

LAW OF GEORGIA
ON PUBLIC-PRIVATE PARTNERSHIPS

Chapter I - General Provisions

Article 1 - Scope of the Law

1. This Law determines the legal basis for public-private partnerships, including the rules and procedures related to the development and implementation of public-private partnership projects, the principles of public-private partnership, and relevant institutional systems, as well as other matters related to public-private partnerships.
2. This Law shall equally apply to concession and non-concessional public-private partnerships, except for Article 15 and Chapter IV of this Law.
3. This Law shall not apply to agreements concluded before the entry into force of this Law, and amendments made thereto before the entry into force of this Law.

Article 2 - Definition of terms

For the purposes of this Law, the terms used herein have the following meanings:

- a) a non-concessional public-private partnership – a public-private partnership in which a contractor, on the basis of a non-concessional public-private partnership, receives remuneration from a public partner for the provision of a public service and/or public infrastructure, and which, at the same time, is not a concession according to this Law.
- b) a non-concessional public-private partnership agreement - a public-private partnership agreement concluded between a public partner and a contractor, regarding a non-concessional public-private partnership;
- c) an affiliated person:
 - c.a) a legal person in which another legal person directly or indirectly holds 25 per cent or more of the interest/shares, and the majority of votes, or can otherwise determine the management policies of the legal person;
 - c.b) a legal person that directly or indirectly holds 25 per cent or more of the interest/shares, and the majority of votes of another legal person, or can otherwise determine the management policies of the legal person;
- d) an institutionalised public-private partnership – a public-private partnership that is carried out through an institutionalised public-private partnership company;
- e) an institutionalised public-private partnership company - a legal person created with public and private participation for a defined purpose, established in accordance with the Law of Georgia on Entrepreneurs;
- f) a private initiator - a legal entity under private law or a consortium that submits an initiative proposal for the purpose of the implementation of a concession in accordance with Article 15 of this Law;
- g) a private partner - a concessionaire, contractor or an institutionalised public-private partnership company;
- h) a contractor - a legal entity under private law (including an institutionalised public-private partnership company) or a consortium with which a public partner has concluded an institutionalised public-private partnership agreement. The selection of a contractor shall be carried out in accordance with the Law of Georgia on Public Procurement;
- i) a consortium - an association of legal entities under private law and/or an association of legal entities under private law and natural persons on the basis of a joint venture (partnership) agreement;
- j) a concession – a public-private partnership, during which a concessionaire, on the basis of a concession agreement, directly or indirectly receives remuneration from an end user, or a public partner and an end user, in exchange for a public service rendered by the concessionaire, and within which the concessionaire takes important operational risks including the risks of demand and/or the risks of delivery;
- k) a concession agreement - a public-private partnership agreement concluded between a public partner and a concessionaire on the implementation of concession;
- l) a concessionaire - a legal entity under private law (including an institutionalised public-private partnership company), or a consortium with which a public partner has concluded a concession agreement;
- m) a creditor - any state authority, international financial institution, or a bank/commercial bank licensed in accordance with the legislation of Georgia, or of another country, that disburses loans and/or issues a guarantee to a concessionaire, a contractor or a private partner of an institutionalised public-private partnership company;
- n) a small project - a public-private partnership project that meets the criteria provided for by Article 4 of this Law, except for sub-paragraph (b) of the same article, whose project cost is lower than the amount determined by the legal act of the Government of Georgia on the basis of the same sub-



paragraph;

- o) a direct contract - an agreement concluded between a public partner, a private partner and a creditor(s);
- p) a project concept – a general description of a project that includes (but is not limited to) the basic characteristics and pre-feasibility assessment of the project in accordance with a legal act of the Government of Georgia;
- q) the project cost – the total cost of financing and providing other resources required for the full implementation of a public-private partnership project, whose rules of calculation shall be determined in accordance with a legal act of the Government of Georgia;
- r) an end user - a natural person, a legal person and/or a state authority for which a private partner provides a public service directly or through a third party;
- s) an initiative proposal - a proposal submitted to an authorised body by a private initiator on its own initiative regarding the implementation of a concession in accordance with the procedure determined by Article 15 of this Law;
- t) works - construction and/or design and construction works, by whose implementation an infrastructural object is created, which is used for the purpose of performing the functions provided for by a public-private partnership project;
- u) a legal act of the Government of Georgia - an ordinance of the Government of Georgia on the Approval of the Procedures for the Development and Implementation of a Public-Private Partnership Project;
- v) state property - state property determined by the Law of Georgia on State Property;
- w) public infrastructure - tangible and/or intangible assets of public interest and/or used for the provision of public services;
- x) public interest - benefits to be received by society-at-large from public infrastructure or the provision of public services within the territory of Georgia;
- y) a public partner - an authorised body or the Government of Georgia which is a party to a public-private partnership agreement;
- z) a public-private partnership/public-private partnership project - a long-term partnership between a public partner and a private partner that meets the criteria provided for by Article 4 of this Law, and is carried out for the purpose of the performance of works and/or the provision of public services in the form of a concession, or a non-concessional public-private partnership;
- z¹) a public-private partnership agreement - a long-term agreement conducted between a public partner and a private partner in the form of a concession, or a non-concessional public-private partnership;
- z²) the Public-Private Partnership Agency - a body established for the purposes of implementing the functions determined by Article 9 of this Law;
- z³) public services - services in the field of public interest that, as a rule, are carried out by a state authority, local self-government body, or a legal entity under public law, for society-at-large in accordance with the legislation of Georgia;
- z⁴) a participant of the selection process - a legal entity under private law or a consortium that participates in a selection process;
- z⁵) an authorised body - a ministry, other state authority, a legal entity under public law, a municipality, the governments of the Autonomous Republics of Abkhazia and Adjara, or an enterprise established on the basis of holding more than 50% interest;
- z⁶) performance-based compensation - remuneration paid by a public partner to a private partner for a unit of service provided, and/or in accordance with each end user;
- z⁷) the creation of infrastructure – construction, reconstruction, rehabilitation, modernisation, or the performance of other types of construction work;
- z⁸) the price-performance ratio – a methodology by which the expediency of a public-private partnership is evaluated, and which is determined by a legal act of the Government of Georgia;
- z⁹) availability payments - periodic payments made by a public partner to a private partner that are carried out in compliance with defined quality standards which apply to the provision of public infrastructure and/or public services.

Article 3 - Objectives of public-private partnerships

The objectives of public-private partnerships are to:

- a) enhance the efficiency of projects;
- b) meet public interests by creating new public infrastructure and/or providing public services and/or improving existing public infrastructure and public services;
- c) attract private financing;
- d) enhance the efficiency of public finances;
- e) arrange the sharing of risks between the public and private sectors;



f) benefit from the know-how of a private partner.

Article 4 - Criteria for public-private partnerships

Public-private partnerships shall meet the following criteria:

- a) duration - the minimum term of a public-private partnership agreement shall be determined by a legal act of the Government of Georgia, but shall not be less than five years;
- b) cost - the cost of a public-private partnership project before 1 July 2020 shall be no less than GEL 5 000 000, and the minimum term of a public-private partnership project from 1 July 2020 shall be determined by a legal act of the Government of Georgia;
- c) the provision of a public service or the establishment and maintenance and/or operation and/or maintenance of public infrastructure by a private partner;
- d) the distribution of risks between public and private partners;
- e) the full or partial financing of a public-private partnership project by a private partner.

Article 5 - Basic principles of public-private partnerships

Public-private partnerships shall be based on the following principles:

- a) transparency - ensuring public access to information on the opportunities of public-private partnerships and public-private partnership projects;
- b) foreseeability – the existence of clear and predictable rules;
- c) the promotion of free competition and the prohibition of discrimination - equal treatment of the public and private entities of Georgia and other countries;
- d) price-performance ratio – a public-private partnership as an optimal tool for achieving the planned objectives;
- e) optimal distribution of risks - reasonable distribution of liability and risks between parties, taking into consideration the capacity and expediency over their control by the parties, public interests and the characteristics of the public-private partnership in question;
- f) fiscal liability - undertaking financial liability related to a public-private partnership without posing a threat to public finances;
- g) environmental protection and social sustainability - the establishment of the compliance of the public-private partnership project with the requirements determined by the environmental legislation of Georgia and the assessment of its environmental and social impact in accordance with the legislation of Georgia.

Article 6 - Sectors for carrying out public-private partnerships

1. Public-private partnerships may be carried out in any public infrastructure and public service sector, unless otherwise determined by the Government of Georgia.
2. The Government of Georgia may determine the priority sectors for carrying out public-private partnerships.

Article 7 Institutionalised public-private partnerships

1. The selection of a private partner in an institutionalised public-private partnership company that is to be, or has already been, established within an institutionalised public-private partnership framework, shall be carried out in accordance with the provisions for the selection of a concessionaire or a contractor determined by this Law.
2. The provisions determined by this Law that are related to a concessionaire or a contractor shall apply to an institutionalised public-private partnership company during such relationship when the company is a concessionaire or a contractor.
3. Additional requirements related to an institutionalised public-private partnership company shall be determined by a legal act of the Government of Georgia.

Chapter II - Institutional Framework of Public-Private Partnerships

Article 8 - Powers of authorised bodies in the field of public-private partnerships



1. For the purpose of the development and implementation of public-private partnerships, an authorised body, within the scope of its authority, and in accordance with a legal act of the Government of Georgia, shall ensure:

- a) the identification and the initiation of a potential public-private partnership project, in accordance with this Law, if necessary;
- b) the analysis and assessment of an initiative proposal;
- c) the participation of the Public-Private Partnership Agency and the Ministry of Finance of Georgia in the drafting and assessment of a public-private partnership project within the scope of their authority;
- d) the organisation of the selection process;
- e) the conduct of negotiations with the participants of the selection process, potential private partners and/or creditors;
- f) the conclusion of a public-private partnership agreement;
- g) the performance of other functions necessary for the implementation of a public-private partnership.

2. The Government of Georgia shall review a public-private partnership project and make a relevant decision in accordance with the legislation of Georgia.

Article 9 - Public-Private Partnership Agency

1. The Public-Private Partnership Agency is a legal entity under public law established on the basis of this Law. The statute of the Public-Private Partnership Agency shall be approved by the Government of Georgia.

2. The Public-Private Partnership Agency, within the scope of its authority, shall perform the following functions related to public-private partnerships:

- a) identifying potential public-private partnership projects and proposing them to an authorised body; if necessary, assisting the authorised body in identifying possible public-private partnership projects;
- b) assessing the concept of a project submitted by an authorised body and developing relevant recommendations;
- c) assisting in the preparation of the documentation related to a public-private partnership, including the documentation related to selection processes, a draft public-private partnership project and other documentation, in the case of the application by an authorised body;
- d) exercising the powers determined by Article 14 of this Law in relation to small projects, if necessary;
- e) ensuring the selection, recruitment and supervision of consultants at any stage of a public-private partnership, if necessary;
- f) coordinating relevant actions with authorised bodies, as well as requesting information related to the monitoring of the implementation of public-private partnership projects;
- g) implementing relevant measures to facilitate the enhancement of knowledge and skills of an authorised body in the field of public-private partnerships, for the purpose of developing institutional potential;
- h) creating and managing a database for public-private partnership projects;
- i) drawing up the forms of standard documents, including the standard clauses of a public-private partnership agreement;

3. The Public-Private Partnership Agency shall perform its functions and tasks in accordance with the legislation of Georgia.

4. The chairperson of the Public-Private Partnership Agency shall be appointed and may be dismissed by the Prime Minister of Georgia. The Public-Private Partnership Agency shall be accountable to the Prime Minister of Georgia.

Article 10 - Assessment of fiscal risks

The Ministry of Finance of Georgia shall perform the following main functions related to public-private partnerships:

- a) the review and assessment of the documentation submitted by an authorised body, in particular:
 - a.a) the assessment of accessibility to public finances;
 - a.b) the assessment of the price-performance ratio;
 - a.c) the assessment of fiscal risks;
 - a.d) other types of assessment - if necessary, within the scope of its authority;
- b) the review of an initial public-private partnership project and the related documents, and the submission of relevant recommendations to an authorised body;
- c) the review of the terms and conditions of a public-private partnership agreement revised by an authorised body as a result of negotiations with a



private partner, and in the case of substantially different terms and conditions from those approved by the Government of Georgia, the conduct of assessment provided for by this article, and, on the basis thereof, the submittal of the recommendation on the expediency of the proposed (revised) or other terms and conditions of a public-private partnership agreement to the Government of Georgia in accordance with a legal act of the Government of Georgia;

d) participation, if necessary, in the negotiations related to a public-private partnership agreement, including in the negotiations related to the amendments to be made thereto;

e) the conduct of the assessment provided for by this article related to the amendments to be made to a public-private partnership agreement. A public partner shall submit to the Government of Georgia draft amendments to be made to a public-private partnership agreement in the case of identifying fiscal risks as a result of the above-mentioned assessment;

f) the development and approval of appropriate methodologies, if necessary, in order to perform the functions determined by this article.

Chapter III - Development of Public-Private Partnership Projects

Article 11 - A public-private partnership project and the stages of its implementation

A public-private partnership project shall be implemented in accordance with the procedure determined by this Law, which includes several stages, including the identification and initiation of the project, its preparation, the selection of a private partner, the implementation of the project and the follow-up assessment of the project.

Article 12 - Identification of public-private partnership projects

1. The identification of a public-private partnership project shall be carried out by an authorised body or the Public-Private Partnership Agency; in the case of an initiative proposal regarding the implementation of a concession, the identification of a public-private partnership project may also be carried out by a private initiator in accordance with Article 15 of this Law.

2. The identification and the preparation of a public-private partnership project shall be carried out in accordance with a legal act of the Government of Georgia, taking into consideration the state development plan/strategy and/or municipality development strategy/action plan.

Article 13 - Initiation, preparation and approval of a public-private partnership project

1. The initiation of a public-private partnership project shall be carried out by an authorised body.

2. After the identification of a public-private partnership project in accordance with Article 12 of this Law, an authorised body shall prepare a concept of the project in accordance with a legal act of the Government of Georgia, and submit it for review to the Public-Private Partnership Agency and the Ministry of Finance of Georgia. The Public-Private Partnership Agency and the Ministry of Finance of Georgia shall prepare recommendations and an opinion determined by paragraph (3) of this article within the period determined by a legal act of the Government of Georgia.

3. An authorised body shall submit the concept of a project with the recommendations of the Public-Private Partnership Agency and an opinion from the Ministry of Finance of Georgia to the Government of Georgia for review.

4. The decision of the Government of Georgia on the initiation of the preparation of a public-private partnership project shall be based on the following criteria:

- a) the strategic or social value of the project;
- b) the preliminary assessment of the economic impact of the project;
- c) the accessibility to public finances for the implementation of the project;
- d) the assessment of fiscal risks that may be caused by the project.

5. In the case of an approval of the concept of a project by the Government of Georgia, an authorised body shall carry out preparatory work for the project and, if necessary, ensure the participation of the Public-Private Partnership Agency and the Ministry of Finance of Georgia in the project within the scope of its authority.

6. The preparation of a public-private partnership project shall be carried out in accordance with a legal act of the Government of Georgia. An authorised body, within the framework of the legal act of the Government of Georgia, shall prepare a financial and feasibility study/analysis, in which, inter alia, the following shall be assessed:

- a) the cost of the public-private partnership project and the potential social and economic consequences of its implementation;
- b) the accessibility to the budget of the authorised body for the implementation of the public-private partnership project, in the case of the financial participation of the State;
- c) the environmental and social impact assessment of the implementation of the public-private partnership project, and the measures determined by the legislation of Georgia to be taken to mitigate any negative impact.



7. The results of the preparation of a public-private partnership project shall be submitted to the Ministry of Finance of Georgia for review. The Ministry of Finance of Georgia shall prepare an opinion in accordance with Article 10(1)(a) of this Law within the period determined by a legal act of the Government of Georgia.
8. The documents and relevant research related to a public-private partnership project, together with the opinion of the Ministry of Finance of Georgia, shall be submitted to the Government of Georgia for review, before the initiation of the stage of selection of a private partner.
9. The Government of Georgia, on the basis of the submitted documentation, shall make a decision on the approval of a public-private partnership project, on the refusal to approve a public-private partnership project, or on the revision of a public-private partnership project.
10. In the case of the approval of a public-private partnership project by the Government of Georgia, an authorised body shall prepare the documentation for the selection process, and initiate the stage of selection of a private partner.
11. The Government of Georgia shall be authorised to define additional requirements for carrying out a feasibility analysis within the framework of a public-private partnership.
12. If the implementation of a public-private partnership project is within the competence of more than one authorised body, the Government of Georgia shall determine an authorised body to implement the public-private partnership project, or make a decision on the joint implementation of the public-private partnership project by the relevant authorised bodies.

Article 14 - Small projects

1. The identification and initiation of a small project shall be carried out by an authorised body. The authorised body shall submit the concept of a project to the Public-Private Partnership Agency and the Ministry of Finance of Georgia in accordance with a legal act of the Government of Georgia.
2. The Public-Private Partnership Agency shall review the submitted concept of a project and submit its recommendations to an authorised body.
3. If necessary, the Public-Private Partnership Agency shall provide assistance to an authorised body, within its competence, in the development and implementation of a small project in accordance with the methodology determined by the agency.
4. The Government of Georgia shall submit the results of the assessment of a small project and the proposals regarding the measures to be taken for reducing fiscal risks to the Public-Private Partnership Agency and an authorised body. The authorised body shall take into consideration the submitted proposals.
5. The selection of a contractor for a small project shall be carried out in accordance with the Law of Georgia on Public Procurement, and the selection of a concessionaire shall be carried out in accordance with Article 18(1-4) of this law and a legal act of the Government of Georgia.
6. In the cases provided for by the legislation of Georgia, an agreement to be conducted within the framework of a small project may be submitted to the Government of Georgia for review. In such case, an opinion of the Ministry of Finance of Georgia shall be recommendatory.

Article 15 - Initiative proposal

1. A private initiator shall have a right to prepare and submit an initiative proposal to the relevant line ministry of the corresponding sector on the implementation of a concession in the sector determined by a legal act of the Government of Georgia.
2. An initiative proposal shall be submitted in accordance with a legal act of the Government of Georgia.
3. The line ministry shall assess an initiative proposal, and in the case of approval, ensure the implementation of appropriate measures for the purpose of its initiation in accordance with this Law and a legal act of the Government of Georgia. Procedures for the review and the approval of public-private partnership projects identified by an authorised body and through an initiative proposal, shall be identical. In addition, the feasibility study provided for by Article 13(6) of this Law may be conducted by a private initiator in the cases provided for by a legal act of the Government of Georgia.
4. The selection of a private partner, after making a decision on the implementation of a public-private partnership project, shall be carried out in accordance with Chapter IV of this Law or by direct negotiation.
5. The selection of a private partner by direct negotiation may be carried out only in the energy sector.
6. If a participant of a selection process, that is not a private initiator or a related person (affiliated person), is selected as a result of the procedures provided for by Chapter IV of this Law, the winning participant shall reimburse the private initiator with reasonable, justified, properly substantiated expenses incurred by the private initiator in relation to the preparation and submission of an initiative proposal, the amount of which became public at the stage of the selection process. The amount shall not exceed the amount determined by a legal act of the Government of Georgia.

Article 16 - Information on public-private partnership projects

Information on public-private partnership projects, as well as on their development and implementation, shall be public, except for the documentation deemed to be confidential by the legislation of Georgia.



Article 17 - Procedures for selecting a concessionaire and types of selection process

1. The selection of a concessionaire shall be carried out by an authorised body on the basis of the selection process, in accordance with this article, and Articles 18 - 20 of this Law.
2. The selection process announced for selecting a concessionaire may be public or closed.
3. A public selection process shall be open for the participants of the selection process that meet the requirements established for the selection process.
4. A selection process shall be public, except for a selection process related to state security interests, which shall be closed. A selection process to be conducted in relation to the facilities of special importance may be public or closed on the basis of a decision of the Government of Georgia. The list of facilities of special importance shall be approved by the Government of Georgia.

Article 18 - Documentation for the process of selecting of a concessionaire, criteria for selection, and the selection commission

1. The documentation for the process of selecting a concessionaire shall include information necessary for the preparation and submission of the application for the selection process, as well as the criteria, procedures and appropriate terms for selecting a concessionaire.
2. An authorised body shall have a right to make an amendment to the documentation for the process of selecting a concessionaire, except for making amendments to the subject of public-private partnership. In such case, the period of familiarisation with the application and the documentation of the selection process shall be extended by the period between the announcement of the selection process and the period when the relevant amendments were made, except for cases where the amendment is of a technical character and aims to correct or verify technical matters only.
3. The requirements for the documentation of the selection process of a concessionaire, the procedure for making amendments thereto and for their publication, as well as the procedure for making requests during the qualification stage of the selection process, and the procedure and the methodology for the assessment of proposals within the framework of the selection process, shall be determined by a legal act of the Government of Georgia.
4. The criteria for the assessment of a proposal within the framework of the selection process of a concessionaire shall be determined so as not to cause the restriction of competition. The period of implementation of a public-private partnership project, the amount of private funding to be made, the quality of works to be carried out/ services to be provided, and/or other criteria, based on the specific nature of the project, or a combination thereof, shall be defined as the criteria for the assessment of a proposal. The criteria and the procedures for the assessment of a proposal for a public-private partnership project shall be determined by an authorised body.
5. An authorised body shall establish a selection commission in accordance with a legal act of the Government of Georgia. The appointed members of the selection commission shall be: the head of an authorised body and/or his/her deputy(ies), representatives of the Ministry of Economy and Sustainable Development of Georgia, the Ministry of Finance of Georgia and the Public-Private Partnership Agency, as well as representatives of other state authorities, if necessary, based on the specific nature of the project. The selection commission shall be chaired by the head of the authorised body or a person designated by him/her. Experts and specialists of respective fields shall be invited to the selection commission with the right of deliberative voting.
6. The selection commission shall assess the submitted applications. The rules of operation of the selection commission shall be determined by a legal act of the Government of Georgia.
7. After carrying out the assessment of applications for selecting a concessionaire and after completing the stages determined by Article 19 of this Law, an authorised body shall submit the agreed/negotiated terms and conditions of the public-private partnership agreement to the Ministry of Finance of Georgia for the purposes determined by Article 10(1)(a) of this Law.
8. The results of the assessment of the selection process of a concessionaire and the agreed/negotiated terms and conditions of the public-private partnership agreement, together with an opinion from the Ministry of Finance of Georgia, shall be submitted to the Government of Georgia for review.

Article 19 - Stages of the selection process of a concessionaire

1. The main stages of the selection process of a concessionaire shall be:
 - a) the announcement of the selection process;
 - b) the submission of the qualification documents by the participants of the selection process;
 - c) the qualification assessment of the participants of the selection process;
 - d) the invitation to submit a proposal;
 - e) the submission of proposals by the participants of the selection process;
 - f) the assessment of proposals within the framework of the selection process;
 - g) the selection of a short list and/or the identification of the winning participant;
 - h) the conduct of negotiations regarding the terms and conditions of a public-private partnership agreement with the participants of the selection process, the participants determined by a short list, or the winning participants;



i) the conclusion of a public-private partnership agreement.

2. Explanations and/or additions may be included in the documentation of the selection process of a concessionaire, including by taking into consideration the applications for the selection process submitted by the participants of the selection process at the stage of the assessment of qualification.

3. It shall be prohibited to grant access to the stage of the selection process of a concessionaire to a person who has been prosecuted for financing terrorism, committing fraud, and/or legalising illicit income.

4. Additional criteria for prohibiting the access of a person to the stage of the selection process of a concessionaire shall be determined by a legal act of the Government of Georgia.

5. A closed selection process shall be conducted without the stage of announcing the selection process. In such case, the relevant information shall be disclosed to the members of the selection process by sending a written notice. Additional criteria for the closed selection process shall be determined by a legal act of the Government of Georgia.

6. A participant of a selection process shall not have the right to submit more than one application or proposal for the same selection process. A participant of a selection process shall have a right to change his/her application or proposal at any time before the expiry of the period of submission to the selection commission. A participant of a selection process shall also have a right to refuse to participate in the selection process at any time before the announcement of a winner. The refusal shall not restrict the right of claim by an authorised body arising out of the security of the relevant claim, including out of the bank guarantees.

7. Enterprises established with the participatory interest of the State and/or a municipality, where the State and/or the municipality directly or indirectly hold an interest/shares which are no more than the volume of those determined by the legal act of the Government of Georgia, shall have a right to participate in the selection process. The volume determined by a legal act of the Government of Georgia shall be less than 50% of interest/shares.

Article 20 - Conclusion of a public-private partnership agreement

1. A participant of the selection process shall be declared a winner of the selection process of a concessionaire if the participant meets the qualification requirements (if any), and the proposal of the participant, according to the assessment of the selection commission and the Government of Georgia, contains the best terms in comparison to those of other participants.

2. A public-private partnership agreement shall be concluded with the winner of the selection process of a concessionaire in accordance with the terms and conditions and procedures determined by the documentation of the selection process and a legal act of the Government of Georgia.

Chapter V - Public-Private Partnership Agreement

Article 21 - Main provisions of a public-private partnership agreement

1. The main provisions of a public-private partnership agreement shall include:

a) the subject of the public-private partnership agreement, the scope and characteristics of the works to be carried out, other matters related to public infrastructure and/or the services to be provided within the framework of the public-private partnership;

b) the procedure for the distribution and transfer of property rights (if any) relating to public infrastructure and/or other property provided for by the public-private partnership agreement between the parties;

c) the period of validity of the public-private partnership agreement;

d) any availability payment/performance-based compensation, and/or other payments (if any) to be made to the private partner;

e) payments (if any) to be made to the public partner;

f) the grounds and the procedures for the termination of the public-private partnership agreement, and the consequences thereof.

2. In the case of an institutionalised public-private partnership, a partners' agreement/charter, in addition to the provisions determined by the legislation of Georgia, shall include the following provisions:

a) the types, the amount and the form of joint financial resources;

b) the procedures for making such organisational changes, for which the private partner requires consent from the public partner, including the change of a partner of an institutionalised public-private partnership company;

c) the conditions and procedures for replacing the private partner, or for the withdrawal of the public partner from an institutionalised public-private partnership company.

3. A public-private partnership agreement shall be a fixed-term agreement. The principles for determining the said term shall be defined by a legal act of the Government of Georgia.

4. Within the framework of a public-private partnership agreement, the parties, in accordance with the legislation of Georgia, may conclude a direct



contract and other agreements permitted by the legislation of Georgia.

Article 22 - Change and termination of a public-private partnership agreement

1. Parties shall have the right to make an amendment to a public-private partnership agreement at any time, based on mutual agreement, in accordance with the same agreement and the legislation of Georgia. An amendment that concerns the essential terms of a public-private partnership agreement, including the terms determined by Article 21(1) and (2) of this Law, shall be submitted for approval to the Government of Georgia in accordance with a legal act of the Government of Georgia.

2. The amendments to be made to a public-private partnership agreement that may include fiscal risks shall be submitted to the Ministry of Finance of Georgia by a public partner. If, according to the Ministry of Finance of Georgia, there are signs of fiscal risks in a proposed amendment, and/or if the amendment affects the initial value of a public-private partnership project in the volume determined by a legal act of the Government of Georgia, such amendment(s) shall be submitted to the Government of Georgia for review.

3. A public-private partnership agreement may be terminated by agreement between the parties. The consequences of the termination of a public-private partnership agreement shall be determined by the legislation of Georgia and the same agreement.

Article 23 - Property rights defined by a public-private partnership agreement

1. A public-private partnership agreement may determine that appropriate rights to public infrastructure and/or related property be transferred to a private partner by a public partner; moreover, it may determine whether or not the public infrastructure and/or the related property shall be returned to a public partner after the termination of the public-private partnership agreement.

2. The transfer of state property to a private partner and the related relations shall be regulated in accordance with the Law of Georgia on State Property, except for the exceptions provided for by the same Law.

3. The procedures and conditions for the transfer of municipal property shall be determined by an ordinance of the Government of Georgia, and the procedure and conditions for the transfer of property owned by the Autonomous Republics of Abkhazia and Adjara shall be determined by appropriate legislation.

4. Unless otherwise provided for by a public-private partnership agreement, a private partner shall have a right to transfer the rights to public infrastructure and related property, with the prior written consent of a public partner, to a third party under the same conditions and for a period which does not exceed the period determined by the public-private partnership agreement.

Article 24 - Use of public infrastructure

1. Public infrastructure shall only be used for the purposes determined by a public-private partnership agreement, unless otherwise determined by the legislation of Georgia.

2. A private partner is obliged to properly observe the terms and conditions determined by a public-private partnership agreement, and the standards intended for the use of public infrastructure.

Article 25 - Liability of parties to a public-private partnership agreement

1. The violation of an obligation by a party to a public-private partnership agreement shall result in the legal consequences provided for by the legislation of Georgia and the same agreement.

2. A public-private partnership agreement shall include the imposition of a penalty on a private partner in the case of the violation of an obligation by the private partner. The minimum amount of the penalty shall be defined by a legal act of the Government of Georgia.

3. A penalty imposed or to be imposed on a private partner on the basis of a public-private partnership agreement may be repealed only by a decision of the Government of Georgia, in accordance with the procedures determined by a legal act of the Government of Georgia.

4. For the purposes of a public-private partnership agreement, the appropriate obligations may be fulfilled by a private partner through a third party, unless otherwise provided for by the same agreement. A private partner shall be fully liable for the actions carried out by the third party, as for their own actions.

Article 26 - Right to temporary administration and replacement of parties to a public-private partnership agreement

1. A public-private partnership agreement may include the power to exercise a right to temporary administration by a public partner or a creditor(s) in some cases of substantial violation of an obligation by a private partner, or in other cases provided for by a public-private partnership agreement. A public partner or a creditor(s) shall have a right to temporarily carry out the operation of public infrastructure and/or the provision of public services for the purpose of ensuring the protection of public interests. The costs incurred for the temporary administration shall be covered by a party determined by the public-private partnership agreement.

2. In the cases provided for by a public-private partnership agreement and/or a direct contract, a public partner and/or a creditor(s) may replace a private partner by another private partner.



3. A new private partner shall meet all qualification requirements (if any) and/or other requirements, on the basis of which a public-private partnership agreement was concluded with the original private partner.

4. The procedure for replacing a private partner shall be determined by an appropriate public-private partnership agreement and/or a direct contract.

Chapter VI - Guarantees for Public-Private Partnerships and State Support

Article 27 - Guarantees for public-private partnerships

1. A direct contract may be concluded between the parties of a public-private partnership agreement and a creditor(s).

2. A public-private partnership agreement and/or a direct contract may include the rights and guarantees of a creditor(s) that do not contravene the legislation of Georgia.

3. A direct contract may include the right of a creditor (s) provided for by Article 26 of this Law related to replacing a private partner, in particular the approval or disapproval by a creditor(s) of a private partner suggested by a public partner. A direct contract may also include the right of a creditor to carry out temporary administration in accordance with Article 26 of this Law.

4. A direct contract may include an obligation of the parties to exchange information on the implementation of a public-private partnership agreement, a provision on paying compensation (including in the case of failure to fulfil an obligation) to a creditor(s), and other terms and conditions agreed by the parties.

5. Any action by a creditor(s) and/or a private partner intended to violate a right originating from a direct contract and/or a public-private partnership agreement shall be prohibited, except for the cases explicitly defined by the legislation of Georgia, the direct contract and/or the public-private partnership agreement.

Article 28 - Forms of support and compensation for public-private partnerships

1. Taking into consideration the restrictions provided for by the legislation of Georgia and/or a public-private partnership agreement, a public partner may take into consideration the following forms of state support, the support of the Autonomous Republics of Abkhazia and Adjara, and/or municipal support for a private partner:

a) availability payment and/or performance-based compensation;

b) guarantees for consumption, consumers and income;

c) guarantees for tariff and/or cost of public services;

d) guarantees on the long-term procurement of certain types of goods and services at the price determined on the basis of an agreement. The types of the goods and services shall be determined by the Government of Georgia;

e) grants and/or subsidies aimed at covering certain costs and returns on investments made in accordance with the procedure and in the cases provided for by the Government of Georgia, including grants in-kind;

f) transferring land and/or granting permits and licences provided for by the legislation of Georgia in the cases provided for by the legislation of Georgia;

g) granting exclusive rights to intellectual property to a private partner;

h) granting exclusive rights to a private partner to establish and maintain and/or operate and maintain a facility of a public-private partnership agreement and/or to provide public services within certain territories.

2. A public-private partnership agreement may include the payment of a fixed amount by a private partner to a public partner as a lump sum, or in instalments, the payment of the part of income by a private partner to a public partner, receivable from the operation on the basis of a public-private partnership agreement, or the transfer of property owned by a private partner and/or of property created on the basis of a public-private partnership agreement, to a public partner, as well as the payment of a relevant fee in other forms permitted by the legislation of Georgia.

3. A public-private partnership agreement may include a combination of any forms of payment provided for by this article.

Article 29 - Upper limit for financing public-private partnerships

1. The upper limit of the state liability within the framework of public-private partnership shall be determined by the legislation regulating state finances.

2. The methodology for calculating the limit provided for by paragraph (1) of this article shall be approved by the Government of Georgia.

Chapter VII - Monitoring of the Implementation of Public-Private Partnerships and Follow-up Assessments



Article 30 - Database of public-private partnership projects

1. The Public-Private Partnership Agency is obliged to establish and manage a database for current and completed public-private partnership projects.
2. For the purpose of the creation and efficient management of a database of public-private partnership projects by the Public-Private Partnership Agency, as well as for making reports, an authorised body, upon the appropriate request, shall submit a copy of a signed public-private partnership agreement to the Public-Private Partnership Agency with all annexes and amendments and related documentation, in accordance with a legal act of the Government of Georgia.
3. A database of public-private partnership projects shall be publicly available, except for information whose publication is restricted in accordance with Article 16 of this Law.

Article 31 - Monitoring of the implementation of public-private partnership projects

1. A public partner shall ensure the monitoring of the fulfilment of the obligations assumed under a public-private partnership agreement by a private partner in accordance with the procedure provided for by a legal act of the Government of Georgia.
2. Appropriate public infrastructure and the related documents shall be available to a public partner, taking into account the restrictions determined by the legislation of Georgia and a public-private partnership agreement.
3. Notwithstanding paragraphs (1) and (2) of this article, a public partner may not interfere with the commercial activities implemented by a private partner or its contracting third party.

Article 32 - Reporting on the implementation of a public-private partnership project

1. The Public-Private Partnership Agency shall ensure the publication of annual reports on all initiated public-private partnership projects.
2. An annual report for each public-private partnership project shall include:
 - a) a brief description of the project;
 - b) the progress achieved within the year, during the implementation of the project, taking into account those measures to be actioned and which formed the basis of the approval of the project;
 - c) a financial report of a private partner in compliance with financial reporting standards, in accordance with the procedure established by the legislation of Georgia.

Article 33 - Follow-up assessment of the implementation of public-private partnership projects

1. The follow-up assessment of the implementation of a public-private partnership project shall be carried out within a year after the termination of the public-private partnership agreement.
2. A report on the follow-up assessment of the implementation of a public-private partnership project shall be submitted by a public partner to the Public-Private Partnership Agency and the Ministry of Finance of Georgia. The Ministry of Finance of Georgia shall draw up an analysis of the follow-up assessment of the implementation of the public-private partnership project and prepare appropriate recommendations.
3. The Public-Private Partnership Agency shall request from the Ministry of Finance of Georgia an analysis of the assessment carried out by an authorised body with its recommendations, and submit an overall assessment to the Government of Georgia with recommendations on how the process of the assessment and implementation of public-private partnerships may be improved in the future.

Chapter VIII - Regulating Legislation and Dispute Resolution

Article 34 - Regulating legislation

Relations based on a public-private partnership agreement shall be regulated by the legislation of Georgia.

Article 35 - Dispute resolution

1. A participant of the selection process shall have the right to appeal a decision/action of an authorised body/selection commission with regard to the selection process to the Disputes Resolution Board established on the basis of the Law of Georgia on Public Procurement, in accordance with the procedures established by the same Law and the relevant subordinate normative act.
2. Paragraph (1) of this article shall not restrict the right of a participant of the selection process to appeal directly to a court a decision/action of an



authorised body/selection commission related to the selection process.

3. Disputes that arise out of a public-private partnership agreement, a direct contract and/or other agreements related to public-private partnerships, shall be resolved in accordance with the procedure for resolving disputes agreed by the parties under the relevant agreement.

4. Parties shall have the right to define a specific mechanism in a public-private partnership agreement for resolving a dispute, including national or international commercial arbitration. If the parties do not define a preferred mechanism in a public-private partnership agreement for resolving a dispute, the dispute shall be reviewed by a court of Georgia.

Chapter IX - Transitional and Final Provisions

Article 36- A public-private partnership project begun before the entry into force of this Law

A public-private partnership project which began before the entry into force of this Law, in particular the procedure for a tender or selection process or expression of interest was announced in accordance with the legislation of Georgia, or the the project developers were selected, shall be submitted to the Government of Georgia for the purpose of determining the development stage provided for by this Law. Information submitted to the Government of Georgia shall include: measures to be carried out for the purpose of initiating and preparing the project, the project concept, conducted studies and other matters related to the project.

Article 37 - Measures related to the entry into force of this Law

1. The Government of Georgia, not later than 1 July 2018, shall approve:

- a) the statute of the legal entity under public law called the Public-Private Partnership Agency;
- b) procedures for drawing up and developing public-private partnership projects;
- c) procedures and conditions for the transfer of municipal property to a private partner;
- d) a list of facilities of special importance.

2. The Government of Georgia and the relevant agencies shall ensure the compliance of appropriate legal acts with this Law no later than 1 July 2018.

Article 38 - Final provisions

1. The Law of Georgia of 21 December 1994 on the Procedure for Issuing Concessions to Foreign Countries and Companies (Official Gazette of the Parliament of Georgia, 1994-1995, No 27-30, Art., 661) shall be declared void.

2. This Law, except for Articles 1 to 36 of this Law, and paragraph (1) of this article, shall enter into force upon promulgation.

3. Articles 1 to 36 of this Law and paragraph (1) of this article shall enter into force from 1 July 2018.

President of Georgia

Giorgi Margvelashvili

Kutaisi

4 May 2018

No 2273-IIIb

