

# **PUBLIC-PRIVATE PARTNERSHIP ACT (ZJZP)**

## **PART I: GENERAL**

### **1. GENERAL PROVISIONS**

#### **Article 1**

##### **(subject of the Act)**

(1) This Act regulates the purpose and principles of private investment in public projects and/or of public cofinancing of private projects that are in the public interest (hereinafter: public-private partnership), the methods of encouraging public-private partnership and the institutions concerned with its encouragement and development, the conditions, procedure for creation and the forms and methods of operating public-private partnerships, the special features of works and service concessions and of public-private equity partnerships, the transformation of public companies, the system of law that applies to resolving disputes arising from public-private partnerships and the jurisdiction of the courts and arbitration services to decide on disputes arising from such relationships.

(2) This Act serves to transpose into Slovenian law the substance of points 3 and 4 of Article 1 and Articles 17, 23, 29, 48 and 56 – 65 of Directive 2004/18/EC of the European Parliament and the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134 of 30 April 2004, p. 114) and Commission Directive 2005/51/EC of 7 September 2005 amending Annex XX to Directive 2004/17/EC and Annex VIII to Directive 2004/18/EC of the European Parliament and the Council on public procurement (OJ L 257 of 1 October 2005, p. 127).

#### **Article 2**

##### **(public-private partnership)**

Public-private partnership represents a relationship involving private investment in public projects and/or public cofinancing of private projects that are in the public interest, and such relationship is formed between public and private partners in connection with the construction, maintenance and operation of public infrastructure or other projects that are in the public interest, and in connection with the associated provision of commercial and other public services or activities provided in a way and under the conditions applicable to commercial public services, or of other activities where their provision is in the public interest, or other investment of private or public and public funds in the construction of structures and facilities that are in part or entirely in the public interest, or in activities where their provision is in the public interest.

#### **Article 3**

##### **(subsidiarity)**

(1) This Act shall be applicable for the procedures of establishing and operating public-private partnerships with regard to those issues that are not regulated otherwise by a special act or regulation issued on the basis thereof for individual forms of public-private partnership.

(2) Irrespective of the provisions of a special act or other regulation referred to in the first paragraph of this article, the provisions of this Act shall apply where this (primacy of applicability) is specifically provided in this Act (the concept of special or exclusive right – point 10 of Article 5, the assumptions for the existence of public procurement or a public procurement partnership – Articles 15 and 27, competitive dialogue – Article 46, the rules on public works concessions – Articles 79 to 91, consent for the transfer of status – Article 131, terms of withdrawal – Article 134).

#### **Article 4**

##### **(application of act)**

(1) This Act shall apply under the conditions referred to in the preceding article irrespective of whether this involves a public-private partnership for the purpose of private investment in public projects or public cofinancing of private projects that are in the public interest, or a combination of both.

(2) A person defined by this Act as a public partner shall establish a public-private partnership only in compliance with the provisions of this Act, unless otherwise provided by a special act.

## **2. DEFINITION OF TERMS**

### **Article 5**

#### **(definition of terms)**

The terms used in this Act shall have the following meanings:

1. "public partner" is the state or a self-governing local community, which in a relationship of public-private partnership within the framework of its real and local jurisdiction establishes a public-private partnership in which it also grants the right and obligation to perform activities including the right referred to in point 11 of this article;

2. "other public partner" is a legal person of public law established by the state or self-governing local community or by another person that performs public procurement pursuant to the provisions of the act governing public procurement, and may establish public-private partnerships only where provided by an act or a regulation issued on the basis thereof. Unless otherwise expressly provided by law, other public partners shall be governed by the same rights and obligations that apply to a public partner referred to in point 1 of this article;

3. "private partner" or "public-private partnership contractor" is one or more legal or physical persons that establish a public-private partner relationship in which they also acquire the right and obligation to operate a public-private partnership;

4. "public-private partner relationship" is a relationship between public and private partners in connection with public-private partnership. A public-private partner relationship may be conducted as a contractual partner relationship (contractual partnership) or an equity partner relationship (equity partnership);

5. "contractual partnership" is a form of public-private partner relationship that may be conducted as a public procurement partnership or a concession partnership;

6. "public procurement partnership" is a form of contractual public-private partnership as defined in the second indent of Article 26 of this Act;

7. "concession partnership" is a form of contractual public-private partnership as defined in the first indent of Article 26 of this Act;

8. "subject of public-private partnership" is the rights and obligations of the public partner associated with operating a public-private partnership. The subject of public-private partnership may also be public authorisation, where this is essentially tied to operating a public-private partnership;

9. "awarding authority" is the public partner in the case of a concession form of public-private partnership (concession partnership);

10. "concessionaire" is the public-private partnership contractor in the case of a concession form of public-private partnership (concession partnership);

11. "special or exclusive right" is the right granted by the public partner in respect of which the purpose or consequence is to restrict the right to perform activities to one or more persons, although the number of persons is limited if in this situation other persons that do not have this right cannot perform the same activities under equal conditions in the same geographical area. Where a right in the sense of this point is granted through an administrative or other act, irrespective of how it is referred to under a special act (concession, licence, permit, authorisation and so forth), such right shall be deemed to be a special or exclusive right;

12. "works concession" is a form of concession partnership as defined in Article 79 of this Act;

13. "services concession" is a form of concession partnership as defined in Article 92 of this Act;

14. "commercial public service" is an activity in which the contractor has special obligations in the public interest. Commercial public service is defined by an instrument which also defines which activities and matters it involves;

15. "other public service" is an activity defined by law as non-commercial, public, social or other public service and does not involve activities from point 14;

16. "public client" is a person or authority which in the procurement of goods, services or works must act in compliance with the act regulating public procurement (hereinafter: Public Procurement Act);

17. "client in the water, energy, transport and postal sector" is a person or authority which in the procurement of goods, services or works in the water, energy, transport and postal sector must act in compliance with the act regulating procurement in the water, energy, transport and postal sector (hereinafter: Public Procurement in the Water, Energy, Transport and Postal Services Sector Act);

18. "direct budget user" is the state or self-governing local community or their bodies or organisations;

19. "public interest" is a general benefit, as defined by an act or regulation issued on the basis thereof, which is determined by a decision referred to in Article 11 of this Act;

20. "structures and facilities" are immovable and movable property without which the public-private partnership cannot be executed or else it would involve disproportionate costs (such as public infrastructure);

21. "candidate" is a person that participates in the procedure of selecting the contractor for a public-private partnership, by submitting an application aimed at establishing a public-private partnership; unless otherwise expressly provided in this Act or where this does not proceed from its purpose, the rules applicable to candidates shall also apply mutatis mutandis to bidders and contractors for public-private partnerships;

22. "promoter" as used in this Act is a legal or natural person with a specific interest in pursuing public-private partnership and submits an application detailing such interest in operating a public private partnership;

23. "application" is any application aimed at obtaining a public-private partnership, unless otherwise expressly provided in this Act or this proceeds from its purpose.

### **3. PURPOSE OF THE ACT**

#### **Article 6**

##### **(enabling private investment)**

(1) The purpose of this Act is to enable and promote private investment in the construction, maintenance and/or operation of structures and facilities of public-private partnership and other projects that are in the public interest (hereinafter: promoting public-private partnership), to ensure the economically sound and efficient performance of commercial and other public services or other activities which are provided in a method and under conditions that apply to commercial public services (hereinafter: commercial public services), or other activities whose performance is in the public interest, to facilitate the rational use, operation or exploitation of natural assets, constructed public good or other things in public ownership, and other investment of private or public funds in the construction of structures and facilities that are partly or entirely in the public interest, or in an activity provided in the public interest.

(2) In order to achieve the purpose of this Act, public-private partnership shall be performed in the areas of financing, design, construction, supervision, organisation and management, maintenance and providing the activities referred to in the preceding paragraph.

#### **Article 7**

##### **(performance in the public interest)**

The purpose of this Act is also to ensure the transparency, competitiveness, non-discrimination and regularity of procedures for the creation, establishment and operation of individual forms of public-private partnership, to protect the public interest in this relationship (of prescribed methods of fulfilling the public interest) and ensuring the influence of the public partner to ensure that the subject of the public-private partnership is performed in the public interest.

### **4. METHODS OF PROMOTING PUBLIC-PRIVATE PARTNERSHIP**

#### **Article 8**

##### **(assessing the possibilities for public-private partnership)**

(1) In order to promote public-private partnership, in selecting the method of implementing the project (procedure) that might be the subject of public-private partnership in the sense of Article 2 of this Act, the public partner must assess whether it can be carried out as a public-private partnership (assessing the grounds of project feasibility and comparison of options or other projects). Assessments shall not be obligatory in the case of projects provided by a regulation referred to in the fourth paragraph of this Act.

(2) In the case of a value greater than 5,278,000 euros the public partner may carry out the procurement of works or services as public procurement only if in respect of the economic and other circumstances of the project it has determined that the procedure cannot be carried out in one of the forms of public-private partnership or that this is not economically justified.

(3) The procedure of comparison and determination referred to in the first and second paragraphs of this article shall be conducted as a preliminary procedure in compliance with this Act (Articles 31-35).

(4) An implementing regulation issued by the minister competent for finance shall regulate in detail the substance of the assessment of project implementation justifiability according to the public-private partnership model and upon prior agreement with the minister competent for local self-government and regional policy,

exceptions to the rule for projects cofinanced from appropriated European Union funds referred to in the first paragraph of this article.

(5) In the event that the European Commission publishes revised ceiling values referred to in Articles 8, 79, 83, 86, 87 and 104 of this Act, the Slovenian Government (hereinafter: the Government) shall publish the new ceiling values in the *Uradni list Republike Slovenije* [Official Gazette of the Republic of Slovenia].

#### **Article 9**

##### **(providing incentives)**

(1) The public partner may in compliance with regulations provide incentives designed to enable a specific investment in a public project being carried out as a public-private partnership.

(2) The public partner shall take account of incentives referred to in the first paragraph of this article in assessing the spread of commercial risk between the public partner and the public-private partnership contractor.

#### **Article 10**

##### **(prohibition on state aid)**

In establishing and operating a public-private partner relationship pursuant to this Act the public partner must continuously act so as not to violate the regulations on the permissibility and monitoring of state aid.

#### **Article 11**

##### **(decision on public-private partnership)**

(1) Decisions determining the public interest in establishing public-private partnership and on implementing projects in one of the forms of public-private partnership pursuant to this Act shall be taken by the Government or by the representative body of a self-governing local community.

(2) Other public partners may take decisions determining the public interest in establishing public-private partnership and on implementing projects in one of the forms of public-private partnership only on the basis of the agreement of the founder or of authorisation provided by law. Public-private partnership contracts shall be adopted by other public partners after obtaining the consent of the founder.

(3) The body referred to in the first paragraph of this article shall also, within the remit of its competence under law or under a regulation issued on the basis thereof:

- determine policy in the area of public-private partnership or plan this;
- adopt regulations and other general acts that regulate the method of operating public-private partnerships;
- adopt other regulations and other general acts serving to regulate the issues of operating public-private partnerships;
- adopt regulations and other general acts that regulate the payment for public-private partnership services, and in compliance with the public-private partnership contract determine the price of public-private partnership goods and services or consent to them;
- issue individual acts associated with establishing, operating and terminating public-private partnerships;
- supervise public-private partnership contractors.

### **5. BASIC PRINCIPLES**

#### **Article 12**

##### **(principle of equality)**

(1) The public partner shall ensure that no distinction is made between candidates at any element or stage of the procedure of establishing and operating a public-private partnership, and that it does not create

circumstances that entail local, objective or personal discrimination against candidates, discrimination stemming from classification of the activities performed by the candidate, or any another discrimination.

(2) The public partner may not deal differently with candidates that are in the same or essentially similar legal and actual position, nor may it deal equally with candidates that are in essentially different legal or actual positions.

### **Article 13**

#### **(principle of transparency)**

(1) In establishing a public private partnership the public partner must ensure the objective seeking of candidates by ensuring the highest possible degree of public information in proportion to the purpose, nature, subject and value (scope) of the public-private partnership project.

(2) All tender notices and other procedural documents in the process of establishing public-private partnerships (selection document and so forth) must be published on the worldwide web.

(3) In the procedure of establishing a public-private partnership the public partner shall ensure that candidates have access to the same information for preparing applications and for participating in the establishment procedure, as well as to information on the conditions and criteria for candidate selection. Public-private partnership contractors must be selected in a transparent manner and according to the prescribed procedure.

### **Article 14**

#### **(principle of proportionality)**

(1) In the procedure of establishment and in operating a public-private partnership, the public partner may only employ those measures to achieve the objective provided by law or by a regulation issued on the basis thereof that:

- objectively lead to this objective,
- restrict or adversely affect to the least degree the private partner, or represent the mildest measure for achieving this objective, and
- in their scope and consequences are comparable to the significance of the objective

(2) Unilateral encroachments by the public partner on the public-private partner relationship shall be governed, unless otherwise provided by law, mutatis mutandis by the rules of obligational law regarding compensation liability owing to breach of contract (reimbursement of actual damages and lost profits).

### **Article 15**

#### **(principle of balance)**

(1) In a public-private partnership a balance of rights, obligations and legal benefits between the public and private partners shall be ensured. Ensuring the public interest (ensuring public goods or services) shall be within the competence of the public partner, but both partners shall ensure the interests of users and all other participants, both in the procedure of establishment and of operating the public-private partnership project.

(2) Risk must be spread within the public-private partnership such that it is borne by the party that can most easily control it; in any event the public-private partnership contractor must, irrespective of the nature of the public-private partnership, bear at least part of the commercial risk (market risk associated with the scope of demand, supply and availability risk).

(3) Where a public-private partnership contractor does not bear even part of the commercial risk, the relationship, irrespective of its title or of the provisions of a special law, shall not be a public-private partnership pursuant to this Act.

### **Article 16**

#### **(principle of competition)**

In the procedure of establishing a public-private partnership the public partner may not restrict competition among candidates. In creating and operating a public-private partnership the public partner shall act in compliance with the regulations on protecting or preventing the restriction of competition.

## **Article 17**

### **(principle of procedural autonomy)**

(1) Unless otherwise provided by regulations, the parties to a public-private partnership may freely arrange the contractual relationship of the public-private partnership, in compliance with the act regulating obligational relationships.

(2) The parties may agree that disputes arising from the public-private partnership be resolved through arbitration, unless otherwise provided by law.

## **Article 18**

### **(principle of subsidiary liability)**

(1) In compliance with regulations, public-private partnership projects must be carried out without interruption or disturbance, and equally for all users and other participants, and also in compliance with previously determined conditions and standards, which shall be set out in detail in the public-private partnership contract.

(2) The public partner shall bear subsidiary liability for damages caused to the users of services or other persons by the contractor in operating a public-private partnership. Users of services or other persons may demand reimbursement for damages from the public partner after submitting a written demand for compensation from the public-private partnership contractor and giving the contractor a reasonable time in which to provide reimbursement, whereupon the contractor has not responded to the demand or has partly or entirely rejected the demand for reimbursement. In relation to the contractor, the public partner shall have the right to reimbursement of such damages and of all associated costs.

(3) By transferring the provision of the subject of public-private partnership to the public-private partnership contractor, the public partner is not absolved of liability for the uninterrupted, undisturbed and equal implementation of the project. Any other agreement between the parties shall have no bearing on relations towards third parties.

## **Article 19**

### **(principle of cooperation)**

The public partner shall assist the public-private partnership contractor in securing the necessary material and other rights and the various permits which the contractor alone cannot obtain, in compliance with regulations and the public-private partnership contract.

## **6. INSTITUTIONALISATION OF PUBLIC-PRIVATE PARTNERSHIP**

## **Article 20**

### **(ministry competent for finance)**

(1) The ministry competent for finance (hereinafter: the Ministry) shall form a special organisational unit within its structure to develop, monitor and cooperate in implementing public-private partnerships in Slovenia, to draw up manuals for operating public-private partnerships, to formulate expert proposals for amendments to regulations and the adoption of other measures that might help in improving practices and eliminating problems in this area, and to perform other tasks provided by this Act.

(2) The Ministry shall monitor, advise and in compliance with regulations participate in the selection, evaluation and operation of public-private partnership projects. In compliance with regulations the Ministry shall cooperate in all stages of the creation and operation of public-private partnerships, especially in public calls and the collection of applications, in compliance with the provisions of Articles 32 and 34 of this Act, and in supervising the operation of public-private partnership projects. Where necessary it shall also involve the representatives of other ministries or external experts in performing activities.

(3) The Ministry shall also keep records of public-private partnership projects and monitor them, and shall offer expert assistance to other public partners on the national (sectoral units) or local levels in formulating documents serving to determine the fulfilment of the economic, legal and other conditions for the creation and operation of public-private partnerships, in seeking technical solutions for public-private partnerships and in all other issues relating to the formation of relationships or carrying out the procedure for selecting private partners. On the basis of good practices it shall draw up guidelines and standards for the selection, monitoring and assessment of public-private partnership projects.

(4) The Ministry shall link and coordinate its work with budgetary planning and the implementation of capital and other projects that might be the subject of public-private partnership, and shall keep records of public-private partnership contracts, and on the basis of annual information and reports shall also draw up annual reports on the success of implementation of individual public-private partnership projects.

(5) The Ministry shall work to provide education, information exchange, public presentations and promotion of the possibility of public-private partnership on the national and local levels.

(6) The substance and record-keeping for projects and records of public-private partnership contracts shall be regulated by an implementing regulation issued on the basis of this Act by the minister competent for finance.

#### **Article 21**

##### **(public-private partnership council)**

(1) For the purpose of studying policy and providing consultation in the area of public-private partnership a Council of the Slovenian Government for Public-Private Partnership (hereinafter: Public-Private Partnership Council) shall be created.

(2) The Public-Private Partnership Council shall be headed by the minister competent for finance. The membership of the council shall comprise independent experts in the economic, legal and other areas of public-private partnership.

(3) The Public-Private Partnership Council shall study key policy issues of conducting public-private partnership projects and problems and deficiencies of the system in this area. In line with its findings it shall draw up a strategy for operating public-private partnerships and shall formulate proposals and initiatives, proposing them to the Ministry, which shall in turn submit the strategy, proposals and initiatives to the Slovenian Government for adoption.

(4) Operational and technical support for the functioning of the Public-Private Partnership Council shall be provided by the Ministry.

#### **Article 22**

##### **(number of members, method of appointment and duration of membership term)**

The number of members, the method of appointment and the duration of membership terms in the Public-Private Partnership Council as well as its method of work shall be determined by the Government in a regulation.

### **PART II: FORMS OF PUBLIC-PRIVATE PARTNERSHIP**

#### **1. CONTRACTUAL AND EQUITY PARTNERSHIP**

##### **Article 23**

###### **(forms)**

Public-private partner relationships may be operated as:

- relationships of contractual partnership in the forms set out in Article 26 of this Act
- relationships of institutional or equity partnership in the forms set out in Article 96 of this Act

##### **Article 24**

###### **(application of regulations in implementing contractual partnership)**

Contractual partnerships shall be implemented in compliance with this Act and the Public Procurement Act and/or the act regulating commercial public services.

##### **Article 25**

###### **(application of regulations in implementing equity partnership)**

Equity partnerships shall be implemented in compliance with this Act, the act regulating commercial public services and the act regulating public finances.

## **2. CONTRACTUAL PARTNERSHIP**

### **Article 26**

#### **(forms of contractual partnership)**

Contractual partnerships may have the form of:

- a concession; i.e. a bilateral legal relationship between the state or self-governing local community or other person of public law as the awarding authority and a legal or natural person as a concessionaire, in which the awarding authority awards to the concessionaire the special or exclusive right to perform a commercial public service or other activity in the public interest, which may include the construction of structures and facilities that are in part or entirely in the public interest (hereinafter: concession partnership), or
- a public procurement relationship; i.e. a payment relationship between the client and supplier of goods, contractor of works or provider of services, of which the subject is the procurement of goods or the performance of works or services (hereinafter: public procurement partnership).

### **Article 27**

#### **(distinction between public procurement and concession partnership)**

(1) If the public partner bears the majority or entirety of the commercial risk involved in operating a public-private partnership project, the public-private partnership, irrespective of its title or arrangement in a special law, for the purposes of this Act shall not be deemed to be a concession, but a public procurement partnership.

(2) In cases referred to in the preceding paragraph, instead of the provisions on public tenders, direct awarding and legal or/and judicial protection in the procedure for awarding concessions, for the selection of public-private partnership contractor and legal safety in this procedure the regulations on public procurement shall apply. Pursuant to this Act, such relationships shall be deemed to be public procurement partnerships.

(3) When the procedure of selecting a private partner referred to in the preceding paragraph has been completed, depending on the nature and form of the relationship, a concession contract shall be made, in compliance with the act regulating commercial public services, and in the event that the relationship has the form of an equity partnership, an equity partnership contract.

(4) If the subject of concession is the performance of a commercial public service or other activity where in order to protect the public interest, the law expressly prescribes the issuing of an administrative decision, prior to concluding a contract referred to in the preceding paragraph the awarding authority must issue to the concessionaire a decision awarding it the right to perform such activity. There shall be no other participants (parties, side participants) in the administrative procedure of issuing decisions.

### **Article 28**

#### **(deciding in doubtful cases)**

If it is not possible from the circumstances of a public-private partnership to determine who bears the majority of commercial risk, where there is doubt, it shall be deemed to be a public procurement partnership.

### **Article 29**

#### **(mutatis mutandis application)**

The rule regarding the distinction between public procurement and concession partnerships provided in the previous articles shall also apply mutatis mutandis for adjudication of the status of equity partnership.

### **Article 30**

#### **(changes to commercial risk)**

If in the procedure of selecting a concessionaire it is determined that owing to the spread of commercial risk between the public and private partners the relationships referred to in Articles 27, 28 and 29 of this Act do not have the nature of a concession, but rather of a public procurement partnership, the public partner must continue

the process of selection according to the rules on public procurement partnerships, but prior to this it must repeat all the actions in the procedure which differ owing to the changed nature of the public-private partnership relationship (such as the substance of works concession and works procurement publication).

## **PART III: PUBLIC-PRIVATE PARTNERSHIP PROCEDURE**

### **1. PRELIMINARY PROCEDURE**

#### **Article 31**

##### **(purpose of the preliminary procedure)**

(1) Prior to taking a decision on public-private partnership, the public partner shall initiate a preliminary procedure on the basis of which the decision is made to operate a public-private partnership project or terminate the procedure.

(2) The purpose of the preliminary procedure is to determine, on the basis of a capital elaborate, whether the economic, legal, technical, environmental and other conditions for implementing the project and establishing a public-private partnership have been fulfilled, and to define the fundamental elements of public-private partnership to determine the substance of the decision and/or document on public-private partnership. For non-capital programmes, instead of a capital elaborate another appropriate document with the same function shall be used.

(3) The assessment of the economic feasibility of the project or programme shall be performed by the public partner in compliance with the regulation referred to in the fourth paragraph of Article 8 of this Act.

#### **Article 32**

##### **(call to promoters)**

(1) The public partner shall as a rule issue once a year a call to potential promoters to submit applications regarding their interest in operating a public-private partnership in areas where the conditions might be met for public cofinancing of a private project (such as constructing a private, publicly accessible car park) or where there exists an interest in private investment in public projects (such as commercial municipal services in the areas of sewerage or gas supply).

(2) Public partners referred to in point 1 of Article 5 of this Act shall issue calls referred to in the preceding paragraph no later than following inclusion of the project in the plan of development programmes or other document of similar substance once a year, within three months of adoption of the budget.

(3) Calls to potential promoters to submit applications regarding their interest in operating a public-private partnership may be issued prior to the decision on public-private partnership referred to in Article 11 of this Act.

#### **Article 33**

##### **(content of call)**

(1) Public calls referred to in the preceding article shall set out the substance of applications regarding interest and the expectations as to which documents promoters must attach or which aspects of public-private partnership to present.

(2) Public calls referred to in the preceding paragraph which already contain a definition of the public partner's requirements and the essential elements from the capital elaborate, may not prejudice forms of public-private partnership or the substance of decisions and documents on public-private partnership.

#### **Article 34**

##### **(initiation of preliminary procedure)**

(1) The public partner shall initiate the preliminary procedure on its own initiative or on the basis of an application regarding interest in operating a public-private partnership.

(2) An application regarding interest may be submitted by a legal or natural person that has an interest in operating a public-private partnership (promoter), where are not tied to the publishing of a call as referred to in Article 32.

(3) The public partner must deliberate and decide on any application regarding interest in operating a public-private partnership within four months of receipt, and in that time it must also decide, wherein it shall not be bound to initiate a preliminary procedure (test of public-private partnership):

- whether the proposed project runs counter to the Constitution or law,
- whether it involves activities that are so closely linked to the protection of state, official or military secrets that implementing the procedure would prevent the protection of such secrets,
- whether the conditions referred to in Article 8 of this Act have been fulfilled (value of project, public partner, subject of public-private partnership), or
- whether the activity that is the subject of the proposal is already being performed.

## **Article 35**

### **(rights of promoter)**

(1) A person that has submitted an application regarding interest in operating a public-private partnership has the same rights as other candidates in the ensuing procedure of establishment. Submission of an application regarding interest shall not be deemed to indicate that the investor is also a candidate in the further procedure of selecting a contractor.

(2) If an application regarding interest in establishing a public-private partnership encloses documents that comprehensively set out the legal, economic, technical, environmental and other conditions for implementing the procedure or signify some other kind of original concept, the public partner may, in compliance with the regulations governing public procurement awards, opt to purchase them (for instance a procedure with negotiations and without prior publication), irrespective of whether it continues the procedure for establishing a public-private partnership.

(3) If a public partner, on the basis of an application from an interested person, does not implement the preliminary procedure or does not reach agreement with the investor regarding purchase of the documents, the public partner shall be obliged to return the documents to the investor. In this case the promoter shall retain all rights to the documents enclosed with the application regarding interest in establishing a public-private partnership.

## **2. INSTRUMENT ESTABLISHING PUBLIC-PRIVATE PARTNERSHIP**

### **Article 36**

#### **(content of instrument establishing public-private partnership)**

(1) The subject, rights and obligations of a public-private partnership, the procedure for selecting the private partner and other elements of an individual public-private partnership relationship may be framed in an instrument establishing a public-private partnership (hereinafter: public-private partnership instrument).

(2) A public-private partnership instrument shall be obligatory in the event that the contractor of a public-private partnership obtains a special or exclusive right to perform a commercial public service or other activity in the public interest, where owing to the protection of public interest the law requires the issuing of a concession or other general instrument.

(3) Where a public-private partnership involves a form of concession partnership, the instrument referred to in the first paragraph of this article shall be entitled "concession instrument". In the case of activities referred to in the preceding paragraph, the concession instrument shall be adopted in the form of a Government decree, a decision by the representative body of the self-governing local community or a general instrument of another public partner issued on the basis of public authorisation provided by a special act.

### **Article 37**

#### **(several public partners)**

(1) If several persons are acting on the side of the public partner in a public-private partner relationship, such persons shall adopt a joint public-private partnership instrument in compliance with the preceding article and in identical content.

(2) The public partners shall regulate their mutual relations in the public-private partnership through a contract concluded through adoption of the instrument referred to in the preceding paragraph.

(3) A joint public-private partnership instrument may be amended or entirely rescinded under conditions and restrictions provided by law, and only under a procedure identical to that in which it was adopted. Each public partner may itself under conditions and restrictions provided by law rescind the validity of the instrument within

the scope of its competence, whereby the public-private partnership instrument shall retain its validity within the scope of competence of the other public partners.

(4) In a joint public-private partnership instrument the public partners shall appoint one of their number to conduct the procedure of selecting a private partner, to issue an instrument of selection and other instruments in connection with the public-private partnership.

(5) In joint operation the public partners shall adopt regulations and general instruments in identical wording.

### **Article 38**

#### **(several private partners and project company)**

(1) On the side of the private partner, a public-private partnership may be established in the same relationship by several legal or natural persons, unless for objective and justifiable reasons the public-private partnership instrument or other regulation provides otherwise. Mutual relations between candidates shall be regulated by means of a contract concluded before a common bid is submitted (what is termed a consortium contract).

(2) A candidate may only submit one application, and in the case of a joint application the same person may only participate in one application. In a public tender the public partner may stipulate other conditions for the submission of joint applications.

(3) Where necessary in view of the nature, scope and subject of the public-private partnership, it may be required in a public tender that in the event of a joint application by several persons being the most advantageous bid, such persons must prior to concluding a public-private partnership contract enter into a specific formal association with which the public partner will make a public-private partnership contract (hereinafter: project company).

(4) In joint applications the fulfilment of status conditions shall be determined for each candidate individually, and in accordance with the subject of public-private partnership, fulfilment of economic and financial, organisational, personnel and technical conditions for all candidates together. The public partner shall determine the method of demonstrating fulfilment of the conditions in joint applications in the tender documentation.

(5) The provision of the third paragraph of this article shall also apply *mutatis mutandis* where in a public tender an application is submitted by a candidate that intends for the operation of a public-private partnership to establish a project company, or where this is required by the public partner for operating a public-private partnership.

### **Article 39**

#### **(content of instrument establishing public-private partnership)**

(1) Depending on the substance and nature of the public-private partnership, the content of the public-private partnership instrument must be sufficiently general not to impede negotiations between the public and private partners, in accordance with the fundamental principles of this Act.

(2) A special or exclusive right may be awarded on the basis of an act.

### **Article 40**

#### **(joint instrument)**

(1) A decision on public-private partnership referred to in Article 11 of this Act and a public-private partnership instrument referred to in this chapter may be adopted in a joint instrument, if the conditions for so doing provided by this Act are fulfilled.

(2) Where this is not already regulated by a decision referred to in Article 11 of this Act, an instrument referred to in the preceding paragraph may serve in particular to:

- regulate the organisational and spatial plan for implementing public-private partnerships (type of contractor, any specific or exclusive rights, if the relevant conditions have been fulfilled);
- determine the public benefit to implement expropriation or the restriction of ownership of property, pursuant to the act regulating land use;
- regulate individual obligations applying to the public-private partnership;
- lay down the general conditions under which users may use the goods and services of the public-private partnership, which must be equal for the same categories of user;
- lay down the rights and obligations of users of public-private partnership goods or services, and the manner of their exercising and protection;

- regulate the envisaged financing of the public-private partnership and other financial relations between the public and private partners (such as the division of loss and profit and division of profits, and whether the refinancing of debt is involved).

(3) An instrument referred to in the preceding paragraphs may serve to regulate other issues involved in governing a public-private partnership, where they are regulated under law by the Government or the representative body of a self-governing local community, or where for other reasons they must be provided in a general instrument, otherwise such issues shall be regulated in a public-private partnership contract.

#### **Article 31**

##### **(non-existence of instrument establishing public-private partnership)**

(1) If the adoption of a special public-private partnership instrument is not envisaged, the essential components of the individual public-private partner relationship and other issues that must be framed in a regulation or other general instrument, shall be laid down in an instrument referred to in Article 11 of this Act (decision on public-private partnership).

(2) If the public partner has no special authorisation to regulate individual issues by law, regulation or general instrument (such as determining the method of financing for the public-private partnership, determining the prices of goods and services of the public-private partnership and so forth), such issues shall on the basis of a public tender be regulated in a public-private partnership contract.

### **3. PUBLIC TENDER**

#### **Article 42**

##### **(public tender procedure)**

Irrespective of the form of selection instrument, a public-private partnership contractor shall be selected, unless otherwise provided by law, on the basis of a public tender, notice of which must also be published on the Internet.

#### **Article 43**

##### **(public procurement partnership)**

(1) In cases of public procurement partnerships, public tenders or the direct agreements and selection of a public-private partnership contractor, as well as the awarding of works to third parties, shall be governed by the Public Procurement Act, unless otherwise provided by this Act.

(2) Upon conclusion of the procedure for selecting a private partner, depending on the nature and form of relationship, a contract shall be made with the application *mutatis mutandis* of the provisions of a concession contract, in compliance with the act regulating commercial public services, or applying the rules of an equity partnership contract, in compliance with this Act, where this involves an equity partnership with the nature of public procurement.

(3) Application *mutatis mutandis* of the provisions of a concession contract in compliance with the act regulating commercial public services, or of the provisions of an equity partnership contract, shall be valid for the concluding of contracts, the substance of the partnership, the validity of contracts and their unilateral amendment, the rights and obligations of the public partner and contractor of a public-private partnership (orders for concessionaire works etc.), and for the transfer and termination of such relationships.

#### **Article 44**

##### **(application of regulations for selecting concession partnership contractor)**

(1) In cases of concession partnerships where the concessionaire acquires the right to perform a commercial public service, public tenders or direct agreements, selection of public-private partnership contractors, legal and judicial protection in these procedures and concession contracts and the awarding of works to third parties shall also be governed by the act regulating commercial public services.

(2) In cases of concession partnerships where the concessionaire acquires a special or exclusive right to perform some other activity (other public service), and where for the purpose of protecting the public interest the law expressly provides the issuing of an administrative decision, public tenders or direct agreements, selection of

public-private partnership contractors, legal and judicial protection in these procedures and concession contracts and the awarding of works to third parties shall also be governed mutatis mutandis by the act regulating commercial public services.

#### **Article 45**

##### **(application of regulations for selecting equity partnership)**

In cases of equity partnerships, public tenders or the direct agreements and selection of a public-private partnership contractor in these procedures, as well as the awarding of works to third parties, shall be governed mutatis mutandis by the Public Procurement Act, unless otherwise provided by this Act or a special act.

#### **Article 46**

##### **(competitive dialogue procedure)**

(1) Irrespective of the form and the regulation of the public-private partnership procedure in a special act, in selecting a public-private partnership contractor the procedure of competitive dialogue may be used for selecting the most economically advantageous bid.

(2) The public partner shall initiate the procedure of competitive dialogue through public tender, which shall set out the aims and requirements associated with the public-private partnership project. The public partner may also set out the aims and requirements in the tender documentation, instead of or in addition to in the public tender.

(3) In the first stage of competitive dialogue, in compliance with the terms set out in the public tender, the public partner shall select candidates with which in the second stage of the procedure it shall conduct a dialogue at determining and defining the funds and the most appropriate solution to satisfy the aims and requirements of the public partner. In this dialogue the public partner may discuss with selected candidates all aspects of the public-private partnership project and where necessary may compare solutions with each other.

(4) In the case of a public procurement partnership, the minimum number of candidates in the procedure of competitive dialogue, except in the event of dialogues that permit the issuing of a public procurement order without public tender (protection of exclusive rights, exceptional urgency of events and so forth) shall be three.

(5) Where there are objective reasons, such as the non-existence of major competition in the market or where there is no demonstrable interest, and unless the public-private partnership has the nature of public procurement, the number of candidates may also be less than three.

(6) During competitive dialogue the public partner must ensure equal treatment of all candidates, whereby it must especially without discrimination provide candidates with information, including information obtained on the basis of applications regarding interest referred to in Article 34 of this Act, in order to prevent any unjustified advantage in the selection procedure.

(7) Irrespective of the provision of the sixth paragraph of this article, the public partner may not disclose to other candidates in the competitive dialogue procedure or other persons proposed solutions or other confidential information that has been submitted by a specific candidate participating in the competitive dialogue, without their written consent.

(8) Irrespective of the provisions of the second paragraph of this article, the public partner may determine that the competitive dialogue procedure be conducted in more than two successive stages, in order to reduce the number of solutions on which the dialogue will be conducted, whereby in excluding individual solutions it must act in accordance with the criteria set out in the public tender. The public partner must envisage the possibility of conducting the competitive dialogue procedure in several successive stages in the public tender.

(9) The public partner shall continue the dialogue with candidates until it finds a solution (solutions) that correspond with its aims and requirements.

(10) Upon deciding that the dialogue is concluded, the public partner shall notify all candidates that have participated in the final stage of the dialogue, and call upon them to submit bids drawn up with account taken of the solutions presented and defined during the dialogue. The submitted bids must contain all elements required and necessary for implementing the public-private partnership project.

(11) The public partner may require bidders to clarify, specify and harmonise the details of their bids with the partner's requirements, whereby through clarifying, specifying, harmonising and providing additional information they may not change their bids, if this might lead to a distortion of competition or have a discriminatory effect.

(12) The public partner shall assess received bids on the basis of criteria set out for the assessment of bids in the public tender, and shall then select the most economically advantageous bid.

(13) The public partner may require the bidder that submitted the most economically advantageous bid to clarify certain elements of such bid or to confirm undertakings given in the bid, provided that a clarification or confirmation would not signify a change in the bid that would distort competition or have a discriminatory effect.

(14) If it opts to purchase documents that comprehensively set out the legal, economic, technical, environmental and other conditions for carrying out the procedure or that signify some other original concept, the public partner may define rewards or payments to those participating in dialogue. Here the second paragraph of Article 35 of this Act (rights of promoter) shall apply mutatis mutandis. Rewards and payments must be included in the calculation of the estimated project cost.

(15) In the event that owing to the nature of the relationship, for the selection of the most advantageous bidder the rules of the act regulating commercial public services are applied, merely the decision on the selection of the most advantageous bidder has the form of an administrative decision on selection of a concessionaire.

(16) If a public-private partnership has the nature of public procurement, the competitive dialogue procedure may not be used in cases where the sole criterion is lowest price.

## **Article 47**

### **(public tender obligation and exceptions)**

(1) Use of the competitive dialogue procedure shall not exclude the obligations of the public partner relating to publication of notices and provided in other acts. For this reason, irrespective of the use of the procedure set out in Article 46 of this Act, for notifications in connection with transitional stages of the procedure, public tenders and selection of the public-private partnership contractor as well as possible exceptions, depending on the nature of the public-private partnership (public procurement, concession, equity), the public partner must use the Public Procurement Act and the act regulating commercial public services in those parts that relate to the selection of concessionaire, or this Act.

(2) Competitive dialogue shall not be used in the case of a public procurement partnership where the public partner is a client in the water, energy, transport and postal sectors. In this case the public partner may conduct the procedure of selecting the public-private partnership contractor through negotiation following preliminary publication, whereby the rules of this Act regarding competitive dialogue (Article 46) shall apply mutatis mutandis.

## **Article 48**

### **(content of public tender)**

(1) Publication of a public tender notice in accordance with a decision on public-private partnership and/or a public-private partnership instrument shall include at least:

- an indication that this involves a public-private partnership pursuant to this Act,
- the name or title and registered office of the public partner,
- information on the publication of the decision on public-private partnership and the public-private partnership instrument,
- the subject, nature, scope and geographical area of the public-private partnership,
- the start and envisaged duration of the public-private partnership,
- the procedure of selecting the public-private partnership contractor,
- the place, time and payment conditions for obtaining tender documentation,
- the place and deadline for submitting applications, the conditions for submission (possible security etc.),
- the requirements regarding the content of applications (presentation of the method of operating the public-private partnership in the bid, structures and facilities in the bid, expected profit from operating the partnership and so forth),
- the conditions that candidates must fulfil and proof of their fulfilment,
- the conditions for submitting joint applications,
- the criteria for selecting the most advantageous candidate and/or the criteria for progressing through the stages of competitive dialogue,
- the address, room, date and hour of bid opening,
- the deadline by which candidates will be informed of the outcome of the public tender.

(2) In the public tender, alongside the information referred to in the preceding paragraph, the public partner may depending on the subject of the public-private partnership also publish other information; other information must be published were so required by law, by a regulation issued on the basis thereof or by a public-private partnership instrument.

(3) At the time of publication of the public tender, the public partner must enable interested parties access to the tender documentation and upon request provide tender documentation.

(4) Tender documentation must set out all the information and data that will enable candidates to formulate complete applications.

#### **Article 49**

##### **(technical specifications)**

(1) The public partner must formulate the technical specifications of the subject of a public-private partnership in such a way that they are determined with regard to the fulfilment of standards and with regard to the success or effectiveness that must be achieved, or the fulfilment of sufficiently precise functional requirements. Here it must ensure that the technical specifications would not distort competition or have a discriminatory effect.

(2) The reference material used for describing products or services shall be European standards or the national standards which implement them, although the public partner may not require that the requested product, service or construction will comply with the relevant standard. The public partner must also accept other products, services or constructions, although technology other than that set out in the standard has been used, if the end result that is the subject of the public-private partnership fulfils all the requirements regarding success, effectiveness and functional requirements.

#### **Article 50**

##### **(criteria for selecting the most advantageous candidate)**

(1) In the public tender or tender documentation the public partner shall set out the importance and weighting of each criterion on the basis of which it will select the most economically advantageous application.

(2) If in the opinion of the public partner it is not possible to determine the importance of criteria in advance, the public partner must nevertheless list the criteria in descending order of their importance.

(3) In the event of two or more most economically advantageous applications, the public partner may prioritise the selection of a subject that is not established and is not performing the activity for the purpose of obtaining profit, or may select the most advantageous application on the basis of previously determined social elements (employment of unemployed or disabled persons and so forth).

#### **Article 51**

##### **(language)**

(1) The public tender, tender and other documentation and procedure must be provided in the Slovenian language.

(2) The awarding authority may, in addition to documents and to execution of the procedure in Slovenian, use a foreign language and allow candidates to use Slovenian or a specified foreign language.

(3) The public partner may determine in the tender documentation that candidates may submit their applications partly or entirely in a specified foreign language. In the subsequent procedure the public partner may require candidates to submit, by a specified deadline, a translation of the application or part of the application not submitted in Slovenian. In the event of discrepancies, the documents submitted upon delivery of the application shall be considered valid.

(4) The provisions of this article applicable for the Slovenian language shall apply, in bilingual areas within the framework of the exercising of special rights by members of the Italian and Hungarian communities, *mutatis mutandis* for the Italian and Hungarian languages for candidates and for the Slovenian and Italian and Slovenian and Hungarian languages for public partners.

#### **Article 52**

##### **(expert committee)**

(1) A public partner referred to in Article 11 of this Act shall appoint an expert committee for the selection of a private partner for operating the subject of a public-private partnership or establishing an equity partnership, comprising a chairman and at least two members. All members of the committee must have at least university-level education and working experience in the relevant area in order to facilitate expert assessment of applications.

(2) The chairman and members of the committee may not be in a business relationship with candidates, their representatives, members of boards, supervisory boards, founders, partners or shareholders with a controlling interest or persons with the power of attorney, or in any other way associated by interest, directly related or

indirectly related to the fourth degree, in a marital relationship or affinity by marriage to the second degree inclusive, even where such marital relationship has terminated, or live with a candidate in a relationship resembling marriage or in a registered same-sex partnership. The public partner may not appoint to the committee any person who was employed by or worked in any other way for a candidate, unless a period of three years has passed since employment or other form of cooperation was terminated. Fulfilment of the conditions for appointment to the committee shall be confirmed by each member in a written statement.

(3) The public partner must, on the proposal of the chairman or member of the committee, when so requested by a candidate or on the public partner's own initiative, appoint a new chairman or member of the committee immediately upon learning of grounds for exclusion or has discovered circumstances that cast doubt on the impartiality of the committee.

(4) If the public partner changes the committee structure after the candidates have already collected the tender documentation, the public partner must notify all those that have collected tender documentation to that effect.

(5) The expert committee shall participate in the procedure of selecting the private partner by reviewing and assessing applications and determining whether they fulfil the tender conditions, by composing reports and indicating which applications fulfil the tender requirements, by classifying applications such that it is clear which of the applications are most successful in meeting the criteria set and what subsequent ranking they achieve in terms of meeting the criteria, and shall submit such reports to the public partner referred to in Article 11 of this Act.

(6) The educational and other conditions, the method of appointment and detailed tasks and methods of work of the expert committee shall be determined by the public partner in the public-private partnership instrument.

#### **4. SELECTION OF PUBLIC-PRIVATE PARTNERSHIP CONTRACTOR AND THE RIGHT TO LEGAL PROTECTION**

##### **Article 53**

##### **(submission and opening of applications)**

(1) Candidates may supplement or change applications up until the expiry of the tender deadline. Applications arriving at the public partner after expiry of the tender deadline shall be too late.

(2) Up until the expiry of the tender deadline, candidates shall not have the right to view the applications of other candidates in the same tender.

(3) The opening of bids or other applications for selection a public-private partnership contractor shall be public, unless for reasons of protecting commercial (for instance in competitive dialogue) secrets or official, military or state secrets the public partner determines that the procedure of opening bids should not be public. Such decision must be communicated in the notice of the public tender.

(4) The expert committee shall not open applications that have arrived after the deadline given in the public tender or improperly submitted applications, but shall immediately return them unopened to the sender.

(5) An official record shall be kept of the opening of bids. Any remarks by representatives of the candidates on the progress of the public opening shall be recorded therein. The expert committee shall send the official record of the public opening to all candidates within eight days.

##### **Article 54**

##### **(review and evaluation)**

(1) After the completion of public opening, the expert committee shall review the applications and ascertain whether they fulfil the tender conditions.

(2) The committee may demand explanations from the candidates that would assist it with the review, comparison and evaluation of the applications. In so doing it must not allow a candidate to supplement or amend an application in any way. In particular, it must not allow a candidate to alter those documents in the application that would influence the evaluation of the application of a specific candidate (change of subject, price and other criteria).

(3) The committee may request only such supplementation of applications as will eliminate minor discrepancies with the requirements of the tender documentation and which shall in no way affect the substance of the application and assessment and ranking of the individual application in accordance with the established criteria for selection of the public-private partnership contractor.

(4) The committee may, with the consent of the candidate, correct calculation errors discovered during the review.

## **Article 55**

### **(report)**

(1) After the completion of its review and evaluation, the committee shall draw up reports and indicate which applications fulfil the tender requirements, and shall rank these applications such that it is clear which of the applications are most successful in meeting the criteria set and what subsequent ranking they achieve in terms of meeting the criteria.

(2) The committee shall submit its report to the body of the public partner referred to in Article 11 of this Act.

## **Article 56**

### **(instrument of selecting public-private partnership contractor)**

The instrument of selecting the public-private partnership contractor shall be a commercial operation instrument, on the basis of which a public-private partnership contract shall be made.

## **Article 57**

### **(exception where the instrument of selecting the public-private partnership contractor is a decision)**

If the subject of the public-private partnership is a concession to perform commercial public services or other activity where for the purpose of protecting the public interest the law expressly provides the issuing of an administrative decision, the selection instrument shall be an individual administrative act (hereinafter: selection decision), on the basis of which a public-private partnership contract shall be made with the selected private partner in compliance with the provisions of Article 68 of this Act.

## **Article 58**

### **(special nature of administrative procedure where the selection instrument is a decision)**

(1) A selection procedure shall commence ex officio upon the first act by an official person with such intent.

(2) If the selection procedure is based on the submission of applications or opening of applications at a precise time, it shall not be possible in the event of missing such appointed deadline to permit a return to the previous state.

(3) Directly before the decision on selection is issued, the parties shall be acquainted orally with the course of the procedure and their success therein, and given a deadline, which must not be longer than 15 days, to file their comments. If the comments are not sent by this deadline, it shall be considered that the parties have no comments.

(4) Until the parties have been acquainted with the procedure referred to in the preceding paragraph, the reviewing and copying of those parts of the documents that refer to the applications of other parties in the procedure and the circumstances related thereto shall not be permitted.

(5) The declaration of the decision on selection shall name the party that has been chosen and the parties whose applications have been rejected. The decision on selection shall be sent to all parties in the procedure.

(6) The decision shall be issued with a limited period of validity, which may not be longer than one year. The period of validity for the decision shall be determined in its declaration. If during this time no contract is made, the decision on selection shall cease to be valid.

## **Article 59**

### **(rejection of all applications)**

(1) Even after publishing a public tender notice, the public partner shall not be bound to select a public-private partnership contractor.

(2) If in the selection procedure the public partner does not select a public-private partnership contractor, it shall issue an instrument to that effect whereby it terminates the selection procedure, and shall set out all the parties whose applications have been rejected and the grounds for their rejection.

(3) With regard to legal remedies and/or administrative disputes against such instrument referred to in the second paragraph of this article, the provisions of this Act relating to the instrument of selecting a public-private partner shall be applicable.

## **Article 60**

### **(rejection of an accepted candidate)**

(1) Up until a contract on public-private partnership is concluded the public partner may reject the candidate that most successfully meets the criteria set, and select the next one on the ranking scale, if circumstances arise to indicate that the candidate will not be able to fulfil the contractual obligations.

(2) Circumstances indicating that a candidate will not be able to fulfil the obligations under a public-private partnership contract are in particular if proceedings of bankruptcy, liquidation or forced settlement are instigated against the candidate, if the candidate has not settled its liabilities regarding tax and other contributions provided by law, if it is shown that the application enclosed false information on the fulfilment of essential requirements, on the existence of acts of organised crime, corruption, fraud or money laundering and similar.

(3) With regard to the form of taking a decision referred to in the first paragraph of this article, legal remedies and/or administrative disputes against such decision, the provisions of this Act relating to the instrument of selecting a public-private partner shall be applicable.

## **Article 61**

### **(legal protection in appeal procedure)**

(1) No appeal may be lodged against an instrument of selection issued by the competent minister.

(2) An appeal lodged against a selection instrument issued by another public partner shall be decided upon by the competent minister, if the founder of the other public partner is the state, or by the mayor, if the founder is a self-governing local community.

(3) The mayor shall decide on any appeal against a selection decision issued by a municipal authority.

## **Article 62**

### **(legal protection in audit procedure)**

In the event that the rules on public procurement or concession works are applied to the establishing of a public-private partnership, legal protection shall be ensured in compliance with the Public Procurement Act (explained notification) and with the act regulating the auditing of procedures for issuing public procurement orders.

## **Article 63**

### **(judicial protection)**

An administrative dispute may be initiated against a final decision on selection or other instrument of selecting a public-private partnership contractor for which the rules on public procurement or concession works are not applicable.

## **Article 64**

### **(special nature of administrative dispute)**

(1) The administrative dispute procedure shall be rapid.

(2) If the revocation of a decision or other instrument would mean a disproportionate burdening of the private partner that has hitherto carried out the public-private partnership contract, the court shall not revoke such decision or other instrument, but shall determine its unlawfulness, and shall upon request award the plaintiff compensation or in respect of claiming recompense it shall direct the plaintiff to pursue litigation.

## **Article 65**

### **(status of party)**

(1) In the procedure of issuing a selection instrument and of legal and judicial protection, unless otherwise provided by a special act the status of party to proceedings shall be held only by applicants for public-private

partnership contractors and the Ministry, and in the procedure of judicial protection also the public partner. There shall be no other participants (parties, side participants) in the procedure of issuing selection instruments.

(2) In the event that the selection of a public-private partnership contractor is conducted according to the rules of public procurement, prior to concluding a concession contract the awarding authority must by law issue to the selected concessionaire an administrative decision awarding it the right to perform the activity (fourth paragraph of Article 27 of this Act), and there shall be no other participants (parties, side participants) in the administrative procedure of issuing the decision.

## **5. GRANTING AND EXECUTING PUBLIC AUTHORISATIONS**

### **Article 66**

#### **(granting of public authorisations)**

(1) The subject of public-private partnership may also be public authorisation, where this is essentially tied to operating a public-private partnership.

(2) In compliance with a special act, public authorisation shall be granted through administrative decision, generally upon the selection of public-private partnership contractor, and exceptionally also during the course of the public-private partnership.

### **Article 67**

#### **(executing public authorisations)**

(1) The tasks performed by a public-private partnership contractor under public authorisation shall be provided by law.

(2) Where public-private partnership contractors in the execution of public authorisations decide on the rights, obligations and legal benefits of individuals, they shall act pursuant to the General Administrative Procedure Act, unless individual procedural issues are otherwise provided in a special act.

## **6. CREATION OF PUBLIC-PRIVATE PARTNER RELATIONSHIPS**

### **Article 68**

#### **(concluding contracts)**

The rights and obligations proceeding from a public-private partner relationship shall be created at the moment of concluding a contract on public-private partnership (or concession contract), unless otherwise provided by law or where a public-private partnership contract specifies that these shall be acquired later or upon fulfilment of a certain condition.

### **Article 69**

#### **(exception in the event of voidness)**

(1) A public-private partner relationship shall not be created in the event that the public-private partnership contract is void.

(2) A public-private partnership contract shall be void if it is made with a subject other than the one selected by the selection instrument, and such possibility was not foreseen in the procedure (Article 38 of this Act). The same shall apply in the event of a contract being made in contravention of the rules of publishing public tender notices or without conducting the procedure of selecting a public-private partner or an issued selection instrument, or if another public partner has made a contract without the consent of the founder.

(3) A public-private partnership contract shall also be void in the event of the selection instrument being revoked in a final judicial ruling and in the selection procedure for the same public-private partnership another contractor has been selected.

### **Article 70**

#### **(record of public-private partnership contracts)**

(1) Within 8 days of concluding a public-private partnership contract the public partner must inform the ministry competent for finance, which shall keep a record of public-private partnership contracts made, and shall submit to the ministry a copy of the public-private partnership contract.

(2) The record of public-private partnership contracts shall also contain all information important for the relationship and for the possible payment of concession or other contributions (date of beginning of partnership, type, purpose and duration), and the following personal data: name, surname and title or registered office of the activity, where the public-private partnership contractor is a natural person.

(3) The information entered in the record, except for personal data, shall be public.

## **7. DURATION OF RELATIONSHIP**

### **Article 71**

#### **(duration of relationship)**

(1) Public-private partnerships shall be long-term relationships established for a fixed period.

(2) The duration of the public-private partner relationship shall be determined such that it affords the public-private partnership contractor stability and security of investment, the possibility of effective and safe financial investment and the return of what it has invested, and in view of the nature of the subject of partnership during the relationship the return to the partnership of funds invested and the achievement on this of a proper market yield, while at the same time the contractor keeps, assumes and manages, depending on the nature of the public-private partnership, part of the commercial risk.

(3) The duration of the public-private partnership may be extended in a manner provided in advance by the public-private partnership instrument, where:

- owing to the measures of the public partner or other measures by an authority the contractor cannot implement the relationship;
- this is necessary owing to additional investment by the public-private partnership contractor resulting from requests of the public partner or its measures in the public interest.

(4) The duration of the public-private partnership may not be extended by more than half of its established duration.

(5) In the event of a public procurement partnership, any extension of the relationship must also be in compliance with the Public Procurement Act.

## **8. OPERATION OF PUBLIC-PRIVATE PARTNERSHIP**

### **Article 72**

#### **(public nature of work)**

In compliance with the regulations governing access to information of a public nature, the public-private partnership contractor shall inform users of its services and other interested persons of the operation of the public-private partnership, its own work, tasks and competence, the rights and obligations of users and the procedures for fulfilling them, as well as other important facts.

### **Article 73**

#### **(building right of public-private partnership contractor)**

(1) In respect of structures and facilities that are the subject of a public-private partnership, unless otherwise provided by a special act, it shall be possible to establish the building right or to acquire some other material or obligational right under law.

(2) Irrespective of the act regulating legal material relations, the duration of a building right may be limited by the termination of the public-private partnership as a condition of rescission.

(3) The amount of compensation upon termination of the public-private partnership shall be regulated by the public-private partnership contract, where there shall be no application of the rules of the act regulating legal material relations regarding the consequences of terminating the building right.

### **Article 74**

#### **(awarding legal operations to third parties)**

(1) The public-private partnership contractor may not transfer activities that are the subject of the public-private partnership in part or entirely to a third party, unless it has obtained in advance the written consent of the public partner for this or this has been expressly provided by this Act (project company, entry into relationship).

(2) In awarding legal operations to third parties (purchase of goods etc.) and the transfer of special and exclusive rights, the public-private partnership contractor must act in accordance with the principle of transparency and non-discrimination regarding citizenship. The contractor may transfer special and exclusive rights to other contractors only in accordance with the law and with the prior consent of the public partner.

(3) In the event of fulfilling the conditions for a public procurement client pursuant to the Public Procurement Act, in the awarding of orders for the supply of goods, services and works and other legal operations that fulfil the assumptions of public procurement, the public-private partnership contractor must act in compliance with the Public Procurement Act.

(4) Irrespective of its legal status set out in the preceding paragraph, in awarding legal operations to third parties that fulfil the assumptions of public procurement (such as subsidised works), and in orders in the water, energy, transport and postal sectors (client in the area of drinking water supply, removing and treating municipal wastewater and rainwater and so forth), the public-private partnership contractor must act in compliance with the Public Procurement Act and the Public Procurement in the Water, Energy, Transport and Postal Services Sectors Act.

#### **Article 75**

##### **(obtaining public procurement orders and orders in the water, energy, transport and postal sectors)**

In procedures of obtaining public procurement orders and orders in the water, energy, transport and postal sectors the public-private partnership contractor shall have the same status as other bidders, unless the law (for instance additional orders) or a legal resource of European law provides a privileged position in this.

#### **Article 76**

##### **(unilateral encroachments on the public-private partner relationship)**

Barring commercial public services or other activities where in order to protect the public interest the law expressly provides the issuing of administrative decisions, unilateral amendments to the contract or other unilateral encroachments on the relationship shall be governed mutatis mutandis by the rules of obligational law regarding compensation liability for breach of contract.

#### **Article 77**

##### **(other activities)**

(1) In addition to operating the public-private partnership, the public-private partnership contractor may perform other activities, unless otherwise provided in the procedure of creating the relationship (such as project company or other grounds).

(2) If the public-private partnership contractor performs other activities, it must keep separate accounts for each activity of the public-private partnership and for other activities.

(3) In cases referred to in the preceding paragraph, prior to implementation of the public-private partner relationship the contractor must submit to the public partner for its consent the principles according to which it separates accounting by activities (keys for dividing joint and general costs by individual cost centres or bearers of costs, transfer prices and supervision thereof, division of loss and profit, division of profits, whether there will be refinancing of debt and so forth). The public partner may refuse its consent only if the proposed principles might threaten the unimpeded operation or supervision of the public-private partner relationship.

#### **Article 78**

##### **(auditing)**

(1) The public-private partnership contractor must have audited annual financial statements in compliance with the law.

(2) A special contract between the public-private partnership contractor and auditor shall provide that in addition to auditing referred to in the first paragraph of this article, the auditor shall determine the implementation of Articles 72 and 74 of this Act and the provisions of the contract between the public and private partners.

(3) The auditor shall report on implementation of the provisions referred to in the preceding paragraph in a special auditor's report.

## **PART IV : WORKS CONCESSIONS**

### **1. DEFINITION**

#### **Article 79**

##### **(concept of works concessions)**

(1) Where the purpose of a concession is the construction of structures and facilities or their individual parts, for which during the relationship the concessionaire has the right to their use, operation or exploitation, or the right to use, operation or exploitation of structures and facilities is combined with payment for executing the works and the value of the works, which is transferred into the ownership of the public partner (first paragraph of Article 80 of this Act), assessed in compliance with the regulations on public procurement, amounts to at least 5,278,000 euros (hereinafter: works concession), actions in the creation and operation of public-private partner relationships shall be governed by the rules of this Act regulating works concessions.

(2) If in the relationship referred to in the preceding paragraph the concessionaire does not bear the majority of the project's commercial risk, in selecting the concessionaire the awarding authority must apply the rules governing the awarding of public works orders.

(3) The provisions of this part of the Act may also be applied in other cases of concession partnership, where the value of the works does not reach the amount referred to in the first paragraph of this article.

#### **Article 80**

##### **(model of ownership right and works concession)**

(1) Structures and facilities of a concession shall become either immediately (for instance the model of build-transfer-operate or BTO) or after a given period (for instance the model of build-operate-transfer or BOT) the property of the public partner, unless this is not possible or economically justified (for instance the model of build-operate-own or BOO). For each model the economic justification must be established, and this must be the subject of deliberation in the preliminary procedure.

(2) In the event of structures and facilities of a concession not becoming the property of the public partner, this shall not be a works concession but a services concession. Where any doubt arises, the concession relationship shall be adjudged to be a works concession.

(3) The model of ownership right in respect of structures and facilities must be set out in the concession contract on the basis of the public tender.

#### **Article 81**

##### **(exclusion right)**

(1) Irrespective of the agreed model of ownership right (works concession or services concession), in the event of bankruptcy or other manner of termination of the concessionaire (liquidation, dissolving), the awarding authority shall have the right in respect of structures and facilities of the concession, upon payment of the appropriate portion of the value of excluded property into the bankruptcy or liquidation estate, to exercise the right of exclusion.

(2) What the concessionary structures and facilities referred to in the preceding paragraph are shall be determined by the competent body of the awarding authority in a decision issued in an administrative procedure. The competent authority may decide that structures and facilities should remain part of the bankruptcy or liquidation estate.

(3) Where the concession contract has not provided that upon termination of the relationship structures and facilities shall be transferred into the ownership of the awarding authority (second paragraph of Article 80 of this Act, services concession), the awarding authority shall be bound to pay into the bankruptcy or liquidation estate the entire value of the concessionary structures and facilities, less any possible claims it has against the concessionaire.

(4) If a concession contract stipulates that concessionary structures and facilities that are subject to exclusion are transferred to the ownership of the awarding authority, whether free of charge or for a certain price (purchase price), the awarding authority shall be bound to pay the value of the concessionary structures and facilities into the bankruptcy or liquidation estate relative to the time left from when the concession was terminated owing to the

institution of bankruptcy or liquidation proceedings, to the expiry of the concession, compared to the entire period of the concession, increased by the purchase price and reduced by any possible claims against the concessionaire.

(5) The rules for determining the value of immovable property in expropriation procedures shall apply in determining the value of the concessionary structures and facilities referred to in this article.

(6) The amount and payment deadline for concessionary structures and facilities shall be decided by a bankruptcy panel, where the deadline for payment may not be less than one year.

## **2. PUBLIC TENDER AND SELECTION OF WORKS CONCESSIONAIRE**

### **Article 82**

#### **(notice of public tender)**

(1) The awarding authority must award works concessions on the basis of the notice of a public tender, in compliance with the rules regulating the awarding of public procurement orders. Such notice shall contain information prescribed by Commission Regulation (EC) No 1564/2005 of 7 September 2005 establishing standard forms for the publication of notices in the framework of public procurement procedures pursuant to Directives 2004/17/EC and 2004/18/EC of the European Parliament and the Council (OJ L No 257 of 1 October 2005, p. 1), and may, in compliance with the prescribed standard forms, also contain other information.

(2) The awarding authority may also issue notice of a public tender in some other appropriate medium specific to the given subject of the public-private partnership (such as a specialised newspaper), but not before submitting the public tender for publication in the official journal of the EU and not with more data than that contained in the notice in the official journal of the EU.

(3) The deadline for submission of applications shall be at least 52 days. If the notice of a public tender is submitted for publication in electronic form, the awarding authority may reduce the deadline referred to in the preceding paragraph by a maximum of 7 days. The period for submissions shall begin on the day the request for publication of the public tender notice is submitted to the official journal.

### **Article 83**

#### **(selection without public tender notice)**

(1) The awarding authority may select a concessionaire of works whose estimated value in compliance with the regulations on public procurement amounts to at least 5,278,000 euros without the issuing of a public tender notice (direct agreement) in cases where the conditions pursuant to the Public Procurement Act have been fulfilled and they apply to the selection of the works contractor (such as protection of exclusive rights, unforeseeability and urgency and so forth).

(2) The awarding authority may award an existing works concessionaire additional concessionary works that were not envisaged in the concession contract, if in view of unforeseeable circumstances they have become necessary for implementation of the project, under the condition:

- 
- that the additional works cannot be technically or economically isolated from the concession contract project without causing serious difficulty for the awarding authority, or
- that such works, even though they could be isolated from the execution of the original works concession, are urgently necessary in order to complete the project that is the subject of the concession contract.

### **Article 84**

#### **(exceptions in selecting works concessionaire)**

The exceptions relating to the application of public procurement regulations in selecting a public works contractor (orders for which different rules of ordering apply and which are awarded under international agreement or in compliance with a special procedure of an international organisation, for orders of a confidential nature specified by government regulations and so forth) and which are set out in the act regulating public procurement, shall also apply to the awarding of works concessions.

### **Article 85**

### **(special features in selecting works concessionaire)**

If the subject of a works concession is a commercial public service concession or other activity where in order to protect the public interest, the law expressly prescribes the issuing of an administrative decision, prior to concluding a contract the awarding authority must issue to the selected concessionaire a decision awarding it the right to perform such activity. There shall be no other participants (parties, side participants) in the administrative procedure of issuing decisions.

## **3. RELATIONS WITH THIRD PARTIES**

### **Article 86**

#### **(awarding concession works to third parties)**

(1) In the case of works concessions whose value estimated in compliance with the regulations on public procurement amounts to at least 5,278,000 euros, the awarding authority may require the concessionaire to award at least 30 per cent of the value of concession works to third parties, with the possibility of candidates offering subcontractors a greater participation.

(2) Irrespective of the provision of the preceding paragraph, the awarding authority may require of candidates for the awarding of concessions that they specify in their bids the percentage of works that will be awarded to third parties.

(3) Associated companies and commercial companies or other persons that are united or associated in order to obtain a concession shall not be deemed to be third parties. Associated company shall mean any undertaking over which the concessionaire may directly or indirectly exercise predominant and decisive control, or any undertaking which can demonstrate predominant and decisive control over the concessionaire, or an undertaking which is a concessionaire and over which another undertaking demonstrates predominant and decisive control, deriving from ownership, financial interest or legal rules from which such relationship derives. An undertaking shall be inferred to demonstrate predominant and decisive control where, in relation to another undertaking, directly or indirectly:

- it has a majority ownership share in the capital of another undertaking,
- it controls the majority of votes associated with the shares issued by the other undertaking, or
- it can appoint more than half of the members of the management or supervisory body of the other undertaking.

(4) In applications for concessions candidates must attach a complete list of associated companies. The concessionaire shall be bound to report to the awarding authority on any manner of subsequent change in the relationships between companies associated with it.

(5) In concession contracts the percentage of works awarded to third parties must be precisely set out.

### **Article 87**

#### **(orders from works concessionaires)**

(1) Concessionaires that are public clients or clients in the water, energy, transport and postal sectors must in ordering works act in compliance with the Public Procurement Act and the act regulating public procurement and procurement in the water, energy, transport and postal sectors.

(2) In the case of a works concession in the sense of the first paragraph of Article 79 of this Act, for the awarding of works to third parties whose value estimated in compliance with the regulations on public procurement amounts to at least 5,278,000 euros, a concessionaire that is not a public client must give notice of a public tender in compliance with the Public Procurement Act. Persons referred to in the third paragraph of Article 86 of this Act shall not be deemed to be third parties.

(3) For works orders awarded by a concessionaire that is not a public client, the deadline for receipt of applications for participation shall be at least 37 days from the day of submitting a request for publication of the public tender notice in the official journal of the Republic of Slovenia and/or the European Union, while the deadline for receipt of bids shall be at least 40 days from the day of submitting a request for the publication of a public tender notice in the official journal of the Republic of Slovenia and/or the European Union or a call for bids. With regard to the extension or shortening of deadlines, concessionaires shall be governed by the rules of the Public Procurement Act that apply to public procurement clients (compulsory inspection, use of electronic media and so forth).

(4) The exceptions that apply in the selection of a public procurement works contractor shall also apply for awarding works concessionaire orders.

## **Article 88**

### **(non-obligatory public tender notices)**

Works concessionaires may also give notice of public tenders that are not obligatory under this Act.

## **4. CONCESSION CONTRACT**

### **Article 89**

#### **(conclusion of a concession contract)**

(1) Based on the selection of the works concessionaire the awarding authority and concessionaire shall conclude a concession contract.

(2) In the event of the subject of the works concession being the performance of a commercial public service, conclusion of a concession contract shall be deemed to be the obtaining of a commercial public service concession.

### **Article 90**

#### **(substance of concession relationship)**

(1) With regard to the conclusion of a concession contract and the substance of the concession relationship, the validity of the contract and unilateral changes thereof, the rights and obligations of the public partner and contractor of a public-private partnership and the transfer and termination of the concession relationship, the provisions of the act regulating commercial public services, in that part relating to concession relationships, shall apply mutatis mutandis. In the event of the subject of a works concession being the performance of a commercial public service, the act regulating commercial public services shall be applied directly (for instance unilateral encroachments on the relationship, withdrawal of concession and so forth).

(2) Irrespective of the preceding paragraph, concession contracts shall contain in particular provisions on:

- the form and purpose of the works concession,
- the type, amount and form of joint funds or funds provided through cofinancing or of invested private funds,
- the relationships in connection with possible funds invested by the public partner, and on the manner of refunding or purchasing invested public funds,
- a timetable of the use of public funds,
- the method of supervising the appropriated spending of funds,
- a timetable and method of carrying out investments in structures and facilities and fulfilling other obligations,
- the model of ownership right to structures and facilities as proceeds from Article 80 of this Act,
- the conditions for awarding business to subcontractors,
- changes in the concessionaire company for which it must obtain the consent of the public partner,
- the possibilities of entering into a concession relationship in place of the existing concessionaire (“step in”),
- contractual penalties and other reasons for cancellation, annulment or rescission of the contract and the rights and obligations of contracting parties in such cases.

## **5. SUBSIDIARY APPLICATION OF THE RULES OF A CONCESSION PARTNERSHIP**

### **Article 91**

#### **(subsidiary application of the rules of a concession partnership)**

Unless an individual issue of a works concession is provided otherwise in this section, the selection of a private partner and operation of a public-private partnership shall be governed by the rules regulating concession partnerships.

## **PART V : SERVICE CONCESSIONS**

## **Article 92**

### **(concept of service concessions)**

Where the subject of a concession partnership is the performance of commercial public services or activities provided in a manner and under conditions applicable for commercial public services, or other activities whose performance is in the public interest, or the construction of structures and facilities or individual parts thereof, whose concessionaire has during the period of the relationship the right to their use, operation and exploitation or where the right to use, operate and exploit structures and facilities is combined with payment for executing the works and this does not involve a works concession (hereinafter: services concession), the selection of concessionaire and operation of the concession relationship shall be governed by the act regulating concession partnerships.

## **Article 93**

### **(performing commercial public services)**

Where the subject of a services concession is the performance of commercial public services or activities provided in a manner and under conditions applicable for commercial public services, the selection of concessionaire and operation of the concession relationship shall also be governed by the rules of the act regulating commercial public services.

## **Article 94**

### **(performing other activities in the public interest)**

Where the subject of a services concession is the performance of other provided in the public interest, the selection of concessionaire and operation of the concession relationship shall also be governed *mutatis mutandis* by the rules of the act regulating commercial public services.

## **Article 95**

### **(application *mutatis mutandis* of the rules on works concessions)**

Unless otherwise provided by law, the performance of service concessions shall be governed *mutatis mutandis* by the rules regarding the spreading of risk, exclusion right and the creation, establishing and substance of concession relationships provided in Part IV of this Act.

## **PART VI : SPECIAL FEATURES OF EQUITY PARTNERSHIP**

### **1. FORMS OF EQUITY PARTNERSHIP AND APPLICATION OF LAW**

## **Article 96**

### **(public-private equity partnership)**

A public-private equity partnership (hereinafter: equity partnership) is a relationship established between public and private partners in a manner whereby the state, one or more self-governing local communities or other persons of public law or other public partner awards the exercising of rights and obligations proceeding from public-private partnership to the contractor of a public-private equity partnership (hereinafter: equity partnership contractor):

- by establishing a legal person under the conditions provided by this chapter,
- through the sale of an interest by the public partner in a public company or other entity of public or private law,
- by purchasing an interest in an entity of public or private law, recapitalisation or
- in another manner in comparative terms legally and actually similar and comparable to the aforementioned forms, and through the transfer of the exercising of rights and obligations proceeding from the public-private partnership to such person (for instance performing commercial public services).

## **Article 97**

### **(when equity partnership is not involved)**

Changes (conversion) of the receivables of public partners in the interest of a legal person in the event of forced settlement, bankruptcy, measures taken pursuant to the act regulating the financial operation of undertakings, or other similar procedure where the purpose or consequence may be the termination of the legal person shall not be deemed to be an equity partnership pursuant to this Act.

## **Article 98**

### **(forms of equity partnership)**

Equity partnerships shall be operated in particular in the following ways:

- through the establishment of a legal person founded by the state, one or more self-governing local communities or other persons of public law or other public partner and one or more persons of private law, and through the transfer of the exercising of rights and obligations proceeding from public-private partnership to such legal person (hereinafter: partnership through the establishment of a legal person),
- through the sale of part of the interest of the state, a self-governing local community or other person of public law or other public partner in a public company or other legal person to the holder of special or exclusive rights or public authorisation and the transfer of the exercising or continuation (maintaining) of the exercising of rights and obligations proceeding from public-private partnership to such legal person (hereinafter: partnership through sale of interest) or
- through the purchase of an interest by the public partner in a person of public law or other legal person to the holder of special or exclusive rights or public authorisations and the transfer of the performance of rights and obligations deriving from the public-private partnership (hereinafter: partnership through purchase of interest)

## **Article 99**

### **(application of the rules on works concessions)**

(1) Where the equity partner relationship has the nature of a works concession, public tenders or direct agreements, the selection of equity partnership contractors and the awarding of works to third parties shall be governed by the rules on works concessions provided in Part IV of this Act.

(2) Following the procedure of selecting the private partner referred to in the preceding paragraph, a contract of equity partnership shall be concluded.

## **Article 100**

### **(application of rules where equity partnership has the nature of public procurement)**

(1) Where an equity partner relationship has the nature of public procurement, public tenders or direct agreements and the selection of the equity partnership contractor shall be governed by the regulations on public procurement.

(2) Following the procedure of selecting the private partner referred to in the preceding paragraph, a contract of equity partnership shall be concluded.

## **Article 101**

### **(when the partnership is deemed to have the nature of public procurement)**

(1) An equity partner relationship shall be deemed to have the nature of public procurement where the equity partner or legal person that is the subject of the equity partnership performs one or more activities in which the public partner bears the majority or the entire commercial risk of its performance.

(2) The provisions of Articles 27 and 28 of this Act regarding the demarcation of risk between public procurement and concession partnerships shall apply mutatis mutandis to the assessment of equity partnership and the procedure of selecting public-private partnership.

## **Article 102**

### **(application of provisions in other cases)**

Where an equity partner relationship has the nature of public procurement, the provision of the preceding article shall apply both in the case of a partnership through the establishment of a legal person, a partnership through the sale of interest and a partnership through the purchase of interest, and mutatis mutandis in all other forms of equity partnership.

#### **Article 103**

### **(application of provisions regarding concessions in the event of transfer of special or exclusive rights)**

(1) Where special or exclusive rights are transferred to the contractor of an equity partnership (for instance payment for purchase of an interest is performed by transferring special or exclusive rights to the equity partner), but the partnership does not have the nature of a public procurement relationship, the selection of the equity partner shall be governed mutatis mutandis by the provisions of the act regulating commercial public services, in that part relating to the selection of the concessionaire, and in the event that the subject of the partnership is also the performance of a commercial public service, the acts regulating commercial public services shall be applied directly.

(2) Where a partnership has the nature of a public procurement relationship, irrespective of the preceding paragraph, the selection of equity partner shall be governed by the Public Procurement Act.

## **2. PUBLIC TENDER**

#### **Article 104**

### **(issuing tender notices)**

(1) The public partner shall issue notice of a public tender for the selection of an equity partnership contractor, in addition to a notice in the official journal of Slovenia and on the Internet, in the official journal of the EU or in some other appropriate medium specific to the given subject of the public-private partnership (such as a specialised newspaper).

(2) Publication in the official journal of the EU or in some other appropriate medium specific to the given subject of the public-private partnership as provided in the first paragraph of this article shall not be obligatory where:

- the entire value of (the project of) the equity partnership amounts to less than 5,278,000 euros or
- the interest of the private partner or of all private partners in the legal person (equity partnership contractor) does not exceed a controlling share pursuant to the act regulating mergers and acquisitions.

#### **Article 105**

### **(subsidiarity of application of rules regulating announcements)**

(1) The provision of the preceding article shall apply unless in respect of compulsory announcements this or another act regulating public procurement or works concessions do not provide otherwise. For this reason the notice of a public tender in another appropriate medium specific to the given subject of the public-private partnership instead of in the official journal of the EU shall not be permitted where an equity partnership has the nature of public procurement or a works concession and publication in the official journal of the EU is obligatory.

(2) Where in view of the nature of the public-private partner relationship (for instance a works concession) notice of the tender in the official journal of the EU is obligatory, the public partner may not give notice of the public tender in another appropriate medium specific to the given subject of the public-private partnership (for instance the daily or specialised press) prior to submitting the public tender for publication in the official journal of the EU, and not with a greater amount of information than that contained in the notice in the official journal of the EU, in compliance with Article 82 of this Act.

## **3. ORGANISATIONAL FORMS OF EQUITY PARTNERSHIP ENTITIES**

#### **Article 106**

### **(organisational forms of entities in the case of partnership through establishment of legal person)**

A legal person of an equity partnership referred to in the first indent of Article 98 of this Act (partnership through establishment of legal person) may be established in the form of a capital company or other legal organisational form, for the obligations of which the founders shall not be liable.

#### **Article 107**

##### **(other organisational forms of entities)**

A special act may serve to provide other legal organisational forms of public-private equity partnership (such as a public institute).

#### **Article 108**

##### **(property and membership rights)**

The public partner shall ensure the purpose of operating a public-private partnership through regulatory competences provided by the law and regulations issued on the basis thereof, and also through rights deriving from an interest in the legal person of an equity partnership.

#### **Article 109**

##### **(definition of the term interest)**

The term "interest" in the sense of the preceding article shall apply to interests in a limited liability company, shares in a public limited company and European public limited company, a share of the capital of other legal persons, other capital investments in legal persons and other rights on the basis of which the bearer has the right to participate in the property (capital) and membership (equity, management) rights of the legal person.

#### **Article 110**

##### **(things not subject to legal transaction as investment)**

Things which pursuant to the law are not involved in legal transactions may not be invested as capital in an equity partnership. Any founding instrument adopted in breach of the preceding paragraph shall be without legal effect.

#### **4. SPECIAL FEATURES OF SELECTION IN THE CASE OF PARTNERSHIP THROUGH SALE OF INTEREST**

#### **Article 111**

##### **(application of regulations in the case of partnership through sale of interest)**

In the case of a partnership through the sale of interest, public tenders or direct agreements (sale), selection of equity partnership contractor and legal protection in such procedures, except in cases referred to in Articles 99 and 103 of this Act (public procurement, concessions, works concessions) shall be governed by the regulations on public finances regulating the methods of selling financial property.

#### **Article 112**

##### **(application of procedure through negotiation)**

In addition to the application of methods regulating the sale of financial property, in the regulations on public finances and the procedure of competitive dialogue, in compliance with this Act, the selection of a partner through the sale of interest referred to in the preceding article may also be carried out according to the procedure through negotiation following prior announcement, whereby the provisions of the Public Procurement Act shall be applied *mutatis mutandis*.

#### **5. SPECIAL FEATURES OF SELECTION IN THE CASE OF PARTNERSHIP THROUGH PURCHASE OF INTEREST**

### **Article 113**

#### **(application of regulations in the case of partnership through purchase of interest)**

(1) Where the purchase of an interest signifies the creation of a public-private partner relationship, the selection of partner shall be governed mutatis mutandis by the provisions set out in the case of a public-private partnership through sale of interest (Chapter 4 of this section).

(2) Where the purchase of an interest has the nature of public procurement or concession, the selection of an equity partnership contractor shall be governed by the rules of public procurement or concession partnerships.

(3) In cases not referred to in the first or second paragraphs of this article, the procedure of purchasing an interest shall be carried out pursuant to the regulations on public finances.

## **6. NON-OWNERSHIP INVESTMENTS BY PERSONS OF PRIVATE LAW**

### **Article 114**

#### **(concept of non-ownership investments by persons of private law)**

(1) Persons of private law may invest in the contractor of an equity partnership their own property (real estate and movable property, rights, cash etc.), provided this does not run counter to the law (hereinafter: non-ownership investments by persons of private law).

(2) All investments not set out in Article 109 of this Act may be deemed to be non-ownership investments by persons of private law.

### **Article 115**

#### **(notice of possibility of non-ownership investment)**

The public partner or equity partnership contractor shall publish the possibility of persons of private law making non-ownership investments on the Internet, and in the selection of persons of private law referred to in the first paragraph of the preceding article (hereinafter: investor) they must act in accordance with the principles of transparency and non-discrimination.

### **Article 116**

#### **(investor rights)**

(1) Investors in an equity partnership contractor shall not become shareholders or corporate partners, but shall acquire an investor's interest representing the totality of their property rights provided by this Act and the contract on investments by persons of private law referred to in Article 120 of this Act.

(2) Investors shall have the right to a portion of the profits of the equity partner and the right to a return of their investment or right to an appropriate portion of the remaining property following liquidation or bankruptcy of the equity partnership contractor, in compliance with the law and the contract on investments by persons of private law referred to in Article 120 of this Act.

(3) Investors shall participate in an equity partner's loss such that the value of their investment shall be proportionally reduced relative to the assets invested and the investments of interest holders, unless otherwise provided by contract. If such loss exceeds the value of an investor's investment, the investor shall not be bound to provide additional property. The proportionate part of such loss shall be made up through pertaining profits in the ensuing period.

(4) Where persons of private law invest real estate in the property of an equity partner, such investments shall be governed mutatis mutandis by the provisions of the act regulating commercial companies in that part regulating the investment of real estate in the share capital of commercial companies (valuation).

(5) Participating interests may be disposed of and inherited. A contract referred to in Article 120 of this Act may prohibit disposal, may provide the pre-emptive right of interest holders or other investors and may permit the partial disposal of an investor's interest.

### **Article 117**

#### **(calculation of profit and loss)**

(1) At the end of each business year the contractor of an equity partnership must calculate profit and loss and must account and in compliance with the provisions of the contract pay out to the investor the profit pertaining on the basis of the investment.

(2) Investors shall participate in any losses of an equity partnership contractor. Investors shall not be bound to return received profits owing to later losses and shall not be bound to provide additional funds owing to losses that exceed the value of their investment. Until the investor's contribution is reduced owing to losses, a proportionate part of the annual profit shall be used to cover losses unless agreed otherwise.

#### **Article 118**

##### **(right to information)**

(1) Investors shall have the right to demand from an equity partnership contractor a copy of the annual report and access to the business books (receivables, liabilities, fixed assets etc.) and commercial documentation.

(2) Where an equity partnership contractor does not accommodate the investor's demand referred to in the preceding paragraph, a court may rule upon the latter's request that the contractor should provide the investor with a copy of the annual report and submit business books and commercial documentation.

(3) The rights of an investor referred to in the first and second paragraphs of this article may not be excluded or limited by contract.

#### **Article 119**

##### **(settlement)**

(1) In all cases of termination of an equity partnership, except in the event of bankruptcy, the contractor of an equity partnership must make a settlement with the investor and pay him in cash the assessed value of his interest, unless otherwise provided by contract.

(2) In the event of bankruptcy of an equity partner, the investor shall have the right to an appropriate portion of the remaining property for reimbursement of the value of the investment prior to dividing up the property among interest holders, unless a contract on investments provides the right to an appropriate portion of the remaining property for all investors and interest holders relative to the size of their interest.

#### **Article 120**

##### **(contract on investments by persons of private law)**

(1) The equity partner and persons of private law shall regulate their mutual relations through a contract on investments by persons of private law, where persons of private law invest their property in the property of the equity partner.

(2) A contract referred to in the preceding paragraph shall contain in particular:

1. a definition of the type and extent of property which the person of private law is investing in the equity partner,
2. the amount of the investment,
3. the method of exercising the right to profits,
4. the possibility for terminating the contract (withdrawal of investment from the company) and
5. other components laid down in this chapter.

#### **Article 121**

##### **(right to annulment and return of investment)**

(1) Investors shall have the right to demand the annulment of a contract on investment and the reimbursement of the value of their investment in the event of a change in the activity of the equity partner, a transformation of its status, amendments to the founding instrument, articles of association or statutes in that part where they would tend to significantly affect the interests of the investors, and for other well-grounded reasons.

(2) Investors shall have the right to payment for the assessed value of their interest according to the situation on the day of the request for a return of the investment. The equity partner must pay out such value no later than within three years of the day of the request, with interest added according to the interest rate payable on bank cash sight deposits, where the claims of creditors on the equity partner must be appropriately protected.

## **Article 122**

### **(liability for obligations of persons of private law)**

Through investments by persons referred to in this chapter, persons of private law shall not be liable for the obligations of an equity partner with their property under the terms of the Commercial Companies Act and other regulations.

## **Article 123**

### **(application mutatis mutandis in the case of other forms of public-private partnership)**

The provisions of this chapter on non-ownership investments by persons of private law shall apply mutatis mutandis in the case of other forms of public-private partnership.

## **7. APPLICATION OF REGULATIONS**

### **Article 124**

#### **(application of regulations on commercial public services)**

(1) The definition of relationships, relationships between public-private partnership and public authorisation and multilateral partnership, unless otherwise provided by this or a special act, shall be governed mutatis mutandis by the provisions of the act regulating commercial public services, in that part relating to concession relationships.

(2) In the event that the subject of partnership includes the performance of commercial public services, the act regulating commercial public services shall be applied directly for issues referred to in the preceding paragraph.

### **Article 125**

#### **(other forms of equity partnership)**

The rules governing the selection of an equity partner in the case of a partnership through the establishment of a legal person, shall also apply mutatis mutandis in other cases of equity partnership not expressly regulated by Article 98 of this Act.

## **8. EQUITY PARTNERSHIP CONTRACT**

### **Article 126**

#### **(conclusion of equity partnership contract)**

(1) Based on the selection of the equity partnership contractor, the public partner and selected equity partnership contractor shall conclude a contract on equity partnership.

(2) In the event of the subject of the public-private partnership being the performance of a commercial public service, conclusion of an equity partnership contract shall be deemed to be the obtaining of a commercial public service concession.

### **Article 127**

#### **(content of contract)**

(1) With regard to the conclusion of an equity partnership contract and the substance of the equity partnership, the validity of the contract and unilateral changes thereof, the rights and obligations of the public partner and equity partnership contractor (for instance orders by works concessionaires) and the transfer and termination of the public-private partnership, the provisions of the act regulating commercial public services, in that part relating to concession relationships, shall apply mutatis mutandis. In the event of the subject of a partnership including the performance of a commercial public service, the act regulating commercial public services shall be applied directly (for instance unilateral encroachments on the relationship, withdrawal of concession and so forth).

(2) Irrespective of the first paragraph, equity partnership contracts shall contain in particular provisions on:

- the form and purpose of the equity partnership,
- the type, amount and form of joint funds or funds provided through cofinancing or of invested private funds,
- the relationships in connection with funds invested by the public partner, and on the manner of refunding or purchasing invested public funds,
- a timetable of the use of public funds,
- the method of supervising the appropriated spending of funds,
- a timetable and method of carrying out possible investments and fulfilling other obligations,
- the model of ownership right to structures and facilities as proceeds from Article 80 of this Act,
- the conditions for awarding business to subcontractors,
- changes in the equity partnership company for which it must obtain the consent of the public partner,
- contractual penalties and other reasons for cancellation, annulment or rescission of the contract and the rights and obligations of contracting parties in such cases,
- exclusion of the private partner or withdrawal of the public partner,
- the possibilities of entering into an equity partnership (Article 130, “step in”), and
- arrangement of the equity relationship in compliance with the following article.

#### **Article 128**

##### **(exclusion right)**

Irrespective of the agreed model of ownership right, in the event of bankruptcy or other manner of termination of the contractor of an equity partnership, the public partner shall have the right in respect of buildings and facilities, upon payment of the appropriate portion of the value of excluded property into the bankruptcy estate, to exercise the right of exclusion. In such cases the provisions of Article 81 of this Act shall apply *mutatis mutandis*.

#### **Article 129**

##### **(arrangement of equity relationship)**

Unless adequately provided by the statutes, articles of association or other founding instrument of the equity partner, a contract on equity partnership shall also lay down the manner of operating the equity partnership contractor, its internal organisation, composition and the tasks of its bodies, the method of decision-making and the relationships between interest holders and private investors referred to in Article 120 of this Act.

#### **Article 130**

##### **(entry into equity partner)**

The entry into equity partner (changing a private partner into an equity partnership contractor) shall be governed *mutatis mutandis* by the same rules that apply to the selection of the equity partner (public tender etc.), unless with the prior consent of the holder of a private interest the public partner decides that the rules referred to in the following article may apply for such transfer.

#### **Article 131**

##### **(transfer of equity partner relationship)**

(1) The transfer of an equity partner relationship (transfer to new public-private partnership contractor) shall be governed *mutatis mutandis* by the rules, conditions and procedure provided for the transfer of concessions by the act regulating commercial public services. Irrespective of the provisions of other acts, prior to the transfer of relationship to a new contractor, the permission or consent of the public partner must be obtained, and other public partners must also obtain the consent of the founder.

(2) Legal successors or third persons that take over an equity partnership, shall fully assume all the rights and obligations of the assignor, in particular obligations related to the uninterrupted performance of the public-private partnership and the provision of goods and services to users of activities that are the subject of the partnership.

## **9. TERMINATION OF EQUITY PARTNERSHIP**

## **Article 132**

### **(application of regulations)**

(1) Termination of an equity partnership shall be governed mutatis mutandis by the provisions of the act regulating commercial public services, in that part relating to the termination of concession relationships. In the event that the subject of partnership includes the performance of commercial public services, the act regulating commercial public services shall be applied directly.

(2) The provisions of the first paragraph of this article shall also apply in cases where an equity partnership has the nature of public procurement or concession (works).

## **10. TERMINATION OF EQUITY PARTNERSHIP CONTRACTOR**

### **Article 133**

#### **(legal and commercial capacity)**

(1) Termination of an equity partner relationship shall not affect the legal and commercial capacity of the equity partnership contractor.

(2) Irrespective of the preceding paragraph, in this case the public partner may withdraw from the legal person (equity partner) or exclude the private partner under conditions provided by law and the founding instrument.

### **Article 134**

#### **(conditions for withdrawal)**

In the event of premature termination of an equity partner relationship for reasons on the side of the equity partnership contractor, the conditions shall be deemed to have been fulfilled for the withdrawal of the public partner from the legal person (equity partner).

## **PART VII : CONTROL**

### **Article 135**

#### **(control over the performance of activities)**

(1) The public partner shall have the right and obligation to control the implementation of a contract on public-private partnership. The public partner shall exercise control over the operation of a public-private partnership in compliance with the agreed plan of control and quality assurance.

(2) Irrespective of the first paragraph, the public partner may request a written report on the operations of the public-private partnership contractor relating to the fulfilment of obligations pursuant to the contract on public-private partnership. Reports shall contain information on:

- the fulfilment of obligations held by the public-private partnership contractor and relating to the fulfilment of obligations pursuant to the public-private partnership contract,
- liabilities, receivables and other property of the public-private partnership contractor,
- complaints from users of the public-private partnership services (record by date and content) and on how they were dealt with,
- the awarding of business to subcontractors and changes in the public-private partnership contractor company,
- damage events (record by date, content, amount and possible amount of damages payments), changed conditions for carrying out the public-private partnership contract,
- insurance claims, and
- all other circumstances that might directly or indirectly affect the execution of the public-private partnership contract.

(3) Unless provided otherwise by the contract on public-private partnership, reports referred to in the second paragraph of this article shall be drawn up annually.

(4) In carrying out an inventory referred to in the second indent of the second paragraph, the public-private partnership contractor must call upon the public partner to ensure the cooperation of its representative in this

procedure. The representative referred to in the preceding sentence must inform the management of the public partner without delay of the progress of the inventory and its findings.

(5) In addition to reports referred to in the second paragraph of this article, the public partner shall have the right to view the business books and annual financial statements which the public-private partnership contractor must draw up in accordance with the law.

#### **Article 136**

##### **(supervisory measures)**

(1) In addition to supervision in compliance with the regulations on inspections and in addition to the rights of the public partner referred to in Articles 137 and 138 of this Act (awarding to subcontractors and changes in the company), the competent body of the public partner shall conduct supervision of the fulfilment of tasks and obligations pursuant to the contract on public-private partnership.

(2) Within the framework of such supervision, authorised representatives of the competent body of the public partner may:

- inspect structures and facilities of the public-private partnership;
- inspect the documentation of the public-private partnership contractor;
- determine the quality of performance of the subject of the public-private partnership.

(3) Where the competent body of the public partner determines that the public-private partnership contractor is not properly fulfilling the obligations proceeding from the public-private partner relationship, such body may, if so provided by law or a regulation issued on the basis thereof (such as the concession instrument of a commercial public service), require the contractor through an administrative decision to fulfil these obligations or to act in some other way appropriate to the public-private partner relationship. In the event of it not being possible to require the fulfilment of obligations unilaterally through an administrative decision referred to in the preceding paragraph, fulfilment of obligations by the private partner shall be governed by the provisions of other regulations and the public-private partnership contract.

(4) An appeal shall not stay execution of the decision referred to in the preceding paragraph of this article.

#### **Article 137**

##### **(prior approval for particular business activities)**

(1) Public-private partnership contracts shall lay down the conditions for awarding business to subcontractors.

(2) Where necessary in view of the nature, scope and subject of the public-private partnership, the public-private partnership contract may also lay down business which the public-private partnership contractor may undertake only on the basis of prior consent from the public partner.

(3) The public partner may refuse the consent referred to in the second paragraph of this article exclusively if such business would run counter to the public-private partnership contract, the public order of Slovenia or would threaten the unimpeded operation of the public-private partner relationship.

#### **Article 138**

##### **(changes to public-private partnership contractor company)**

(1) A public-private partnership contractor must inform the public partner of changes concerning the articles of association of the company, of reorganisation of the status of the private partner's company and its members, and of major changes to the structure of the company's membership, to the management of the company and its supervision.

(2) The public partner and public-private partnership contractor may agree in the public-private partnership contract that prior to any decisions on all or individual changes referred to in the first paragraph of this article the public-private partnership contractor must obtain the consent of the public partner. The public partner may refuse its consent only where it has reasonable grounds to suspect that the proposed change might threaten the fulfilment of obligations under the public-private partnership contract.

### **PART VIII : LAW APPLICABLE FOR THE RESOLVING OF DISPUTES**

#### **Article 139**

##### **(law applicable for public-private partner relationships)**

Irrespective of the affiliation of the public-private partnership contractor, Slovenian law shall be applicable for the relationship between the public partner and public-private partnership contractor and for relations with users.

#### **Article 140**

##### **(resolving of disputes)**

(1) The parties to a public-private partnership may agree that disputes directly related to their relationship and which are not within the exclusive jurisdiction of a court in Slovenia, may be resolved through an agreed arbitration service.

(2) Relations between public-private partnership contractors and users shall lie within the exclusive jurisdiction of the locally competent court in Slovenia (prohibition on prorogation of foreign court or arbitration).

### **PART IX : TRANSITIONAL AND FINAL PROVISIONS**

#### **Article 141**

##### **(transformation of existing public companies)**

(1) Existing public companies that perform commercial public services may be transformed into commercial companies in compliance with the act regulating commercial companies, or they may maintain their status of public company in compliance with the law. The type of transformation shall be determined by the founder no later than within three years of the entry into force of this Act.

(2) Where there are investments by persons of private law in existing public companies, irrespective of the first paragraph, such public companies shall at the latest within one year of the entry into force of this Act:

- be transformed into commercial companies in compliance with the act regulating commercial companies, or
- maintain their status of public company in compliance with the law, if the investments by persons of private law are transferred into the ownership of the Republic of Slovenia, if the public company performs a national commercial public service, or into the ownership of a self-governing local community, if the public company performs a self-governing local public service or if the investments by persons of private law in such public companies are terminated in some other way (such as fund of proprietary shares).

(3) The transfer or termination of a business interest referred to in the second paragraph of this article shall be carried out in compliance with the provisions of the act regulating commercial companies.

#### **Article 142**

##### **(awarding concessions to public companies that are transformed into commercial companies)**

(1) Public companies referred to in Article 141 which are transformed into commercial companies must, for the performance of commercial public services, obtain a concession without public tender, in compliance with the second paragraph, or a concession on the basis of a public tender in compliance with the third paragraph of this article. The awarding of concessions shall be governed by the provisions of the act regulating commercial public services, unless otherwise provided by this Act.

(2) No later than within one year of the entry of transformation in the court register, the founder shall award concessions without public tender to the commercial companies that were created out of the public companies (Article 141), provided persons of private law have no investments in such companies.

(3) In the event of existing public companies referred to in Article 141 of this Act being transformed into commercial companies, where the conditions referred to in the preceding paragraph have not been fulfilled, the founder must no later than within one year of the entry of transformation in the court register issue a public tender for the selection of a concessionaire.

(4) Up until the conclusion of a concession contract, but for a maximum of one year or three years where a concession contract is not concluded for reasons on the side of the founder, commercial companies referred to in Article 141 of this Act shall perform commercial public services in the manner they performed such services up until transformation as public companies.

(5) In determining the duration of a concession pursuant to this article, the founder must take into account the nature of the public service and the scope of its performance, the investments to date in performance of the public service and the level of their depreciation, the possible need for new investment and other circumstances. In deciding on the duration of the concession the founder must determine the minimum necessary time for the duration of the concession.

### **Article 143**

#### **(awarding concessions to commercial companies created from public companies)**

(1) Awarding authorities must also issue public tenders for the selection of concessionaires within one year of the entry into force of this Act in the event that commercial public services are performed by those commercial companies created from public companies or public undertakings on the basis of earlier regulations (Commercial Public Services Act, Ownership Transformation of Companies Act etc.) or established as commercial companies or other legal subjects (such as public institute):

- if concessions for performing commercial public services were awarded to them without public tender, and there was no basis for such direct awarding in the regulation on the manner of performing the commercial public service upon awarding (for instance a provision in the decision whereby the concession is awarded without public tender), or
- if the conditions for awarding concessions without public tender in compliance with the second paragraph of Article 142 were not fulfilled (non-existence of investments by persons of private law).

(2) The provision of the first paragraph of this article may also apply mutatis mutandis in cases where upon entry into force of the act, the commercial public service is performed in a manner not envisaged by the act (for instance temporary contracts, contracts on the operation of infrastructure, contracts on the operation of municipal services and so forth).

(3) Up until the conclusion of a concession contract, but for a maximum of one year or three years where a concession contract is not concluded for reasons on the side of the founder, the existing contractor may perform commercial public services in the manner it performed such services up until the entry into force of this Act.

### **Article 144**

#### **(transformation of public institutes and public commercial institutes)**

The provisions of this Act relating to the transformation of public companies and the awarding of concessions to public companies that are transformed into commercial companies, shall also apply mutatis mutandis to the transformation of public commercial institutes and public institutes.

### **Article 145**

#### **(transfer from share capital)**

(1) Where the material investments in existing companies have included infrastructure assets, which in compliance with the law are not the subject of legal transactions, they shall be deducted from the capital and transferred into the ownership of the Republic of Slovenia, if the public company or other legal person performs a national commercial public service, or into the ownership of a self-governing local community, if the public company or other legal person performs a self-governing local public service.

(2) The transfer of things referred to in the first paragraph of this article shall be carried out on the basis of a division balance through the reduction of capital, in compliance with the provisions of the act regulating commercial companies.

(3) The transfer referred to in this article shall be performed at the latest upon the conclusion of a contract on public-private partnership.

### **Article 146**

#### **(transformation of the organisational forms of equity partnership legal persons)**

Other legal organisational forms of legal persons of equity partnerships (for instance an unlimited liability company, commandite company and so forth), which are public-private partnership contractors and are not set out in Article 106 of this Act, shall be transformed into one of the legal organisational forms of legal persons of private law referred to in Article 106 of this Act no later than by the end of the next business and calendar year following the start-up of the equity partnership, otherwise the conditions shall be fulfilled for rescission (unilateral withdrawal) of the public-private partner relationship for reasons on the side of the private partner.

### **Article 147**

#### **(public finance restriction)**

Where the operation of a public-private partnership would claim payment from public finances, the public partner may conclude a public-private partnership contract provided the funds envisaged for this exist in the Slovenian national budget, the budget of a self-governing local community or in the financial plan.

#### **Article 148**

##### **(application of act for public-private partnership projects in other areas)**

Up until the regulation of public-private partnership in individual areas, the procedure of selecting public-private partners and operation of the relationship shall also apply mutatis mutandis to the procedures of private investment in public projects and/or public cofinancing of private projects that are in the public interest in areas in which forms of public-private partnership (such as concessions) have not been regulated through a special act.

#### **Article 149**

##### **(decision on selecting a concessionaire)**

Irrespective of the provisions of municipal decisions, municipal administrations shall issue decisions on the selection of concessionaires in local communities, and mayors shall decide in appeals against decisions made by municipal administrations.

#### **Article 150**

##### **(implementing regulations)**

(1) Within thirty days of the entry into force of this Act, the Slovenian Government must issue the regulation referred to in Article 22.

(2) Upon the entry into force of this Act, the minister competent for finance must issue the regulation referred to in the fourth paragraph of Article 8 of this Act.

(3) Within thirty days of the entry into force of this Act, the minister competent for finance must issue the regulation referred to in Article 20 of this Act.

#### **Article 151**

##### **(formation of organisational unit within ministerial composition)**

The minister competent for finance shall create special organisational units within the composition of the Ministry referred to in Article 20 of this Act within three months of the entry into force of this Act.

#### **Article 152**

##### **(completion of existing procedures)**

Procedures already started which have in compliance with this Act the nature of one of the forms of public-private partnership, may be completed under the existing regulations.

#### **Article 153**

##### **(cessation of validity)**

On the day this Act enters into force, the following shall cease to be valid:

- the wording “or indefinite” in Article 27 of the Institutes Act (Official Gazette of the Republic of Slovenia/I Nos 12/91 and 17/91 – ZUDE and Official Gazette of the Republic of Slovenia, Nos55/92 – ZVDK, 13/93, 66/93, 45/94 – Constitutional Court Decision, 8/96, 31/00 – ZP-L and 36/00 – ZPDZC),
- the wording “to persons of private law” in the fourth indent of the first paragraph of Article 6, the fifth indent of the first paragraph of Article 6, the wording in Article 25, which reads: or shall be established as an undertaking through investments of private capital, provided this does not run counter to the public interest for which it was established”, and Articles 54 to 58 of the Commercial Public Companies Act (Official Gazette of the Republic of Slovenia Nos32/93 and 30/98),

- Article 80.j of the Public Finances Act (Official Gazette of the Republic of Slovenia, Nos79/99, 124/00, 79/01, 30/02, 56/02 – ZJU and 110/02 – ZDT-B), and
- Article 35 and the third paragraph of Article 36 of the Commercial Public Services Act, insofar as this involves public-private partner relationships,
- the fifth paragraph of Article 20, the 11<sup>th</sup> indent of Article 21 and Articles 39 to 70 of the Act Promoting Harmonised Regional Development (Official Gazette of the Republic of Slovenia, No93/05).

**Article 154**

**(entry into force)**

This Act shall enter into force ninety days after its publication in the Official Gazette of the Republic of Slovenia.

No 310-01/06-8/1  
Ljubljana, 23 November 2006  
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President of the National Assembly  
of the Republic of Slovenia  
France Cukjati, MD