

DECREE-LAW No. 2/2014
of 15 January 2014

FIRST AMENDMENT TO DECREE-LAW No. 42/2012, OF 7 SEPTEMBER,
WHICH APPROVES THE LEGAL FRAMEWORK FOR
PUBLIC-PRIVATE PARTNERSHIPS

Decree-Law no. 42/2012, of 7 September, established a legislative framework in which the legal regime for agreements between the State and private entities, public-private partnerships, was defined.

Public-private partnerships were defined as the agreement, by which private partners are obliged before the Government, to ensure the construction and execution of an infrastructure project. However, the design and / or operation and / or maintenance of infrastructures can also be subject to provisioning through the form of public-private partnerships, allowing for gains in effectiveness and efficiency in the provision of services.

In this sense, the present diploma establishes a framework that allows a public sector entity and a private partner to be parties to a public-private partnership agreement to design and / or build and / or operate and / or maintain infrastructure, thus promoting , the creation and development of public infrastructures as well as the provision of services associated with them.

Thus, the Government decrees under the terms of point e) of paragraph 1 of article 115 and of paragraph a) of article 116 of the Constitution of the Republic, to be enforced as law, the following:

Article 1

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

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

"Article 1

Object

This Decree-Law establishes the principles and instruments for establishing partnerships, in public infrastructures, between the Government and private entities, as well as the competences and processes for the identification, assessment, supply, construction and / or operation and / or maintenance of these infrastructures.

Article 2

Definitions

1. For the purposes of this law, it is understood that:
 - a) public-private partnership is an agreement, whereby private entities, designated by private partners, undertake before the Government, to ensure the design and / or construction and / or operation and / or maintenance of one or more infrastructures and where financing and responsibility for investment and exploitation rest, in whole or in part, with the private partner.
 - b) (...).
2. (...).

Article 3

Powers to approve and sign agreements

1. (...).
2. It is incumbent upon the minister of the public sector body responsible for the project to sign the respective public-private partnership contract, as well as direct agreements, after authorization by the Council of Ministers, which may approve additional signatories, representing the State.
3. The Ministry of Finance is responsible for assessing the budgetary risks of any public-private partnership agreement.

4. (...).
- a) (...);
 - b) (...);
 - c) (...).
5. (...).
6. (...).
7. (...).

Article 6

Analysis of the project and its supply

1. (...).
2. The methods and procedures for selecting private partners, awarding concessions and signing public-private partnership contracts, as well as for identifying public-private partnership advisers, are subject to the regime of this Decree-Law and the respective regulations , with the Provisioning Legal Regime being supplemented.
3. (...).
4. (...).
- a) (...);
 - b) (...),
 - c) (...).
5. (...).
- a) (...);
 - b) (...);
 - c) (...);
 - d) (...).
6. (...).

Article 7

Procedures for project approval

1. The list of infrastructure projects likely to be provided through the public-private partnership modality are submitted to the Secretariat for Major Projects, for registration, which sends it to the Public-Private Partnerships Unit for opinion and recommendation.
2. The Public-Private Partnerships Unit prepares an opinion on the feasibility of entering the project in the project cycle of public-private partnerships.

Article 8

Financial feasibility study

- (...):
- a) Estimates of future payments and revenues for the term of the project, including concession or operation lease fees;
 - b) (...);
 - c) (...);
 - d) (...);
 - e) (...).

Article 11

Principles

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

Article 16
Contract regime

Public-private partnership contracts are subject to the regime of this Decree-Law and respective regulations and, alternatively, the Public Procurement Legal Regime.

Article 17
Content of the contract

1. Annex II to this law approves an indicative list of the provisions to be contained in public-private partnership contracts.
2. (...).

Article 21
Regulation

1. The powers of the Public-Private Partnerships Unit as well as the project cycle of public-private partnerships are regulated by decree-law.
2. (...).

ANNEX II
CONTENTS OF A PUBLIC-PRIVATE PARTNERSHIP CONTRACT

Content of a public-private partnership contract under Article 17:

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

Article 2
Repeal

Article 22 is repealed.

Article 3
Entry into force

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

Approved by the Council of Ministers on November 5, 2013.

The Prime Minister,

Kay Rala Xanana Gusmão

The Minister of Finance,

Emília Pires

Enacted on 4 January 2014

Be it published.

The President of the Republic,

Taur Matan Ruak