

New law on public-private partnerships

17.01.2017

In brief

On 23 November 2016, the President of Romania enacted Law 233/2016, with the main purpose of implementing a legislative framework capable of ensuring efficient cooperation between the public and the private sector regarding public investments. The object of the public-private partnerships is to create, rehabilitate or extend goods intended to provide a public service.

In detail

Main provisions:

1. The scope of the act

The provisions apply to implementation projects for which the substantiation report establishes that the expected project company revenue is to be generated by payments from the public partner or from some other public institution to the benefit of the public partner.

Public-private contracts can be concluded for one of the main relevant activities in the public utility segment, as indicated in Law no. 99/2016 and Law no. 51/2006.

2. Forms of public-private partnership

Public-private partnerships can be:

- *Contractual* where the parties are the public partner, the private partner and the project company with the share capital owned

entirely by the private partner.

- *Institutional* where the public and private partners are establishing a new company to act as the project company with own legal status on registration.

3. Financing

Public-private partnership projects can be financed:

- entirely from the private partner's own financial resources;
- or using financial resources from both partners.

The private partner is able to ensure the financing of the project either from own or third-party resources.

Public partners can contribute financing in one of the following ways:

- Setting up rights on behalf of the project company or the private partner;

- Cash contributions to the project company's share capital.
- Assuming payment obligations to the private partner or the project company;
- Providing guarantees in favour of financiers of public-private partnerships which are credit institution or financial institutions.

4. Collateralisation

The private partner or the project company are entitled to provide guarantees regarding the legal rights they have from the public-private partnership only for the project financiers and for as long as the partnership lasts.

Private partners can also settle guarantees regarding the shares owned by the project company, only on behalf of project financiers which are either a credit institution or a financial institution.

5. Steps for concluding public-private partnerships

The following are required to conclude such a contract:

- The substantiation report has to be prepared by the public partner following the feasibility study;
- The specific requirements detailed in the second Chapter of the Government Emergency Ordinance no. 88/2013 have to be fulfilled;
- The procurement procedures of the public-private partnership have to be followed;

Projects are assigned in accordance with the provisions of Law nos. 98/2016, 99/2016 and 100/2016.

6. The nature of the contract

A legally-concluded public-private contract is an administrative contract and the provisions of Law no. 101/2016 apply in full.

The entire duration of the contract is established according to the amortisation period of the investments to be made by the project company.

7. Modifying the contract

The contract can be modified or unilaterally terminated only by the public partner if the public interest demands so in compliance with the following conditions:

- The procurement documentation and the public-private partnership contract contain this possibility detailed in a very precise way;
- The modification of the contract does not affect its nature;

- With the prior notification of the private partner and the project company.

8. Replacement of the private partner

If the private partner or the project company does not fulfil their tasks, the public partner has the right to replace the other party, if this possibility is stipulated in the contract.

9. Dispute settlement

The competence to solve any disputes arising from public-private partnerships is established by Law no. 101/2016.

[Source: The new law on public-private partnership as adopted by the Chamber of Deputies on 11 July 2016 and enacted by the President of Romania on 23 November 2016]

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:



Sorin David, *Partner*
sorin.david@david-baias.ro



Dan Dascalu, *Partner*
dan.dascalu@david-baias.ro



Anda Rojanschi, *Partner*
anda.rojanschi@david-baias.ro



Manuela Guia, *Partner*
manuela.guia@david-baias.ro

PwC Romania

Lakeview Building
301-311 Barbu Văcărescu Street
Sector 2, Bucharest
Tel.: + 40 21 225 3000
Fax: + 40 21 225 3600

D&B David si Baias SCA

Lakeview Building
301-311 Barbu Văcărescu Street
Sector 2, Bucharest
Tel.: + 40 21 225 3770
Fax: + 40 21 225 3771

This Tax & Legal Alert is produced by PwC Romania tax department in cooperation with D&B David si Baias SCA, a law firm associated with PwC.

Legal Disclaimer: The material contained in this alert is provided for general information purposes only and does not contain a comprehensive analysis of each item described. Before taking (or not taking) any action, readers should seek professional advice specific to their situation. No liability is accepted for acts or omissions taken in reliance upon the contents of this alert.

© 2017 PwC. All rights reserved. "PricewaterhouseCoopers" and "PwC" refer to the network of member firms of PricewaterhouseCoopers International Limited (PwCIL). Each member firm is a separate legal entity and does not act as agent of PwCIL or any other member firm. PwCIL does not provide any services to clients. PwCIL is not responsible or liable for the acts or omissions of any of its member firms nor can it control the exercise of their professional judgment or bind them in any way. No member firm is responsible or liable for the acts or omissions of any other member firm nor can it control the exercise of another member firm's professional judgment or bind another member firm or PwCIL in any way.