and legal remedies in the procedure for awarding public-private partnership contracts .

Article 2

Purpose

The purpose of this Law shall be to promote and enable private initiative in the financing of public services, to establish equal approach, transparency in the procedure for granting concession and contracts for other types of public-private partnership , as well as quality and efficient performance of the works and services under the granted concession and awarded contracts for other types of public-private partnership .

Article 3

Definitions

Certain terms used in this Law shall denote the following:

1. Concession - shall be awarding the right to use assets of general interest to the Republic of Macedonia, performance of construction work in public interest or provision of public services, by obligating the concessionaire to build and/or manage, use and maintain the facility under concession, whereby the grantor might be paying or not;
2. Grantor - shall be the Republic of Macedonia, the municipality and the City of Skopje and the municipalities in the City of Skopje;
3. Concessionaire - shall be a domestic or foreign legal or natural person or a consortium to which the concession is granted;
4. Facilities under concession are the assets of general interest for the Republic of Macedonia, the immovable and movable property, plants, installations and other property owned by the Republic of Macedonia, and/or the City of Skopje and the municipalities in the City of Skopje
5. Concession contract - shall be a contract of financial interest, concluded between the grantor and the concessionaire, the subject of which is the use of assets of general interest to the Republic of Macedonia, performance of construction works for a building in public interest, or provision of public services;
6. Special law - shall be a law governing the area in which the concession is granted;
7. Other types of public-private partnership - shall mean all exercises, different from concession and public procurements, of cooperation within which the public and the private partner join resources and professional knowledge, in order to ensure the performance of a given public service through appropriate channelling of resources, risks and profits (further in the text: public-private partnership);
8. Exercise is a form of cooperation between the public and the private partner, carried out through the performance of activities related to project development, performance of construction, provision of services and other activities for the needs of the public partner.

9. Public-private partnership contract is a contract in financial interest concluded between a public and a private partner, that has the purpose of designing, financing, building and maintenance of infrastructure facilities, equipping and/or provision of services by the private partner in order to perform a given public service.

10. Public partner is:

- the Republic of Macedonia,
- the municipality and the City of Skopje and the municipalities in the City of Skopje
- public enterprises, public institutions, companies established by the Republic of Macedonia, the municipality and the City of Skopje and municipalities within the City of Skopje and companies over which the state or the organs of the municipality and the City of Skopje have a direct or indirect influence through the ownership thereof, and/or if they own a major share of the capital of the company, hold the majority of the votes of the shareholders /partners and appoint more than one half of the members of the steering and supervisory board, and/or the management bodies of the company and
- other legal entities that perform public competences in the area of performance of public competences;

11. private partner is a national or foreign legal or natural person or consortium to which a public-private partnership contract was awarded;

12. Contractual concession /public-private partnership is a partnership between the grantor/public and concessionaire/private partner, established through a contract;

13. Institutional concession /public-private partnership is a partnership between the grantor/public and the concessionaire /private partner established through the form of a joint legal entity, established pursuant to the law ;

14. Bidder - shall be a domestic or foreign legal person or natural person or a consortium which submitted a bid to participate in the procedure for awarding concession ;

15. Candidate - shall be a domestic or foreign legal person or natural person or a consortium which submitted an application to participate in the first phase of the restricted procedure or in the competitive dialogue procedure;

When the concessionaire is a foreign legal or natural person, the grantor may require from the tenderer to establish a specific legal form at prior to concluding the concession contract/the public-private partnership contract;

8. Consortium - shall be a group of domestic or foreign legal persons or natural persons who jointly submit a bid or an application to participate, signed by all or by one authorised member of the consortium , without assuming a specific legal form thereby.

Members of the consortium group shall be **jointly** and severally liable for the obligations arising from the concession contract.

In case the bid or the request to participate is submitted by the consortium , the grantor/public partner shall address the members individually and/or each member of the consortium through their authorised member.

9. Proof of registration - shall be a document confirming that the indicated bidder/candidate is registered to perform the appropriate activity;

10. Subcontractor - shall be a domestic or foreign legal person or natural person which is not a tenderer nor a candidate, but which has concluded a contract with the concessionaire/private partner to execute certain works related to the awarded concession/public-private partnership contract.

Forms of concession and of public-private partnership

The concession and the public-private partnership can be established as:

- contractual partnership and
- institutional партнерство.

Article 5

Application

The provisions of this Law shall be applied to the awarding of concession unless otherwise provided by a special law.

Article 6

When establishing the relations and implementation of concession /public-private partnership, the rules of awarding state aid must not be violated.

Article 7

Principles

Awarding of the concession/public-private partnership contract shall be carried out in line with the principles of transparency, non-discrimination, proportionality and efficiency.

Article 8

Council for concession/public-private partnership

To efficiently create the policy in the area of concessions and public-private partnership the Government of the Republic of Macedonia, established is a Council for concession /public-private partnership, composed of 11 members (further in the text: The Council), one of whom is the president of the Council and another is the deputy president of the Council.

The Council studies the issues in policy of project management in the area of concessions and public-private partnership and problems occurring due to the insufficient regulation thereof, and prepares proposals, opinions and initiatives that will be the basis for the development of a Strategy for implementation of projects related to the concessions/public-private partnerships.

As members of the Council, appointed are representatives of the Ministry of Economy, the Ministry of Finance, the Ministry of Transport and Communications, the Ministry of Health, the Ministry of Education and Science, the Ministry of Environment and Spatial Planning and the Secretariat for Legislation, two representatives from the Alliance of Units of Local Self-Government (ZELS), as well as two experts in the area of economy and law, having in mind the equitable and appropriate representation of all citizens in the Republic.

The Strategy mentioned in paragraph 2 of this Article is appointed by the Parliament of the Republic of Macedonia, upon a proposal of the Government of the Republic of Macedonia.

The term of office of the members of The Council and the remuneration for their work are prescribed by the Government of the Republic of Macedonia.

The Council passes Rules of Procedure for its operation.

CHAPTER II CONCESSION

1. GENERAL PROVISIONS

Article 9

Exceptions from the application

The provisions of this Law shall not be applied to entities referred to in Article 3 paragraph 10 lines 3 and 4 of this Law, in the part on awarding of concessions

In case of privatisation of the entities referred to in paragraph 1 of this Article it shall be deemed that they have concession, provided that the conditions for performing the public services and/or the use of assets of general interest, laid down in the special laws, are met

The provisions of this Law shall be applied for the payment, and/or the concession fee referred to in paragraph 2 of this Article.

Article 10

Facilities under concession

Facility under concession shall be performing a construction work, performance of public services and the use of assets of general interest for the Republic of Macedonia.

Article 11

Construction works concession

Construction works concession shall have as subject the construction of facilities under concession, with the right to manage, use and maintain, comprising the following:

- the right to manage, use and maintain the facility under concession without payment by the grantor, or
- the right to manage, use and maintain the facility under concession together with payment by the grantor.

Article 12

Public service concession

Public service concession shall have as subject performance of activities regulated by law as public services, and it comprises:

- the right to perform the activity without payment by the grantor,
- the right to perform the activity through payment by the grantor;
- the right to perform the activity, including the management, usage and maintenance of the facilities under concession that are necessary to perform the activity.

Public service concession may also include the performance of a partial reconstruction, conservation or repair in the cases imposing the necessity to:

1. complete the commenced construction
2. partially enlarge, partially reconstruct or repair installations, plants and other means necessary to perform the concession activity.

Article 13

Concession for assets of general interest

Concession for assets of general interest shall have as subject the usage of assets of general interest and shall be executed with funds by the concessionaire.

Article 14

Revenues and risk

The risk entailed in the awarded concession is borne by the concessionaire or the grantor, depending on who is earning the revenues from the awarded concession,

Article 15

Concession fee and payment for the granted concession

The payment by the grantor or the fee for the concession that is paid by the concessionaire, which might be a bulk payment or divided into instalments, shall be determined with a decision on the commencement of the procedure for granting concession, depending on the economic viability of the subject to concession or on the usage of the facility under concession, determined on the basis of:

- 1) the duration of the concession; and
- 2) the envisaged costs for construction, for providing public service, as well as the revenue earned from the usage of the facilities under concession.

The calculation and the manner of payment by the concessionaire of the fee referred to in paragraph 1 of this Article shall be prescribed in the call for competition for submission of bids for granting concessions and defined more closely in the concession contract, pursuant to the special law and the regulations adopted in line with this Law.

The fee referred to in paragraph 2 of this Article shall be paid by the concessionaire to appropriate pay-in accounts within the treasury account and it shall be revenue of the Budget of the Republic of Macedonia, and/or Budget of municipality, and/or Budget of the City of Skopje and the municipalities in the City of Skopje, pursuant to a special law.

Article 16

Mandatory payment by the concessionaire

An obligation may be envisaged for payment of a fee by the concessionaire for the acquired right to use a facility under concession, laid down by the special law and the concession contract.

The amount and the manner of payment of the fee referred to in paragraph 1 of this Article shall be determined with the concession contract, depending on the following:

- 1) economic benefit the concessionaire realises under the granted concession;
- 2) proportional distribution of the revenues between the grantor and the concessionaire;
- 3) attaining socially acceptable prices of services subject to concession, when the price is determined by the regulations pertaining to the appropriate concession.

The schedule and end dates for payment of the fee shall be determined with the concession contract.

Article 17

Payments by the grantor

The concessionaire may exercise the right to use the facility under concession, and/or the right to perform the activity with payment by the grantor, in the case of:

- attaining socially acceptable prices of services when executing the concession, when the price-list for public services is determined by the regulations pertaining to the appropriate concession;
- hindrance to use the facility under concession due to force majeure; and
- when it is provided in a decision pursuant to Article 26 of this Law.

The grantor shall execute the payment referred to in paragraph 1, item 2 of this Article following the commencement of the usage of the facility under concession by the concessionaire.

Article 18

Concession and other related acts

Should it be envisaged by a special law that the granting of concession requires issuance of licences, opinions, permits or other acts necessary for construction works, provision of public service or usage of assets of general interest for the Republic of Macedonia, they will be provided, and/or their provision will be coordinated, on behalf of and for the concessionaire, by the line ministry in the field in which the concession is granted, and/or the Republic of Macedonia, and/or the City of Skopje and the municipalities in the City of Skopje.

Article 19

Actions and procedure for granting concession

Granting concession shall include the following:

1. Carrying out preparatory activities;
2. Carrying out a procedure for granting concession;
3. Concluding a concession contract.

The procedure for granting concession shall include the following:

1. Adopting a decision on commencement of the procedure for granting concession;
2. Carrying out an open procedure, restricted procedure or a competitive dialogue for granting concession;
3. Deciding – selecting the concessionaire.

Article 20

Reasons to not grant a concession

No concession shall be granted, should it pose a threat to the national security and defence of the state, environment protection, human health protection, as well as in other cases laid down by law.

Article 21

Grantor

The Government of the Republic of Macedonia (grantor) shall grant concession on behalf of the Republic of Macedonia.

The Government of the Republic of Macedonia may authorise a minister in charge of the field in which the concession is granted, to conclude a concession contract on behalf of the Government.

The Municipal Council, and/or. the City of Skopje and the municipalities in the City of Skopje (grantor), shall grant concession on behalf of the respective municipality, and/or. the City of Skopje and the municipalities in the City of Skopje.

The Council of Municipality, and/or. Council of the City of Skopje and Council of a municipality within the City of Skopje, shall authorise the mayor to represent them in the procedure for granting concession and when concluding or executing the concession contract.

Article 22

Concession period

Concession shall be granted for a period of up to 35 years, without the right to its extension, unless otherwise determined by this law or special laws. The concession period shall commence on the date of conclusion of the concession contract.

When determining the concession period, the financial and economic indicators and the technical and/or technological specificities of the facility under concession shall be taken into account.

Article 23

Concession extension

As an exception from Article 22 of this Law, the concession may be extended in the following cases:

- termination or postponement of the works due to objective reasons the parties did not take into account or could not have taken into account at the moment of concluding the concession contract (force majeure etc);

- interim stoppage of concession realisation due to actions related to public interest protection, not initially envisaged, in order to enable the concessionaire to recover the additional expenses arising from the requests of the grantor.

Article 24

Article 24

Right to ownership

The facility under concession, including attachments and improvements, are owned by the grantor, unless the decision referred to in Article 26 of this Law specifies otherwise.

The attachments and the improvements added to the concession facility that are not aiming at fulfilling the concession contract, shall become ownership of the grantor, unless the concession contract specifies otherwise.

Regarding construction works concession, the constructed buildings, plants and other property shall become property of the grantor from the moment of commencement of their usage, unless otherwise determined in the decision on commencement of the procedure for granting concession and the concession contract.

Article 25

Restitution of the facility under concession

When the concession expires, the concessionaire shall have the duty to return, and/or transfer the title to the facility under concession, to the grantor, regardless of whether it was fully or partially built, reconstructed, conserved, equipped or improved by the concessionaire, under the conditions and in a manner established in the concession contract.

2. PREPARATORY ACTIVITIES

Article 26

Commencement of the procedure

Regarding the commencement of the procedure for granting concession, the grantor shall adopt a decision on commencement of the procedure for granting concession.

When the grantor is the Republic of Macedonia, the decision referred to in paragraph 1 of this Article shall be adopted by the Government of the Republic of Macedonia upon a proposal of the minister in charge of the field in which the concession is granted.

When the grantor is the municipality, and/or the City of Skopje and the municipalities in the City of Skopje, the decision referred to in paragraph 1 of this Article shall be adopted by the municipal council, and/or the Council of the City of Skopje and the municipalities in the City of Skopje, upon proposal of the mayor of the municipality, and/or of the City of Skopje and the municipalities in the City of Skopje.

Article 27

Contents of the proposal

The proposal referred to in Article 26 of this Law, depending on the type of concession, shall in particular contain the following:

- main objectives of the concession;
- possibilities for different financing and management of facility under the proposed concession;
- concession project study.

Article 28

Concession project study

The concession project study shall contain in particular the following:

- data on the main technical parameters of the facility under concession;
- estimated value of the concession;
- broader economic justification of the concession;
- elaboration on the assessment of the environmental impact of the concerned concession, and
- other data on the financial, technical and legal aspects of the concession.

Article 29

Decision on commencement of the procedure

The decision on commencement of the procedure for granting concession referred to in Article 2 of this Law shall contain in particular the following:

- elaboration on the justification to grant concession;
- indicating of its objectives;
- subject to concession and main requirements for granting concession;
- type of procedure for granting concession;
- calculation and manner of payment of the concession fee;
- manner and deadline to carry out the procedure for granting concession;
- amount of the fee for issuing the tender documentation.

The decision referred to in paragraph 1 of this Article shall be published in the Official Gazette of the Republic of Macedonia and in the national media, while regarding concessions of the municipality and/or the City of Skopje and the municipalities in the City of Skopje, it shall also be published in the municipal media, and/or media of the City of Skopje and the municipalities in the City of Skopje.

The decision referred to in paragraph 1 of this Article may also be published in a foreign media.

Article 29

Estimated value of the concession

The grantor shall mandatorily estimate the maximum value of the concession on the basis of the total amount of the financial resources necessary for payment, net of tax, customs and other public duties.

The methodology for calculation of the estimated value of the concession shall be prescribed by the Government of the Republic of Macedonia.

3. TYPES OF PROCEDURES

Article 31

Types of procedures for granting concession

Granting concession shall be carried out by way of call for competition, organised and carried out according to the requirements laid down in this Law, unless otherwise laid down by a special law.

The call for competition shall be organised and carried out as:

- a) procedure for granting concession through an open procedure;
- b) procedure for granting concession through a restricted procedure;
- c) procedure for granting concession on the basis of a competitive dialogue.

The selection of the procedure for granting concession shall depend on the following:

- complexity and specificity of the facility under concession and the activities performed;

- number of expected bidders and candidates; and
- complexity of the bids or applications for participation.

Article 32

Open procedure

"Open procedure" shall mean procedure for granting concession in which all interested persons who obtained tender documentation prepared by the grantor, may submit bids for concluding a concession contract.

The number of eligible bidders should be no less than three.

Article 33

Restricted procedure

"Restricted procedure" shall mean procedure for granting concession in which all interested persons may submit an application to participate in the procedure for granting concession, whereby only those candidate invited by the grantor shall submit bids for concluding a concession contract.

The restricted procedure for granting concession shall be carried out in two phases, as follows:

- procedure for short-listing of candidates;
- collecting bids from certain number of selected candidates.

The first phase shall consist of the following:

- announcement of the call for competition to all interested persons to submit an application to participate in the procedure;
- ascertaining their economic and financial, as well as technical capacity; and
- selection of sufficient number of eligible candidates to ensure genuine competition.

The minimum number of candidates invited to submit a tender in a restricted procedure shall not be less than three.

In the second phase, the Commission shall send a written invitation and tender documentation without public notice to all selected capable candidates.

Article 34

Competitive dialogue

"Competitive dialogue" shall mean a procedure in which the grantor invites three or more candidates to prepare or propose a solution to meet the performance and functional requirements of the grantor, prior to submitting the bids.

Article 35

Use of competitive dialogue

The competitive dialogue procedure shall be carried out only for construction works concessions, in exceptionally complex cases when the grantor deems that no results will be achieved with an open or a restricted procedure.

The facility under concession shall be considered as exceptionally complex should the grantor not be objectively able to:

- (a) define the technical specifications to meet the performance and functional requirements; or
- (b) specify the legal or financial framework for carrying out of the concession.

Article 36

Implementation of the competitive dialogue procedure

The competitive dialogue procedure shall commence with the announcement of the call for competition for participation in a competitive dialogue and shall be carried out in three phases.

After the receipt of the requests in the first phase, the grantor shall select at least three eligible candidates, pursuant to the requirements in the announced call for competition, and/or pursuant to Article 34, paragraph 2 of this Law.

In the second phase, the grantor shall commence a dialogue or receive presentations by the candidates so as to determine, define or establish a solution for its requirements (hereinafter referred to as: "dialogue phase"). The dialogue phase may be carried out in stages so as to reduce the number of solutions to be discussed only if this has been indicated in the call for competition for participation in a competitive dialogue. The grantor shall keep the solutions proposed by the candidates separate and confidential, unless approval for their disclosure is granted.

After the dialogue phase ends, the grantor shall send an invitation to the candidates to submit a bid on the basis of their solutions, or on the basis of joint or individual solution, should the candidate agree with its contents (hereinafter referred to as: "phase of tender submission"). Bids shall contain all the elements required and necessary for the performance of the project. During the phase of tender submission, the grantor may invite the candidate to clarify aspects of the tender, provided that the substantial features of the concession are kept and there is no risk of distorting competition between the candidates.

The best tenderer shall be selected only on the basis of the most economically advantageous tender that meets the performance and functional requirements indicated in the contract notice.

4. COMMISSION FOR IMPLEMENTATION OF THE PROCEDURE

Article 37

Composition of the Commission for implementation of the procedure

The procedure for granting concession shall be prepared, organised and implemented by a Commission for implementation of the procedure for granting concession (hereinafter referred to as: Commission), established by the grantor.

The Commission referred to in paragraph 1 of this Article shall consist of a President, Vice President and at least three members and their deputies.

Members of the committee are appointed from the ranks of the line ministries and the Ministry of Finance. Experts in the respective field in which concession is granted may participate in the work of the Commission.

Members of the Commission shall not be persons who:

- are married, in kinship up to second degree, or are related by adoption or guardianship with the candidate, its legal proxy, and in cases when the candidate or the participant is a legal person, with the members of its steering, supervisory or other bodies or management authorities;
- during the last three years, were employed or were members of the managing bodies of the candidate;
- or are in other de jure or de facto relationship with the candidate.

The Commission shall work in full capacity and shall make decisions with a majority of votes of the members.

Article 38

Competences of the Commission

The Commission shall:

- prepare the tender documentation;
- publish the tender notice;

- organise the receipt of the applications and the bids;
- select and determine the candidates who have the right to continue their participation in the procedure;
- discuss with the candidates that meet the requirements to participate in the competitive dialogue procedure;
- determine the candidates to which it sends an invitation for submission of tender in the restricted procedure and competitive dialogue;
- provide clarifications and submit additional information and documents;
- review and evaluate the bids and rank the candidates, with a proposal for the first-ranked candidate to be selected as concessionaire;
- submit proposal for termination of the procedure; and
- perform other activities necessary for the implementation of the procedure.

The Commission shall inform all candidates or participants on the carried out activities during the procedure.

5. TENDER DOCUMENTATION

Article 39

Contents of the tender documentation

The Commission shall prepare tender documentation within the deadline set by the decision for commencement of the procedure for granting concession, upon prior obtained consent by the grantor. The Commission may entrust the preparation of the tender documentation to a scientific or expert organisation or to experts in a respective field.

Depending on the nature of the concession, the tender documentation shall contain the following elements:

- invitation for submission of tender with instructions;
- requirements which shall have to be met, including the technical specifications;
- investment projects – on construction works concession, if any are prepared;
- study referred to in Article 28 of this Law ;
- data on the necessary guarantees;
- minimum requirements which bids shall have to meet, if they include variants offering an alternative to the technical specifications, should it be previously determined in the call for competition;
- criteria for bids' evaluation;
- instruction for tenderers for preparation of the bid;
- data on the facilities under concession, ceded to the concessionaire during the concession period;
- description of the locations, manner of acquiring the land and other issues related to the usage or arrangement of the location;
- time framework for completion of the construction, conservation, arrangement and improvement of the buildings, plants, installations or other property;
- the period for which the concession is issued;
- main financial requirements under the project, including the minimum amount of the employed capital;
- proposed prices for the services – tariff;
- obligation for payment of fee pursuant to Article 17 of this Law ;

- designating the property subject to restitution and requirements for restitution pursuant to Article 23 of this Law ;
- regulations and standards for environment and nature protection and the manner of assessment of the environmental impact;
- draft text of the concession contract;
- other requirements depending on the subject to concession and the envisaged procedure.

A copy of the decision on commencement of the procedure for granting concession, as well as a draft concession contract, shall be attached to the tender documentation for participation in the procedure.

The Commission may determine that the data or part of the data in the tender documentation shall be considered a professional secret. In such case, the participants in the procedure shall be bound to submit a declaration, attached to the documentation, stating that they assume the obligation not to disclose the data considered as a professional secret.

The Minister in charge of the area in which the concession is awarded, and/or the mayor of the municipality, and/or the City of Skopje and the municipalities in the City of Skopje, shall approve the tender documentation.

Article 40

Obtaining the tender documentation

The Commission for implementation of the procedure shall be bound to enable the interested candidates to obtain tender documentation immediately after the date of publishing the announcement of the procedure.

In case when the entity, not being the grantor, has part or the whole tender documentation, the address for obtaining the tender documentation and the deadline for its obtaining and submission shall be indicated in the call for competition.

Article 41

Fee

The grantor may charge the tenderers and the candidates a fee for issuance of the tender documentation.

The amount of the fee referred to in paragraph 1 of this Article shall be calculated on the basis of the reasonably determined costs for the activities necessary for its preparation.

Article 42

Amendments to the tender documentation

The Committee approves the tender documentation upon a prior consent of the minister in charge of the area in which the concession is granted. The grantor may amend the tender documentation, provided that they are available to the interested candidates 6 days at the latest prior to the expiry of the deadline for submission of bids or requests to participate.

5. CALL FOR COMPETITION

Article 43

Public announcement of the procedure

Following the approval of the tender documentation by the grantor, the Commission shall, at the same time, announce a call for competition for submission of bids for granting concession in the Official Gazette of the Republic of Macedonia and in the national media, while regarding the municipality and the City of Skopje and the municipalities in the City of Skopje, it shall be announced in the official municipal bulletins, and/or media of the City of Skopje and the municipalities in the City of Skopje.

The announcement referred to in paragraph 1 of this Article shall contain the following:

- 1) subject to concession;
- 2) value of the concession project;

- 3) indicating the type of procedure pursuant to Article 31 of this Law ;
- 4) description of the construction works and proportion of the investments in the construction works – construction works concessions;
- 5) location of the facility under concession ;
- 6) description and volume of services or activities the concessionaire may carry out on the basis of the facility under concession ;
- 7) period of validity of the bids
- 8) deadline, address and manner of obtaining the tender documentation, as well as any fee for its obtaining ;
- 9) deadline, address, manner of submission of bids, and date and time of opening the bids;
- 10) language in which bids are to be written ;
- 11) persons authorised to participate in the opening of bids;
- 12) evidence and documentation the tenderer needs to prove the economic and technical ability;
- 13) indicating the criteria for assessment of bids;
- 14) other information pertaining to the subject to concession .

Article 44

Announcement for restricted procedure

Should the procedure be carried out as a procedure for granting concession through a restricted procedure, the announcement of the call for competition shall also contain the following:

- deadline, address and manner for applying to participate in the first phase in the procedure for granting concession ;
- deadline to carry out short-listing and manner of informing about the short-listing results and
- documented data to be submitted by the person applying to participate in the first phase of the procedure for granting concession, as follows:
 - (a) information on the financial and economic capability, as follows:
 - certified statement on the financial standing of the person showing interest, or of each of the members of the consortium on its financial standing in the last three years;
 - proposal for the financial structure of the concession project and
 - declaration by a renowned (first-class) financial institution or bank on its intention to extend a credit line to the person for the purpose of implementing the project;
 - (b) information on the experience and references for the person, as follows:
 - information on his/her independent or joint participation in projects of similar nature with the respective concession project in case of consortium – such data shall be submitted by each member of the consortium , and
 - information on the practical experience of its key staff in the relevant stages of the respective concession project;
 - (c) information on its management structure and operational abilities, as follows:
 - proposed team to work on the project, with information on the expertise and experience of each of the team participants;
 - manner of managing the team and team managers, and
 - information on the equipment and/or construction or other technology to be used in the project, and

(d) documentation and data, as follows:

- certified statement of the registration documents of the person expressing interest;
- declaration by the person expressing interest or by each member of the consortium that if the concession is granted, they shall be jointly and severally liable for the obligations arising from the concession;
- declaration that they are not insolvent and that no bankruptcy proceeding, neither a criminal nor a misdemeanour procedure has been initiated against them pertaining to the professional activity, and
- information on a judicial or an administrative procedure that is or was conducted against the person showing interest or against each member of the consortium.

Should the procedure be carried out as a procedure for granting concession through open procedure, the submission of the information referred to in sub-item (d) of this Article shall be required with the tender documentation from all tenderers, as part of their tender.

Article 45

Call for competition for competitive dialogue

Granting concession in the competitive dialogue procedure shall commence with the announcement of the call for competition for participation in a competitive dialogue.

6. TIME LIMITS

Article 46

Determination and extension of time limits

Time limits for submission of bids shall be adequately published and shall be determined depending on the complexity of the procedure for granting concession and the time reasonably required to prepare a tender, but shall not be less than the time limits laid down by this Law.

The grantor may extend the time limits at any time prior to the expiry of the time limit itself, provided that it informs the tenderers and the candidates on time.

Time limits shall be extended should the tender documentation not be delivered on time to all tenderers or candidates.

Time limits shall run from the date on which the call for competition was sent for publishing.

Article 47

Usual time limits

Unless otherwise regulated by this Law, when submitting bids:

- (a) in an open procedure the time frame shall not be shorter than 52 days from the date the call was sent for publishing;
- (b) in the first phase of restricted procedure, the time frame shall not be shorter than 37 days from the day the call for competition for submission of request to participate is dispatched;
- (c) in the second phase of restricted procedure, the time frame shall not be shorter than 40 days from the day the call for competition for submission of bids is dispatched;
- (d) in the submission of request to participate in competitive dialogue, the time frame shall not be shorter than 37 days from the day the call for announcement is dispatched.

Article 48

Shortening the time frame in case of urgency

In case of urgency caused by events beyond reasonable control of the grantor, which render the usual minimum time limits impracticable, the time limits:

- (b) for the first phase of restricted procedure may be shortened to not less than 20 days;
- (b) for the second phase of restricted procedure may be shortened to not less than 15 days;
- (c) for the competitive dialogue procedure may be shortened to not less than 20 days.

7. SUBMISSION OF BIDS AND GUARANTEE FOR PARTICIPATION IN THE PROCEDURE

Article 49

Manner of submission of bids

The bid and/or the application to participate shall be submitted in a manner and form stipulated in the call for competition.

Persons having obtained the tender documentation shall have the right to submit bids.

The tenderer may submit only one bid.

Article 50

Activities at the time of submission of bids

The tenderers may, up until the expiry of the time limit for submission of bids, request clarifications of the requirements foreseen in the tender documentation, or indicate ambiguities or omissions in the documentation.

The Commission shall respond in writing to the posed request or remarks referred to in paragraph 1 of this Article, at the same time sending the response to all tenderers.

The Commission, upon a previously obtained written consent by the grantor, may amend the tender documentation, at the same time informing all tenderers thereof in writing.

Immediately after the expiry of the time limit for submission of bids, and in any case prior to the public opening of bids, the Commission may organise a meeting with all tenderers, as well as visit to the location at which the concession is to be executed, for the purpose of better informing of the tenderers, pursuant to the rule in the tender documentation.

Article 51

Collateral for participation in the procedure

Participation in the procedure for submission of bids shall always be conditioned with providing a collateral by the tenderer in the form of deposited funds or a bank guarantee, which shall not be less than 3% of the estimated value of the concession.

If the tenderer provides the guarantee in the form of deposited funds they shall be paid to an appropriate account within the treasury account.

The grantor shall be bound, within seven days after concluding the concession contract with the selected concessionaire, to return the deposited amount, and/or the guarantee, to the tenderers who participated in the procedure for granting concession.

The guarantee referred to in paragraph 1 of this Article shall be collected for the benefit of the grantor if the tenderer has been called to conclude a concession contract, and he/she refuses to do so, and if the participant in the procedure withdraws the tender after the opening.

Article 52

Public opening of bids

Upon the expiry of the time limit for submission of bids, the Commission shall publicly open the bids in the presence of the authorised representatives of the tenderers at the place and time determined in the call for competition.

The public opening of bids shall be carried out in a manner determined in the call for competition.

The Commission shall compose minutes for the public opening of bids.

9. EVALUATION OF CANDIDATES - TENDERERS

Article 53

Order of evaluation

The Commission shall set a rank order of the candidates on the basis of their personal situation, their ability to perform professional activity, economic and financial standing, as well as technical and professional capacity.

The Commission shall evaluate the bids only of those tenderers selected as eligible.

The Commission shall publish a report on the carried out evaluation and shall inform all tenderers about the results from the selection procedure.

Article 54

Compulsory criteria

The tenderers and bids shall not be assessed or evaluated on the basis of a criterion not announced in the tender documentation.

Article 55

Proof of registration

The proof of registration shall confirm that the indicated candidate is registered:

- (a) in the official list of registered trade companies, updated by the competent state body; and
- (b) at the certification competent body, meeting the standards prescribed by law.

Article 56

Dependence on third parties

The candidates or tenderers may, where appropriate and with respect to a given subject of concession, refer to the eligibility of other entities, including the members of a joint tender, regardless of the legal character of the relations they have with them, provided that they can prove, in a satisfactory manner, that they have available the necessary resources for realisation of the subject of concession.

Article 57

Evaluation of third parties

The grantor, pursuant to the provisions in this part of the Law, shall evaluate the eligibility of third parties to which the candidate, or the tenderer, refers, the same as if the third party were a tenderer or candidate.

Article 58

Mandatory exclusion of tenderer or candidate

The grantor shall mandatorily exclude the candidate or the tenderer – legal person or member of its management or supervisory body, who have been convicted by an effective court decision for one of the following criminal acts:

- 1) corruption;
- 2) fraud;
- 3) money laundering.

The grantor shall also mandatorily exclude the candidate or the tenderer when:

- bankruptcy or liquidation procedure has been initiated against him /her;
- sentence for a criminal act or a misdemeanor sanction - prohibition for performing an activity has been pronounced against him /her;
- they have not met the obligations pertaining to payment of taxes, contributions and other public duties for payment of fees in line with the regulations of the country in which he/she is established, and

- they have failed to submit complete tender documentation.

Article 59

Proof of personal situation

The grantor shall accept as proof of personal situation of the tenderers or the candidates the following:

- (a) certificate or document issued by a competent judicial or administrative body;
- (b) declaration under oath or formal affidavit by the tenderer or the candidate, or the relevant persons employed at the tenderer or the candidate, in line with the regulations of the country where the declaration is given.

Article 60

Proof of ability to pursue the professional activity

The grantor may require the tenderers and the candidates to prove their involvement or membership in a professional association or organisation registered in an appropriate register, or to provide a special declaration or reference proving their right and ability to pursue the professional activity.

Article 61

Proof

The grantor may accept, as proof for the suitability of the tenderer or the candidate to pursue professional activity, declaration on moral and personal responsibility, or a certificate in a form satisfactory for it.

Article 62

Proof of economic and financial standing and capacity

The grantor may request from the tenderers or the candidates proof of solvency, of economic and financial standing and on the ability to realise the subject of the concession contract.

Article 63

Proof of the economic and financial standing

The proof of economic and financial standing shall be accepted in one or several of the following forms:

- (a) appropriate statements from banks or, where appropriate, evidence of relevant professional risk indemnity insurance;
- (b) the presentation of balance-sheets or extracts from the balance-sheets, where publication of the balance-sheet is required under the law;
- (c) a statement of the overall turnover of the candidate – tenderer for a minimum the last three financial years, depending on the date on which the company was set up or started trading, and as far as this information is available;
- (d) in cases no other references can be provided due to reasons accepted by the grantor, any document the grantor considers appropriate;
- (e) certificates of solvency and of paid taxes and other public fees, issued by a competent body in the country of origin.

Article 64

Proof on the ability

The grantor may require the tenderers or the candidates to submit proof of their technical and professional ability to perform the subject of the concession.

Article 65

Proof of technical or professional ability

The grantor shall accept the evidence of the tenderers' or the candidates' technical abilities by one or more of the following means according to the nature, quantity or meaning, and use of the subject of the concession:

- (a) list of the works carried out over the last five years, accompanied by certificates of satisfactory execution for the most important works. These certificates shall indicate the value, date and site of the works and shall specify whether they were carried out according to the rules of the profession and whether they were properly completed.
- (b) a list of the principal deliveries effected or the main services provided in the last 3 years, with the amounts, dates and recipients, whether public or private, involved.
- (c) an indication of the technicians or technical bodies involved, whether or not belonging directly to the economic operator's trade company, especially those responsible for quality control and, in the case of works concessions, those upon whom the contractor can call, in order to carry out the work;
- (d) a description of the technical facilities and measures used by the tenderer or the candidate for ensuring quality and the undertaking's study and research facilities.
- (e) the educational and professional qualifications of the tenderer or the candidate or qualifications of the members of the company's management bodies and, in particular, qualifications of the person or persons responsible for providing the services or managing the work;
- (f) for concessions regarding goods of general interest and concessions regarding construction, and only in appropriate cases, an indication of the environmental management measures that the economic operator will be able to apply while carrying out the concession contract;
- (g) a statement of the average annual human resources of the tenderer or candidate and the number of managerial staff for the last three years;
- (h) a statement of the plants or technical equipment available to the tenderer or the candidate for carrying out the concession contract;
- (i) an indication of the share of the contract which the services concessionaire intends to subcontract, in relation to the mode for performing the service by the subcontractor.

9. EVALUATION OF BIDS

Article 66

Criteria for selection of the best bid

The criteria on the grounds of which the grantor shall base the selection of the best bid is the financially- or economically most favorable bid.

The economically most favorable tender shall be evaluated on the basis of the criteria linked to the performance and functional requirements including quality, price of works and services, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, technical assistance and period of completion of the works.

The Minister of Finance shall enact the methodology of expressing the criteria in points.

Article 67

Principle of equivalence

A tender cannot be excluded from the evaluation if:

- (a) the tenderer or the candidate is able to prove to the satisfaction of the grantor that works or services offered comply, in equivalent manner, with the performance and functional requirements of the concession, even in case when services or works are not fully compliant with the technical specifications.

(b) if the services or works the tenderer or the candidate offers comply with the technical standards of equivalence with the requirements defined by the technical specifications of the tender for the concession.

Article 68

Abnormally low bids

If a bid submitted by a tenderer or a candidate appears to be abnormally low – price 30% lower than the average value offered – the price of the other bids, the Commission shall, before it may reject the tender, request in writing details of the reasons and/or constituent elements of the tender which it considers relevant.

The details requested by the tenderer or the candidate regarding the abnormally low tender may relate to:

- (a) the financial aspect of the construction method or the process of provision of services;
- (b) the technical solutions chosen or any exceptionally favourable services available to the tenderer for the execution of the work or for the supply of services.
- (c) the originality of the work or services proposed by the tenderer or the candidate;
- (d) compliance with the provisions relating to protection at work and working conditions in force at the place where the work or service is performed;
- (e) whether the tenderer or candidate is receiving or has the possibility to receive state aid.

The Commission shall not evaluate the bids and/or it shall reject the same, in case:

- the tenderer or the candidate fails to submit the written explanation within the determined time limit;
- the Commission finds the given reasons not objective; and
- the tenderer or the candidate, within an additional time limit, fails to prove that the state aid in question was received legally.

Article 69

Request for information

Upon the request by the tenderer or the candidate, the Commission, within 15 days of the receipt of the written request, shall:

- inform each tenderer or candidate on the reasons for rejecting its bid, including the reason due to which the technical proposal of the tenderer is not equivalent to the technical specifications required by the grantor or that the works and services do not fulfil the performance or the functional requirements;
- submit a copy of the evaluation report and of the decision on selection.

Article 70

Withholding information

The grantor shall have the right to withhold information referred to in article 64 and article 66 in this chapter of the Law where the release of such information could impede the enforcement of this Law, would otherwise be adverse to the public interest, would prejudice the legitimate commercial interests of tenderers or candidates, whether public or private, or might prejudice fair competition between them.

The grantor shall not disclose information given by the tenderers or candidates, which are considered confidential and include technical or business secrets or material elements of the tender, unless they have consent by the tenderer or unless that is allowed under this or other law.

11. SELECTION OF CONCESSIONAIRE

Article 71

Evaluation report and draft decision on selection

For each procedure granting concession, the Commission shall prepare a written evaluation report.

The evaluation report and the draft decision on selection shall be signed by the president and the members of the commission and shall be submitted to the grantor.

Article 72

Decision

After the implemented procedure, the Commission for implementation of the procedure for granting concession shall submit a proposal to the grantor on the following:

- selection of the most economically favorable tender with a ranking list of the candidates;
- termination of the procedure.

The grantor, on the basis of the proposal referred to in paragraph 1 of this article and the evaluation report, shall reach decision on the following:

- selecting the concessionaire from the first-ranked candidate or
- entrusting the Commission with the task to eliminate the stated deficiencies in the procedure for granting concession and to make new ranking of the bids; or
- terminate the procedure in the cases referred to in article 75, paragraph 1 of this Law.

The decision referred to in paragraph 2 of this article shall be submitted to all tenderers or candidates within a period no longer than 15 days starting from the day on its adoption.

The decision on selection of most suitable tenderer shall be published in the Official Gazette of the Republic of Macedonia.

Article 73

Contents of the decision on selection

The decision on selection of concessionaire shall determine:

- the essential elements of the concession subject matching the tender of the selected tenderer.
- the time limit for concluding concession contract.
- the Minister competent and authorised for concluding the concession contract and the competent body that shall supervise the granted concession – for concessions granted by the Government of the Republic of Macedonia. The competence, authorisation and supervision over concessions granted by the mayor of the municipality, and/or the city of Skopje and the municipalities within the city of Skopje – for the concessions they grant.

The grantor may select the second-ranked candidate as concessionaire in case the first-ranked candidate fails to fulfil the conditions and fails to conclude the concession contract within the time period referred to in article 76 paragraph 1 of this Law.

Article 74

Terminating the procedure

The grantor may adopt a decision to terminate the procedure for granting concession, in the following cases:

- an insufficient number of bids has been submitted under the call for competition
- the contents of the bids do not match the requirements included in the call for competition;
- it is no longer necessary to implement the procedure as a result of objective circumstances that were neither known, nor could have been known at the moment the decision for initiating the procedure has been made;
- irregularities are found in the implementation of the procedure for granting concession that cannot be eliminated without thereby changing the conditions under which the procedure has been implemented;

- the first and the second ranked candidate, successively, waive the right to sign the concession contract.

The decision terminating the procedure may also:

- amend the decision to initiate the procedure for granting concession, as well as implement new procedure for granting concession;
- decide to carry out a new procedure under the same conditions as the procedure that is subject to the decision to terminate.

The decision to terminate the procedure shall be published in the Official Gazette of the Republic of Macedonia.

In case of termination of the procedure for granting concession regarding the cases referred to in paragraph 1 indents 3 and 4 of this article, the participants in the procedure shall be returned the fee for obtaining the tender documentation, as well as the guarantees they have provided.

12. Concession contract

Article 75

Concluding concession contract

The concession agreement shall be concluded between the grantor and the first ranked candidate within a period of three months starting from the day of adopting the decision on selection.

When concluding the concession contract, the first ranked candidate shall be bound to act in accordance with the proposals submitted in the tender and the draft concession contract.

The concession contract must be compliant with the provisions of this Law, the special law and the regulations adopted on the basis of these laws, as well as the elements from the call for competition.

The provisions of the concession contract contrary to the aforementioned laws and regulations and to the call for competition shall be null and void and shall not cause any legal effect.

In the cases referred to in Article 74 paragraph 2 of this Law, the concession contract shall be concluded with the second ranked candidate under the same conditions and within the same time period applying to the first ranked candidate, whereby the period for conclusion of the contract shall begin running from the moment of submitting a written invitation to the second ranked candidate.

Article 76

Form of the concession contract

The concession contract shall be concluded in writing in at least three original copies, one of which for each contracting party and the third copy for the records in the Concessions Register referred to in article 107 of this Law.

Provisions of the Law on Obligations shall apply respectively to the concession contract, unless otherwise stipulated in the provisions under this law and the special laws.

Article 77

Contents of the concession contract

The concession contract shall contain provisions regulating, in particular, the following:

- the objective, subject and time limit of the concession;
- the manner, form and conditions for performing concession activity;
- the description of the facility under concession as well as description of the existing infrastructure;
- the date the concession contract enters into force;
- the conditions, manner and deadline for delivery of the facility under concession and termination of the concession;

- the rights and obligations of the contracting parties, including the conditions and time limits for their fulfilment;
- the amount, deadlines and manner of payment of the concession fee, if any;
- the revenue, share in the revenue and concession risk sharing, according to article 14 of this Law ;
- the types, scope and deadlines for fulfilment of the investment obligation;
- the form , amount and deadlines for payment of the concession by the grantor pursuant to article 16 of this Law when this payment is envisaged under the procedure for granting concession;
- the type, amount, deadlines and the manner of submitting guarantees and security set for fulfilment of the obligations under the contract;
- the conditions and manner of financing the measures and activities for eliminating consequences from environmental damage, if any;
- liability in case of failure to fulfil the obligations under the contract;
- the conditions and the manner of supervision over the performance of concession activity, including provisions on performing special expert supervision by authorised third parties, as well as the manner of compensating the costs for the expert supervision;
- the manner of solving disputes related to the contract;
- other obligations envisaged under this law , the special law and the regulations adopted on the basis of these laws; and
- other provisions relevant to the specific subject to concession .

The concession contract regarding construction, in addition to the provisions referred to in paragraph 1 of this Article, shall also contain provisions on the following :

- the manner and conditions on acquiring and usage of the site where the facility under concession would be built;
- installations and plants to be built and/or completed and/or reconstructed at the concessionaire's risk;
- the obligations of the concessionaire to regulate all legal and property issues related to the insurance of the construction site or expansion of the facility under construction, as well as to entry of public investments related to the facility under concession or to the insurance of its usage after delivery;
- the condition in which the facility under concession is delivered to the grantor after the expiry of the concession period;
- subcontractors, if any, pursuant to the provisions of this Law .

The concession contract shall also regulate the special rights of the grantor and the concessionaire as follows:

- the grantor may at any time control the work, give recommendations for better completion of works, stop the work due to public interest determined by law and amend the contract so as to adjust it to the public interest;
- in the cases referred to in paragraph 3 indent 1 of this article, the concessionaire may receive fair indemnity, appropriate compensation for the occurrence of obstacles of technical nature which could not have been envisaged as well as further validity of the amended contract.

Article 78

Amendments to the concession contract

The concession contract can be amended by adding an annex to the same.

The annex shall be concluded by the body representing the grantor under the concession contract.

The annex may be concluded upon the initiative of the grantor in the following cases:

- threat to the national security and defence of the country, to the environment, nature and human health as well as public order facilities;
- destruction of the facility under concession in the case of force majeure or objective inability to be used;
- change of relevant regulations;
- occurrence of cases explicitly determined in the decision on implementation of the procedure for granting concession that lead to change of the factual situation or the legal basis for using the facility under concession or for performing concession activity thereby;
- in other cases determined by special laws.

When during the performance of the concession contract, changes occur to the status of the concessionaire, it shall be bound to notify the grantor thereof within a period of 15 days starting from the day the changes had occurred, after which the contracting parties shall conclude an annex entering the data related to the status change concerned.

13. TERMINATION OF THE CONCESSION

Article 79

Cases of termination of the concession

The concession shall terminate in the following cases:

- expiry of the validity period of the concession contract;
- unilateral breaking of the concession contract by the grantor;
- unilateral breaking of the concession contract by the concessionaire;
- mutually agreed breaking of the agreement;
- bankruptcy or liquidation of the concessionaire; and
- other cases envisaged under the concession contract.

Article 80

Termination of the concession due to expiry of the period

The concession shall terminate on the expiry of the period for which it was granted, as set under the concession contract, provided it had not been extended pursuant to Article 22 of this Law.

Article 81

Unilateral breaking of the contract by the grantor

In case of significant breach of the obligations by the concessionaire under the concession contract, the grantor may unilaterally break the concession contract, pursuant to the provisions of this article.

Unilateral breaking of the concession referred to in paragraph 1 of this article may be declared when:

- the activity delegated under the concession is carried out in an inappropriate manner or with poor quality, taking into account the rules, parameters and other conditions determining the appropriate performance of the activity set under the concession contract;
- the concessionaire has otherwise significantly breached the provisions of the concession contract or the laws and regulations applying to the concession contract;
- the concessionaire has terminated or caused termination of the performance of public services;
- the concessionaire has lost the economic, technical or operational ability necessary to perform the activity pursuant to the special law and the concession contract; and

- the concessionaire has failed to comply with the measures imposed in the supervision procedure pursuant to the special law .

The declaration of unilateral breaking shall be made with a decision by the grantor, indicating the reasons for breaking the concession and the rights of the concessionaire under the decision.

Before adopting the decision referred to in paragraph 3 of this article and if the concessionaire fails to act pursuant to the notification referred to in paragraph 5 of this article, the grantor shall be bound to explain to the concessionaire the reasons of the unilateral breaking.

The grantor shall be bound, within an optimal period before it adopts the decision on breaking of the concession, to notify the concessionaire in writing on the breaches referred to in paragraph 2 of this article and to call the same to correct the shortcomings so as to ensure compliance with the contract within the deadline set in the notification. The deadline must be sufficient so as to enable the concessionaire to act upon the notification.

Article 82

Unilateral breaking of contract by the concessionaire

In the case of a significant violation of the obligations of the grantor, foreseen in the concession contract, the concessionaire can unilaterally break the concession contract, pursuant to the provisions of this article.

The unilateral breaking of the concession referred to in paragraph 1 of this article can be declared when :

- the grantor does not perform the duties arising from the concession agreement, and
- the grantor has made another significant violation to the provisions of the concession contract, or the laws and regulations applying on the concession contract.
- The concessionaire shall have the duty within an optimum timeframe foreseen in the concession contract, before declaring the unilateral breaking of the concession, to inform the grantor in writing about the violations referred to in paragraph 2 of this article and to invite them to correct the omissions in order to ensure respect for the agreement within the time specified in the notice. The time period must be sufficient to enable the grantor to act upon the information.
- After the expiry of the time period referred to in paragraph 3 of this article, if the grantor has not removed the identified violations, the contract will be considered broken

Article 83

Mutually agreed breaking of the agreement

The grantor and the concessionaire may mutually agree on breaking the concession contract due to a breach of the contractual obligations by the grantor, and/or the concessionaire, pursuant to the applicable legal regulations and the provisions of the contract.

Article 84

Procedure for restitution of the facility under concession

When the concession expires, the concessionaire has the duty to hand over to the grantor the assets of general interest, all objects, facilities, plants, installations and other property involved in the activities on the basis of the concession.

The handing over on the part of the concessionaire, of the assets of general interest, objects, facilities, plants, installations and other property will be done by a commission.

Minutes are made on the handing over of assets of general interests, all objects, facilities, plants, installations and other property, and it is signed by the president and the members of the committee and an authorized representative of the concessionaire.

the handing over of assets of general interests, all objects, facilities, plants, installations and other

property, will be carried out within 30 days from the date of expiry of the concession.

In the case that the concessionaire refuses to hand over the subject of concession after the expiry of the deadline referred to in paragraph 4 of this article, the committee makes special minutes, taking note of the situation and informing the grantor which, on the basis of that, brings a decision to take over the facility under concession.

Once the concession has expired, after the necessary works have been carried out and the agreed remunerations and the additionally incurred costs are calculated, the grantor immediately takes over the performance of the activity.

Article 85

Notification to the Concessions Register

The body representing the grantor in the concession contract shall be bound, within a period of 15 days of the day of taking over the facility under concession, to submit a notification to the Concessions Register regarding the basis for termination of the concession, the date of termination and the date of taking over the facility under concession.

CHAPTER III

PUBLIC-PRIVATE PARTNERSHIP

Article 86

Subject of the contract

The subject of public-private partnership contract is an exercise undertaken by a private partner, for the benefit and on behalf of the public partner, through remuneration.

The remuneration of the private partner referred to in paragraph 1 of this Article can consist of the right of the private partner to earn profits, or to enjoy another gain from the exercise or collection by the public partner, according to the agreement.

Private partner will bear, fully or partially, the costs for the undertaken exercise of will provide that the costs are borne by other entities, pursuant to the agreement.

Article 87

Justification for the need of public-private partnership

A public-private partnership exercise is undertaken when it brings about a benefit of public interest, which surpasses the benefits derived from the ordinary way of provision of conditions for performance of public activities.

A benefit of public interest shall mean particularly saving costs for the public partner, higher standard of provision of services, and other public benefits.

Article 88

Formats of exercise

A public-private partnership ensures involvement of a private partner in the financing of:

- designing, equipping and implementation of an investment project, to ensure public interest,
- provision of services for a certain period of time, if that covers operation or maintenance of a property component which is essential for the purpose.
- activities that have the purpose of economic and social development, including restoration and

development of the municipalities and the City of Skopje on the basis of a project of a public partner or a project of private partner,

- development of pilot-projects, promotional, educational, scientific or cultural exercise which supports the ensuring of the public interest and
- other forms of cooperation, pursuant to the law .

Article 89

The initiative to start a public-private partnership

The decision to start the public-private partnership shall be made by the public partner, on the basis of a previous study of the exercise, from which its effectiveness and the risks related to the implementation will be established.

The Study referred to in paragraph 1 of this Article contains in particular:

- the risk related to the implementation of the exercise, taking into consideration various ways to distribute this risk between the public and the private partner and the impact on the budget revenues and expenditures,
- the economic and the financial impact of the exercise, including comparison of costs of implementation of the exercise within the framework of the public-private partnership to the costs of its implementation in another form at,
- the comparison of the benefits related to the implementation of the exercise within the public-private partnership to the benefits and the social impact related to the implementation of the exercise in another form at, and
- the legal status of the immovable and movable property, if the property-related rights need to be transferred or established by the public partner for the benefit of the private partner.

In the cases when the decision of paragraph 1 of this Article is made by the public partner referred to in the Article 3 item 10 lines 3 and 4 of this law , the founder gives its consent to the decision. The provisions of Article 29 of this Law are applied to the contents of the decision to start a procedure for awarding the contract for public-private partnership .

Article 90

Financial forecasting

The total amount of funds that is the maximum financial obligation that the public partner can assume within a given year in relation to the public-private partnership contract shall be established in the budget of the public partner.

Public partner, when adopting the budget, shall have to take into account:

- the expenditures needed to cover the obligations incurred in relation to the public-private partnership contracts,
- remuneration in part, temporary suspension (termination) or restriction of the exercise which can be related to the public-private partnership contracts and
- costs for remuneration (compensation) for the private partners that can be incurred in relation to the public-private partnership contracts.

Article 91

Request for approval of funds

If on the basis of the study referred to in Article 89 of this law it is established that for the implementation of the exercise are needed funds from the Budget of the Republic of Macedonia, the public partner referred to Article 3 item 10 line 1 of this law, shall have the duty to send a request to the Ministry of Finance to approve the undertaking of such exercise.

2. ARRANGEMENT OF RELATIONS

Article 92

Procedure to award a public-private partnership contract

To award a public-private partnership contract, the provisions of Articles 31 to 75 of this Law shall be applied.

When implementing the exercises referred to in Article 88 of this Law, the performance of the public services shall be within the competence of the public partner.

Article 93

Risk

Depending on the type, form and mode of financial participation of the private partner, the issues related to the risk of implementation of the awarded public-private partnership contract shall be borne by the public or the private partner and they shall be subject to regulation through the public-private partnership contract.

Article 94

Ownership

In a case when the private partner is the owner of the facilities built and the equipment, after the expiry of the public-private partnership contract the ownership title is transferred to the public partner, unless the contract specifies otherwise.

Article 95

Mode and form of the public-private partnership contract

The provisions of Articles 76 and 77 of this Law are applied to the public-private partnership contract with regards to the mode of concluding and the form at..

Article 96

Contents of the contract

The public-private partnership contract mandatorily contains the following

elements:

- objective, subject and the period of contract for public-private partnership,
- description of the subject of contract, as well as the description of the existing infrastructure,
- the date of entry into force of the contract,
- the conditions, mode and deadline for transfer of the subject of contract, and the termination of the contract,
- the rights and obligations of the parties to the contract, including the conditions and deadlines for their fulfilment,
- the amount, deadlines and mode of payment for the implementation of the contract,
- the mode for risk-sharing,
- the criterion for quality and standards that will be used when performing the exercise,
- the types, scope and deadlines for fulfilment of the obligation of investing,
- the type, amount, deadlines and the mode to submit collaterals and guaranties prescribed for the fulfilment of the obligations under the contract,
- responsibility for non-fulfilment of the obligations under the contract,
- conditions and mode to perform the supervision over the implementation of the contract, including provisions to perform a special professional supervision by authorised third parties, as well as the mode for reimbursement of costs to carry out the professional (expert) supervision,
- mode for dispute resolution in relation to the contract,
 - other obligations foreseen with this law, a special law and regulation adopted on the basis of these laws,
 - other provisions related to the specific subject of contract,
 - the mode and conditions to acquire and use the location where the facility is to be built,
- installations and plants that shall be built and/or upgrade and/or reconstructed at the risk of the private partner,
- the obligations of the private partner to regulate all legal and property issues related to the securing of the building location, and
- the sub-contractors, if there are any, pursuant to the provisions of this law .

Article 97

To anything that is not regulated with the provisions of Chapter III of this law with regards to the public-private partnership contracts the provisions of the Law on Obligations shall be applied.

CHAPTER IV

SUPERVISION

Article 98

Supervision

The grantor/public partner performs a permanent and regular supervision over the performance of the concession activity and the implementation of the awarded contract for public-private partnership, as well as the respect for the obligations on the part of the concessionaire/private partner pursuant to the law and the contract in question.

CHAPTER V

LEGAL REMEDIES

Article 99

Complaint

Dissatisfied tenderers and candidates as well as persons that took tender documentation may, at any time during the procedure for granting concession, lodge a complaint to the Commission.

Article 100

Acting by the Commission

If the Commission considers that the submitted complaint is justified, it may accept and change its position.

If the Commission rejects the complaint, after adopting the decision on selection, the complainant shall have the right to initiate an administrative dispute.

The complaint shall postpone the adoption of the decision on selection.

Article 101

Right to an administrative dispute

Dissatisfied tenderers or candidates, as well as entities that took tender documentation shall have the right to initiate an administrative dispute against the decision on selection.

The entities that took tender documentation may initiate an administrative dispute only due to breaches included in the tender documentation.

After a decision on selection is adopted, candidates that are not satisfied with the decision on selection of eligible candidates in the first phase of the restricted procedure and competitive dialogue, shall have the right to initiate an administrative dispute.

Article 102

Legal effect

The initiated administrative dispute shall not postpone the execution of the decision on selection and the conclusion of the concession contract.

Article 103

Access to documents

Parties that have initiated an administrative dispute or intend to initiate an administrative dispute shall be entitled to access to and a copy of the documents, except of those documents that include such information the access to which the grantor is legally bound to prevent.

Article 104

Dam age com pensation

After completion of the administrative dispute, the candidates or tenderers the appeals of which have been accepted shall be entitled to damage compensation, pursuant to the Law on Obligations.

Article 105

Invalidity

A decision on selection shall be considered null and void if:

- a) adopted without prior procedure for granting concession;
- b) its subject or action is prevention, restriction or distortion of competition.

CHAPTER VI

REPORT AND CONCESSIONS REGISTER

Article 106

Report

For any initiated, but not completed procedure for concession, any concluded concession/public partnership contract, the Commission shall prepare a written report.

The report referred to paragraph 1 of this article shall be submitted to the body competent for granting the respective contract concerned.

The Minister of Finance shall prescribe the format and the contents of the report referred to in paragraph 1 of this article

Article 107

Register of granted concessions

A Concessions Register shall be maintained for the granted concessions.

The Concessions Register referred to in paragraph 1 of this article shall be maintained by the Ministry of Finance.

The data regarding the granted concession shall be submitted to the Ministry of Finance on an appropriate form within a period of three days of the day of conclusion of the contract.

The Concessions Register shall be published on the website of the Government of the Republic of Macedonia.

The Minister of Finance shall stipulate the format and the contents of the Concessions Register as well as the form referred to in paragraph 3 of this article.

Article 108

Notification about amendments to the contract

The grantor/public partner shall be bound to report to the Ministry of Finance all the changes related to the granted concession, on the form referred to in article 107 of this Law within a period of three days from the day of the changes made to the basic contract.

Article 109

Report on collection of compensation

The grantor shall be responsible to collect the concession fee and it shall be bound to submit reports to the Ministry of Finance on the regularity of payments of the concession fees at least once a month.

CHAPTER VII

TRANSITIONAL AND FINAL PROVISIONS

Article 110

Application of the provisions

Provisions of the Law on Concessions (Official Gazette of the Republic of Macedonia No. 25/02 and 24/03) and the laws that represent concession acts under the same shall apply to the procedures for granting concession initiated before this law has entered into force, as well as to the concession contracts concluded before this Law has entered into force.

Article 111

Regulations for enforcing the Law

The bylaws stipulated under this Law shall be adopted within a period of six months from the date this Law enters into force.

Article 112

Termination of the application

The day this Law enters into force, the Law on Concessions (Official Gazette of the Republic of Macedonia No. 25/02) shall cease to be valid.

Article 113

Entry into force

This Law shall enter into force on the eighth day from the date of its publication in the Official Gazette of the Republic of Macedonia.