

Legal News

August 2015

In this issue:

I. Amendment to the law no. 125/2013, dated 25.04.2013 “On concessions and public private partnership”, as amended.

II. State aid in strategic investments

III. Health and security at work premises for pregnant women and new mothers

I. Amendment to the law no. 125/2013, dated 25.04.2013 “On concessions and public private partnership” as amended.

The Albanian parliament passed recently the law no. 77/2015, dated 16.07.2015 (the “**Amending Law**”) amending the law no. 125/2013, dated 25.04.2013 “On concessions and public private partnership” as amended (the “**Concession Law**”). The Amending Law was published with the Official Gazette as of July 29, 2015.

As part of the revision of the legal framework governing the concessions and public private partnership procedures the Amending Law provides for several novelties to the Concession Law.

In this view, the Amending Law extends the definition of the Special Purpose Vehicle (SPV) which, inter alia, from now on can be used in the field of Public Private Partnership (“PPP”), where the SPV (joint entity formed by the public and private stakeholders) will carry out works and services in virtue of a concession/PPP contract, and the private stakeholder, except of the contribution to the capital or in assets, contributes also through the active participation in the management of the concession/PPP contract.

Another important novelty is the inclusion of the agricultural sector in the field of applicability of the Concession Law. The option of the unsolicited proposal shall no longer be applied for the award of the hydropower plants concessions. For the other procedures where this option remains applicable, the proposer thereof is entitled to a bonus in the competitive procedure up to 10% of the total bid scores.



The Amending Law attempts the facilitation of the (institutional) procedures on granting of the concessions/PPPs. All procedures of concessions/PPPs shall be carried out by a (sole) commission (i.e. to be established by the contracting authority in coordination with the Unit on Treatment of Concessions/PPPs). To this effect, it provides that the commission on granting of concessions/PPPs shall, inter alia, carry out the feasibility study within 60 days from the date of establishment thereof. This period may be further extended, due to the complexity of the project, up to 30 working days. This commission also reviews and assesses the accepted bids and/or the requests for participation that have been submitted and prepares the proposal for the selection of the successful bid or the proposal of the decision to interrupt the procurement procedure.

Pursuant to the Amending Law, the parties interested to the related procedure are entitled to request the amendment or correction of the standard documents of such procedure. This request should be submitted within 10 days from the publication date of the contract's notice. If the documents of the procedure have been amended or corrected, the final deadline for submission of bids may be postponed, as per the relevant circumstances, for no longer than 10 days.

The Amending Law provides also for the introduction of the administrative review procedure regarding concessions/PPPs. To this effect, any economic operator, which has or had an interest in a competitive procedure and when has been damaged or runs the risk of being damaged by any decision of the contracting authority, is entitled to appeal such decision before the Public Procurement Commission ("PPC").

For complaints related to the bidding documents, the economic operators are entitled to file the relevant appeal within 10 days from the subsequent publication day of the contract's notice in the official website of the Public Procurement Agency. The decision on the final assessment or classification can be appealed within 10 days from the day when the appellant became aware of or should have been aware of.

The appeal addressed to PPC should be in writing (as per the standard form) and a copy of it shall be delivered to the contracting authority, which upon receipt thereof suspends the competitive procedure until the final review of relevant case and issuance of the final written decision. The PPC should issue its decision within 10 days from the filing date of the appeal. The decision of PPC might be appealed before the competent administrative court. The court of appeal does not suspend the competitive procedures, the conclusion of

the contract or execution of the obligations between the parties.

Moreover, the Albanian legislator supplemented the law provision on dispute resolution by setting the Albanian law as the governing law in the field of concessions and PPPs.

It is to be noted that the provisions of the Amending Law do not apply to actions and procedures for granting of concessions/PPPs, which have started before the entry into force thereof.

II. State aid in strategic investments

On 13.07.2015 the State Aid Commission (the "Commission") approved the decision no. 58 "On the scheme of state aid for the realization of strategic investments" (the "Decision").

The Decision aims to clarify the cases when the provision of facilities to the strategic investors as defined in the law no. 55/2015 "For strategic investments" ("Law 55/2015"), may fall under the definition of the state aid as provided by the law no. 9374, dated 21.04.2005 "On state aid", as amended.

Upon such Decision the Commission concluded that making available of construction lands, agricultural lands as well as other state owned immovable properties, in terms more favorable than those of the market, may be considered as state aid. In any case of disposal of state owned immovable property, state authorities must assess if such disposal shall be considered as state aid, and in case of positive conclusion the disposal should be subject to prior approval by the Commission.

The Decision, describes two main methods of disposal of state owned immovable properties which exclude state aid. Such methods consist of disposal through the public auction and disposal of the asset based on an expertise act of an independent expert. Both methods intend to assure the disposal of the asset based on the market value, avoiding the granting of any aid from the state that directly or indirectly may impair the competition and give unfair priorities to certain investors. However the Decision does not put a limit to the range of methods which may exclude state aid.

In pursuance also with article 31 of the Law 55/2015 will be created the Immovable Property Fund for Support of Strategic Investments. The Albanian Agency of Investment Developments within 31 March of each year shall provide to the Commission the information on the

said fund and disposal of state owned immovable property.

III. Health and security at work premises for pregnant women and new mothers

Upon the Decision no. 634, dated 15.07.2015, the Council of Ministers approved the regulation, "On measures related to health and security for pregnant women and new mothers" (the "Regulation"). The Decision was published with the Official Gazette no.147, dated 13.08.2015 and is effective as from the date of its publishing.

The purpose of the Regulation is to establish detailed rules for safety and health at work premises for pregnant women and new mothers.

The Regulation provides that the employer should assess any risk to safety or health at work and any possible effect on pregnant or breastfeeding women and should undertake preventive and/or corrective measures if the assessment indicates the existence of a risk. Such measures may include temporary adjustment of working conditions and/or working hours of an employee. Where an employee cannot perform a job because of potential risks, the employer must assign her to another position and, if unable, grant her a paid leave.

Employers may not order a pregnant women or new mother to perform night shifts if such shifts are harmful to health, provided that this is confirmed through a medical report. In such case the employee is entitled to (i) be transferred to a similar job during the day; or (ii) take paid leave from work; or (iii) extend the maternity leave if the transfer is not possible due to technical reasons.

Pregnant women or new mothers have the right to paid leave of not less than thirty minutes every three hours of continuous work during the day and are entitled also to paid leave from work in order perform medical visits which are required to be carried out during the working hours.

The annexes of the Regulation contain a detailed list of agents, processes and work conditions that may be harmful to health of pregnant women or new mothers and for which the risk assessment should be performed.

Deloitte Contacts

Olindo Shehu, CPA

Partner | Tax & Legal Services

Deloitte Albania sh.p.k

Rr. "Elbasanit", Pallati pranë Fakultetit Gjeologji Miniera

Tirana | Albania

Mob: +355 68 60 33 116

E-mail: oshehu@deloitteCE.com



Disclaimer:

This publication contains general information only, and none of Deloitte Touché Tohmatsu Limited, any of its member firms or any of the foregoing's affiliates (collectively the "Deloitte Network") are, by means of this publication, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services.

This publication is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your finances or your business. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this publication.

No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this publication.

Deloitte refers to one or more of Deloitte Touché Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/al/about for a detailed description of the legal structure of Deloitte Touché Tohmatsu Limited and its member firms.

Deloitte provides audit, tax, consulting, and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries, Deloitte brings world-class capabilities and deep local expertise to help clients succeed wherever they operate. Deloitte's approximately 182,000 professionals are committed to becoming the standard of excellence.

© 2015 Deloitte Albania sh.p.k