

LAW OF THE REPUBLIC OF AZERBAIJAN

On Public-private partnership

This Law defines the organizational, legal, and economic foundations for the implementation of activities in the scope of public-private partnership in accordance with paragraphs 11, 12 and 13 of Part I of Article 94 of the Constitution of the Republic of Azerbaijan.

Chapter 1

GENERAL PROVISIONS

Article 1. Definitions

1.1. The main terms used for the purposes of this Law shall have the following meanings:

1.1.1. **public-private partnership** — joint activity between a public partner and a private partner, based on a contract concluded in accordance with this Law, about the provision of public services, as well as the establishment and management of infrastructure associated with the provision of these services;

1.1.2. **public-private partnership project** — a set of organizational, legal, scientific, technological, and economic measures directed towards the implementation of a public-private partnership, with an aggregate cost surpassing the sum stipulated by the body (institution) designated by the relevant executive authority;

1.1.3. **rules of public-private partnership** — a document established by the body (institution) designated by the relevant executive authority and regulating the implementation of public-private partnership;

1.1.4. **bidder** — a natural person or legal entity participating in a competition or direct negotiations for the implementation of a public-private partnership project or advancing a private initiative;

1.1.5. **public partner** — state bodies (institutions), as well as municipalities or municipal enterprises, which have entered into a public-private partnership contract with a private partner;

1.1.6. **private partner** — a natural person or legal entity that has entered into a public-private partnership contract with a public partner, or selected for the implementation of a public-private partnership project through a competition or direct negotiations;

1.1.7. **public services** — goods produced, services rendered, and work performed by state bodies (institutions), as well as the management of state property, including legal entities in which the state holds a share;

1.1.8. **infrastructure** — tangible and intangible assets provided for the provision of public services;

1.1.9. **strategic documents** — state programs, strategies, concepts, and national action plans embodying projects of public-private partnership;

1.1.10. **competent authority** — a body (institution) designated by the relevant executive authority;

1.1.11. **project company** — a legal entity established by a private partner to carry out the implementation of a public-private partnership project.

1.2. Other terms used in this Law express the meanings defined by the normative legal acts of the Republic of Azerbaijan.

Article 2. Legislation on public-private partnership

The legislation of the Republic of Azerbaijan on public-private partnership consists of the Constitution of the Republic of Azerbaijan, this Law, the Civil Code of the Republic of Azerbaijan, the laws of the Republic of Azerbaijan 'On Investment activity', 'On Licenses and permits', and other normative legal acts of the Republic of Azerbaijan regulating relations in this field, as well as international agreements to which the Republic of Azerbaijan is a party.

Article 3. Scope of application of this Law

3.1. This Law shall regulate relations arising among the state, the competent authority, the public partner, and the private partner, as well as the Bidder, in the implementation of public-private partnership projects pertaining to the provision of public services within the territory of the Republic of Azerbaijan, including the establishment and management of infrastructure for the provision of these services, having regard to the provisions of other laws of the Republic of Azerbaijan regulating relations in the scope of public-private partnership.

3.2. The laws of the Republic of Azerbaijan 'On Public procurement' and 'On Privatization of state property' shall not apply to relations regulated by this Law.

3.3. The provisions of this Law shall not apply to activities in the oil and gas sector in accordance with the law of the Republic of Azerbaijan 'On Subsoil'.

3.4. Public-private partnership related to the utilization of renewable energy sources in electricity generation shall be conducted in accordance with the law of the Republic of Azerbaijan 'On the use of renewable energy sources in electricity generation'.

3.5. Relations in the field of public-private partnership in the Alat Free Economic Zone shall be regulated in accordance with the requirements of the law of the Republic of Azerbaijan 'On the Alat free economic zone'.

Article 4. Basic principles of public-private partnership

4.1. Public-private partnership shall be implemented in accordance with the following principles:

- 4.1.1. rule of law;
- 4.1.2. protection of free competition;
- 4.1.3. enhancement of transparency and efficiency;
- 4.1.4. equality of rights for bidders;
- 4.1.5. protection of the balance of interests and risks among the parties.

Article 5. State participation in public-private partnership projects

5.1. Public-private partnership projects shall be funded from the sources not prohibited by the laws of the Republic of Azerbaijan.

5.2. The forms and methods of state participation in a public-private partnership project shall be ascertained by the competent authority based on the technical-economic justification of the public-private partnership project and shall be stipulated in the terms of references of the competition.

5.3. The forms and methods of state participation in a public-private partnership project (except in cases where there are economic and/or financial justifications based on the consent of the competent authority) cannot be changed after the conclusion of the public-private partnership contract.

5.4. Considering the provisions of Article 5.2 of this Law, the upper limit of state liability pertaining to public-private partnership shall be ascertained by the competent authority for each project.

Chapter 2

REGULATION OF PUBLIC-PRIVATE PARTNERSHIP

Article 6. State policy in the field of public-private partnership

6.1. The objectives of the state policy in the field of public-private partnership are as follows:

- 6.1.1. enhancing the efficiency of public resources utilization;
- 6.1.2. improving the efficiency and quality of public services, and increasing their accessibility;
- 6.1.3. stimulating sustainable development in various sectors of the economy;
- 6.1.4. increasing the volumes of private investments attracted to specific various of the economy, including direct foreign investments;
- 6.1.5. establishing and managing socio-economic and business-oriented infrastructure;
- 6.1.6. creating new job opportunities, as well as ensuring balanced opportunities for regions;
- 6.1.7. enhancing the export of competitive products;
- 6.1.8. enhancing efficiency and transparency in the economy.

Article 7. Competent authority

7.1. The competent authority in the field of public-private partnership shall be determined by the body (institution) approved by the relevant executive authority.

7.2. The competent authority shall:

7.2.1. take part in the formulation and implementation of state policy in the field of public-private partnership;

7.2.2. Prepares draft competition documents and contracts or the terms of reference of the contract for the implementation of a public-private partnership project;

7.2.3. organize a competition or direct negotiations to determine the private partner;

7.2.4. ensure the evaluation of project proposals for public-private partnership and the establishment of the information database, as contained in Article 35.1 of this Law;

7.2.5. organize the preparation and coordination of terms of reference with the public partner for the project, the initiation of the competition for public-private partnership project or the conclusion of a contract through direct negotiations, as well as arranging amendments to the contract;

7.2.6. specify the requirements for competition participants in each project;

7.2.7. submit a list of projects, as contained by Article 8.1 of this Law, for approval to the body (institution) designated by the relevant executive authority;

7.2.8. determine the period for reviewing project proposals for the competition and selecting the successful bidder;

7.2.9. establish working groups, operating in accordance with the rules of public-private partnership, with the participation of authorized representatives of the relevant state bodies (institutions) for each project submitted to the public-private partnership competition;

7.2.10. conduct monitoring of the implementation of the public-private partnership project in accordance with Article 36 of this Law, and submit a report on the findings to the body (institution) designated by the relevant executive authority;

7.2.11. based on the findings of the monitoring conducted, in accordance with Article 36 of this Law, submit proposals to the body (institution) designated by the relevant executive authority for the evaluation of the effectiveness of public resources utilization.

Chapter 3

PUBLIC-PRIVATE PARTNERSHIP PROJECTS, THE PROCEDURE FOR THEIR SELECTION, AND REQUIREMENTS FOR BIDDERS

Article 8. Public-private partnership project

8.1. The competent authority shall prepare a list of public-private partnership projects based on strategic documents in force and, after approval by the body

(institution) designated by the relevant executive authority, annually place it in the information database, as envisaged by Article 35.1 of this Law, and on its official website, as well as publish it through mass media.

8.2. In cases where the implementation of a public-private partnership project falls under the jurisdiction of more than one public partner, the competent authority shall determine the public partner or render a decision for their joint implementation of the public-private partnership project.

8.3. Public-private partnership projects, envisaged in Article 9.1 of this Law, shall determine in accordance with the following criteria:

8.3.1. significance of the project;

8.3.2. economic efficiency of the project;

8.3.3. financial risks that may arise during the project's implementation, and the allocation of these risks among the parties.

8.4. The maximum project implementation timeline for a public-private partnership shall not exceed 49 (forty-nine) years. This timeline shall be determined by the competent authority, taking into consideration the following factors:

8.4.1. the useful life of the infrastructure to be created as a result of the public-private partnership;

8.4.2. form and volume of investment by the private partner, as well as the period, terms, and project profitability of the return on invested capital.

8.5. Public-private partnership projects can also be submitted by bidders in accordance with Article 10 of this Law.

Article 9. Project selection for public-private partnership

9.1. Upon publication of the list as contained in Article 8.1 of this Law by the competent authority on its official website and in the information database, as contained in Article 35.1 of this Law, or through mass media, persons interested in participating in the implementation of project have the right to notify the competent authority of their intention in accordance with the rules of public-private partnership.

9.2. The competent authority shall prepare the public-private partnership project for the competition in accordance with Article 12 of this Law, relying on the intentions of persons wishing to participate in the project implementation, or at its own initiative, in accordance with the rules envisaged in Article 24 of this Law.

Article 10. Private initiative by the bidder

10.1. The bidder shall have the authority to submit a private initiative beyond the list, contained in Article 8.1 of this Law.

10.2. The competent authority shall evaluate the bidder's private initiative for conformity with the criteria, as provided by Article 8.3 of this Law.

10.3. Within 60 (sixty) days, the competent authority shall decide on the acceptance of the bidder's private initiative to proceed to the next stage, acceptance to proceed to the next stage with reservations (or amendments), or rejection if it does

not meet the requirements established by this Law, and shall promptly notify the bidder thereof within 2 (two) working days.

10.4. Upon acceptance of the bidder's private initiative to proceed to the next stage, the competent authority shall, within 10 (ten) days, post a brief summary of the aforementioned private initiative on its official website and in the information database, provided by Article 35.1 of this Law, or publish it through mass media.

10.5. If the bidder's private initiative shall be deemed accepted to proceed to the next stage with reservations (amendments), negotiations pertaining to these reservations (amendments) shall be conducted between the competent authority and the bidder, in accordance with Article 10.3 of this Law, within 30 (thirty) days from the date of the information was sent. When reaching an agreement between the competent authority and the bidder regarding the reservations (amendments), appropriate measures shall be undertaken in accordance with Article 10.6 of this Law.

10.6. Within 60 (sixty) days, after the competent authority publishes a brief summary of the proposal submitted under private initiative, interested parties may express their intention to participate as a private partner in the implementation of the aforementioned public-private partnership project by contacting the competent authority. In the event of notification to the competent authority of such intention by no less than two other persons, the competent authority shall prepare the public-private partnership project for the competition, in accordance with Article 12 of this Law.

10.7. If the intention to participate in the implementation of the public-private partnership project is not declared by no less than two other parties, in accordance with Article 10.6 of this Law, the competent authority shall, without conducting a competition, organize the conclusion of a contract with a private partner by the public partner within 45 (forty-five) days, in accordance with Article 24 of this Law.

10.8. In cases where the bidder declines to participate in the competition after the submission of the proposal under private initiative, or fails to win the competition, the competent authority must reimburse the expenses incurred by the bidder for the preparation of said documents and acquisition of information, if it utilizes the documents and information provided by the bidder who submitted the private initiative. In this regard, as part of the competition terms and conditions, the competent authority shall specify the reimbursement of the aforementioned expenses to the bidder who submitted the private initiative but declined to participate in or did not win the competition, to be reimbursed by the successful bidder.

Article 11. Requirements for bidders

11.1. The requirements for bidders to participate in the implementation of a public-private partnership project shall be established by the rules of public-private partnership, considering the following:

11.1.1. The bidder shall have experience in the relevant field of activity or in the execution of similar projects in their implementation;

11.1.2. The bidder shall possess financial resources for the implementation of the public-private partnership project and/or the ability to draw these financial resources.

11.1.3. The bidder shall have tangible and/or intangible assets or the ability to draw these assets;

11.1.4. The bidder shall possess managerial capabilities, knowledge, innovations, and technologies, or the ability to develop or involve them;

11.1.5. There shall be no cases wherein a natural person or legal entity, inclusive of its founder, participant, beneficial owner, legal representative, or members of executive bodies, shall be subjected to criminal liability for acts of corruption, fraud, acquisition of property obtained through illicit means, and financing of terrorism, nor shall criminal legal measures be applied against them;

11.1.6. There shall be no international sanctions upon a natural person or legal entity, including its founder, participant, beneficial owner, legal representative, or members of executive bodies, nor shall there be any restrictions curtailing or prohibiting the participation of said natural person or legal entity in a public-private partnership project within the country of its citizenship or residency;

11.1.7. There shall be no restrictions or prohibitions imposed by a legally binding court decision upon a natural person or legal entity, including its founder, participant, beneficial owner, legal representative, or members of executive bodies, for the implementation of activities envisaged by the public-private partnership project;

11.1.8. There shall be no bankruptcy proceedings against the bidder, and in the case of a legal entity, also no liquidation proceedings shall occur.

11.2. In consideration of the international commitments of the Republic of Azerbaijan or concerns regarding state security, certain foreign bidders or those from specific countries (including countries with which the Republic of Azerbaijan does not have diplomatic relations) may be restricted from participating in the competition process, submitting proposals under the private initiative, or engaging in direct negotiations pertinent to a public-private partnership project. The competent authority must explicitly delineate such restrictions within the competition's terms of reference and in the announcement about the competition.

11.3. Taking into account the provisions outlined in Articles 11.1 and 11.2 of this Law, the requirements pertaining to the private partner, depending on the objective, structure, and characteristics of the public-private partnership project, shall be ascertained by the competent authority in accordance with the rules of public-private partnership during the development stage of the terms of reference of the competition.

Chapter 4

COMPETITION FOR PUBLIC-PRIVATE PARTNERSHIP

Article 12. Preparation of a public-private partnership project for competition

12.1. The stages of preparation of public-private partnership projects for competition by the competent authority shall be as follows:

12.1.1. preparation and submission to the competent authority by the public partner of a comprehensive project detailed technical-economic justification;

- 12.1.2. drafting of competition's terms of reference;
 - 12.1.3. designation of the public partner concerning the bidder's private initiative (if required);
 - 12.1.4. preparing a draft of a public-private partnership contract or key terms of the contract.
- 12.2. The comprehensive detailed technical-economic justification of the public-private partnership project must encompass the following:
- 12.2.1. comprehensive description of the public-private partnership project;
 - 12.2.2. document validating the assessment of environmental impact, in accordance with the Law of the Republic of Azerbaijan 'On Environmental Impact Assessment', accordingly when the public-private partnership project relates to activities envisaged in the Annex the Law;
 - 12.2.3. information and documents required in business customs in the event of involving foreign investors and creditors;
 - 12.2.4. risks related to the public-private partnership project, their assessment, and distribution among the involved parties;
 - 12.2.5. determination of the support and guarantees to be provided by the State.
- 12.3. After completion of the activities outlined in Articles 12.1.1 – 12.1.4 of this Law, the competent authority shall announce the public-private partnership project for a competition.

Article 13. Stages of the public-private partnership competition process

- 13.1. The competition related to public-private partnership shall be conducted openly and shall comprise of the following stages:
- 13.1.1. announcement of the competition;
 - 13.1.2. submission of applications by the bidders to participate in the competition;
 - 13.1.3. evaluation of bidders' qualification compliance, submitted by those who have applied for participation in the competition, in accordance with Article 16.1 of this Law;
 - 13.1.4. sending the competition's terms of reference to the bidders that meet qualification compliance, and sending written notification to the applicants who does not meet the qualification compliance;
 - 13.1.5. evaluation of project proposals submitted by bidders;
 - 13.1.6. selection of the successful bidder, in addition to bidders holding second and third places.
- 13.2. Each participant in the competition shall submit no more than one project proposal for a given competition. A competition participant are permitted to amend their project proposals at any time before the designated submission deadline.

Article 14. Announcement of the competition

- 14.1. The announcement of regarding the conduct the competition shall be posted within the prescribed timeframe, depending on the project's characteristics, by

the competent authority on its official website, as well as published through the mass media.

14.2. Information regarding the public-private partnership project shall be posted on the official websites of both the competent authority and the public partner, as well as in the information database, as envisaged by Article 35.1 of this Law, and shall include the following:

14.2.1. brief description of the project and the place of its implementation;

14.2.2. state support and guarantees for the project (if any);

14.2.3. a concise overview of the competition's terms of reference.

14.3. The announcement envisaged by Article 14.1 of this Law, must specify the requirements, as envisaged by Article 11 of this Law, and the deadline for the submission of applications for participation in the competition.

Article 15. Participation of bidders in the competition

15.1. Persons willing to participate in the implementation of a project, provided by Article 9 of this Law, along with bidders who have submitted private initiatives, in accordance with Article 10 of this Law, as well as other persons, shall apply to participate in the competition, conducted in accordance with Article 12 of this Law.

15.2. Applications must be submitted to the competent authority within the stipulated timeframe specified in the competition announcement.

15.3. Supplementary documents to be appended by the bidders to the applications shall be determined by the rules of public-private partnership.

15.4. Several bidders in the public-private partnership project may participate by combining their financial, organizational, human resources, as well as material-technical base and other necessary resources for the implementation of the public-private partnership project on the basis of a contract.

15.5. Bidders must submit the contract provided by Article 15.4 of this Law to the competent authority. The contract must delineate the duties of each participant in the implementation of the public-private partnership project, the allocation of responsibilities among participants, and the designation of the main participant authorized to represent them.

Article 16. Evaluation of bidders qualification compliance in the competition

16.1. The qualification criteria of the bidders who have submitted application to participate in the competition, in accordance with Article 15 of this Law, shall be evaluated by the competent authority in accordance with the requirements of Article 11 of this Law while protecting the bidders' intellectual property and commercial secrets.

16.2. No additional criteria, requirements, or procedures shall be considered, except those provided for in Article 11 of this Law pertaining to the evaluation of bidders' qualification compliance.

Article 17. Competition's terms of references

17.1. The competition's terms of references shall comprise the following information:

17.1.1. comprehensive description of the public-private partnership project;

17.1.2. support and guarantees furnished by the State;

17.1.3. characteristics and implementation timeline of the public-private partnership project, and potential consequences of its execution;

17.1.4. requirements pertaining to the utilization, creation or development of local resources (labor force, commodities, works, and services) within the framework of the public-private partnership project;

17.1.5. requirements for project proposals of bidders;

17.1.6. validity period of project proposals of bidders;

17.1.7. security for the project proposals of the bidders (a form of security, validity period, and instances of non-reimbursement pursuant to the rules of public-private partnership);

17.1.8. comprehensive description of the procedure for conducting the competition, evaluation of project proposals, criteria for selecting the competition winner, and the specific weight of each criterion;

17.1.9. basic terms of the public-private partnership contract delineated in Article 22 of this Law;

17.1.10. participation of the public partner in the project company (when the decision is made), basic terms of the contract among participants (shareholders) of the project company.

17.2. In case of amendments to the competition's terms of reference after the commencement of the competition, the duration of the competition may be extended within the stipulated timeframe outlined in the rules of public-private partnership. All bidders of competition must be informed of such alterations.

Article 18. Preparation and submission of project proposals

18.1. Bidders must prepare and submit their project proposals in accordance with the competition's terms of reference, contained by Article 17 of this Law.

18.2. Project proposals must be submitted before the expiration of the deadline specified in the competition's terms of reference. Submissions made after the deadline shall not be accepted.

Article 19. Evaluation of project proposals

19.1. The evaluation of project proposals shall be conducted by the competent authority in the following manner:

19.1.1. verification of project proposals' compliance with the minimum technical requirements specified in the competition's terms of reference shall be conducted, and proposals failing to meet such requirements shall not be considered;

19.1.2. project proposals shall be evaluated by the competent authority based on each criterion, provided by Article 19.2 of this Law, utilizing a scoring methodology that accounts for the specific weight of each criterion.

19.2. Depending on the characteristics of the public-private partnership project, project proposals shall be evaluated based on the following criteria:

19.2.1. amount of payments to be disbursed by the public partner to the private partner, and their distribution over the duration of the public-private partnership;

19.2.2. amount and level of state support and guarantees provided to the private partner, and their allocation throughout the duration of the public-private partnership contract;

19.2.3. duration of the public-private partnership, if the project implementation timeline is proposed by the private partner;

19.2.4. anticipated outcomes during the implementation of the public-private partnership project and compensatory damages for non-performance of contractual commitments;

19.2.5. technical, aesthetic-functional, and innovative attributes of the project proposal;

19.2.6. measures proposed by the bidder to mitigate risks.

19.3. The evaluation criteria for project proposals and the specific weight of each criterion must be specified in the competition's terms of reference. In instances delineated by the rules of public-private partnership, evaluation of project proposals based on only one criterion with justification in the competition's terms of reference may be considered.

Article 20. Announcement of the competition's winner and project company

20.1. As a result of the evaluation of project proposals, the bidder who received the highest score shall be announced as the winner of the competition, and notification shall be dispatched to him/ her within 5 (five) working days, as well as the bidders who have secured second and third place in the competition.

20.2. Information pertaining to the winner of the competition, as well as the bidders who have taken second and third places, shall be posted on the official website of the competent authority.

20.3. The public-private partnership contract with the winner of the competition or the project company established by the winner for implementation of the project, if stipulated by the competition's terms of reference, shall be concluded within 60 (sixty) days, which may be extended by mutual consent of the parties.

20.4. In case the winner of the competition declines to enter into the public-private partnership contract, his/her bid security shall not be refunded. Under such circumstances, the public-private partnership contract may be concluded with the bidder who took second or, respectively, third place, and this information shall be posted on the official website of the competent authority and in the information database, as envisaged by Article 35.1 of this Law.

20.5. In cases delineated by the competition's terms of reference, the competent authority may conduct final negotiations with the winner of the competition for the purpose of drafting the public-private partnership contract, other project contracts, or for the clarification of technical specifications of the public-private partnership project.

20.6. To ensure the implementation of a public-private partnership project, the bidder may establish a project company. The establishment of a project company to implement a public-private partnership project may be provided for within the competition's terms of reference.

20.7. The competent authority may decide regarding the participation of the public partner in the project company (not exceeding 49 percent of the charter capital).

20.8. When the establishment of a project company is stipulated in the competition's terms of reference, the requirements for said project company are determined in the competition's terms of reference. The project company may engage solely in activities pertaining to the implementation of the public-private partnership project.

20.9. In the event that a project company has been established, the provision of security for the commitments of the project company by the bidder may be envisaged in the competition's terms of reference.

20.10. The provisions concerning the preservation of control by the bidder over the project company for a defined duration may be stipulated in the public-private partnership contract (the bidder's predominant participation in the project company's charter capital or the entitlement to determine the decisions of the project company as stipulated within the contract between the bidder and the project company).

Chapter 5

TERMS, PROCEDURE FOR CONCLUSION, AMENDMENT, AND TERMINATION OF THE PUBLIC-PRIVATE PARTNERSHIP CONTRACT

Article 21. Public-private partnership contract

21.1. A public-private partnership contract shall be entered into with the winner of the public-private partnership competition or the private partner selected through direct negotiations, in accordance with Article 20.3 of this Law.

21.2. When financing a public-private partnership project by the creditor (creditors), a direct contract among the public partner, private partner, and creditor (creditors) may be signed for the purpose of providing collateral security to the creditor (creditors). This direct contact with the creditors may include the exchange of information among the parties pertinent to the public-private partnership project, the rights of the creditor (creditors), and provisions required by customary business practices, specifying the terms for the exercise of these rights.

21.3. If the private partner is a foreign natural person or a legal entity, a branch of a foreign legal entity, or a legal entity whose controlling shareholding is owned by a foreign natural person or legal entity, or if the public-private partnership project is financed by foreign or international credit organization, bank, or financial institution,

then the public-private partnership contract and other project contracts shall be considered civil law relationships with a foreign element, and the parties may select the law applicable to civil law relationships among them, in accordance with the Law of the Republic of Azerbaijan 'On International Private Law'.

Article 22. Terms of the public-private partnership contract

22.1. The following must be considered in the public-private partnership contract:

22.1.1. parties to the contract;

22.1.2. the subject matter of the contract, including scope and characteristics of commodities produced, works performed, and services provided, infrastructure development, and the transfer of management;

22.1.3. procedure for the transfer and allocation of ownership rights among the parties to the infrastructure as provided for in the contract (if any);

22.1.4. duration of the contract;

22.1.5. commitments of the parties regarding the project, encompassing financial commitments;

22.1.6. state support and/or incentives provided to the private partner (if any);

22.1.7. procedure for contract termination and its consequences;

22.1.8. conditions and procedures for replacing the parties to the project;

22.1.9. regulation of relations between the competent authority and the private partner regarding the lease or utilization of land, if land allocation is envisaged for the implementation of the public-private partnership project;

22.1.10. state guarantees provided to the private partner;

22.1.11. allocation of commitments between the public partner and the private partner within the framework of the public-private partnership project;

22.1.12. participation shares of the public partner and the private partner in the total value of the project;

22.1.13. investment matters between the public partner and the private partner (depending on the project's specifications, the competent authority);

22.1.14. requirements for contractors and subcontractors (if any).

22.2. Where the competition's terms of reference encompass the provision of state support and guarantees to the private partner, the contract for state guarantees with the private partner shall be concluded by the body (institution) designated by the relevant executive authority.

22.3. The parties to the public-private partnership contract shall have the right to agree and incorporate into the the public-private partnership contract payment terms, as well as mechanisms for periodic review and adaptation of such payment terms to changing conditions, on the condition that the private partner fulfills its commitments, to attain commensurate compensation and receive income for the expenses incurred, investments made, and commitments undertaken by the private partner.

Article 23. Amendment and termination of the contract

23.1. In the light of the requirements of the rules of public-private partnership, the public-private partnership contract may be amended or terminated pursuant to the Civil Code of the Republic of Azerbaijan in cases specified in the public-private partnership contract.

23.2. The consequences of the termination or cessation of the public-private partnership contract must be delineated. These include:

23.2.1. consequences delineated by Article 29 of this Law;

23.2.2. determination of the compensation amount, provided by Article 22.3 of this Law, and the procedure for its disbursement;

23.2.3. determination of the rights holder over the necessary infrastructure and intellectual property for the public-private partnership project.

Article 24. Conclusion of the contract based on direct negotiations

24.1. The public-private partnership contract with the bidder shall be concluded by the decision of the competent body based on direct negotiations without holding a competition in the following cases:

24.1.1. when only one bidder possesses the capability to implement the public service envisaged by the public-private partnership project;

24.1.2. when implementing public-private partnership projects are implemented for defense and security purposes;

24.1.3. in cases where, a competition announcement, the submitted proposals fail to meet the evaluation criteria for project proposals as stipulated by this Law and the competition's terms of reference, or if only one project proposal has been received;

24.1.4. in cases provided for in Articles 10.7, 29, and 37.3 of this Law.

Chapter 6

STATE SUPPORT AND GUARANTEES TO PRIVATE PARTNERS AND CREDITORS

Article 25. Forms of state support

25.1. The public-private partnership project shall be subject to the incentives provided for in the Law of the Republic of Azerbaijan 'On Investment activity', as well as exemptions on tax and other state payments, additional financial support, guarantees, incentives, and compensations.

25.2. According to the agreement with the body (institution) designated by the relevant executive authority, the state is empowered to offer the following state support and guarantees, provided by the competition's terms of reference, to the private partner:

25.2.1. organization of the provision of goods, materials, raw materials, and equipment for the implementation of the public-private partnership project;

25.2.2. guarantee of the income revenue level of the public-private partnership project;

25.2.3. guaranteeing the purchase of procuring products, services rendered, works performed in specified volumes within the framework of the public-private partnership project;

25.2.4. provision of subsidies and/or loans, capital investment;

25.2.5. guarantee of regulated price levels;

25.2.6. grant of temporary exclusive rights for the service provision, performance of works, and product sales within the territory of the Republic of Azerbaijan or its part;

25.2.7. in cases stipulated in the public-private partnership contract, the reimbursement of expenses and missed profits of the private partner.

Article 26. Guarantee pertaining to the activities of the private partner

Intervention in any form that proscribed by the laws of the Republic of Azerbaijan and shall curtail the private partner's autonomy in managing investments, products, or revenues, overseeing and controlling property and activities pertinent to the public-private partnership project, or impede the private partner's activities is not allowed.

Article 27. Guarantee pertaining to the effects of legislative amendments

If amendments to the Republic of Azerbaijan's normative legal acts occurring after the public-private partnership contract is concluded, result in increased expenditures for the private partner under the public-private partnership contract or decrease revenues it will receive, then compensation shall be disbursed to the private partner in the manner prescribed by the rules of public-private partnership. Under such circumstances, the amount of compensation to be paid may be determined in the public-private partnership contract.

Article 28. Guarantee of creditor rights

28.1. In the light of the exceptions stipulated in the public-private partnership contract, the private partner is empowered to encumber all or any property owned by it (or to be owned in the future) in relation to the public-private partnership project, as well as the ownership stakes (shares) it owns, for the purpose of securing external financing for the public-private partnership project, including requirements and entitlements in favor of creditors, and/or utilize alternative methods of guaranteeing the fulfillment of commitment not proscribed by the Civil Code of the Republic of Azerbaijan, the Law of the Republic of Azerbaijan 'On Encumbrance of Immovable Property', and other laws regulating relations within this field.

28.2. If the public partner participates in the project company, the establishment of mortgage or any other encumbrance on the state's stake (shares) may be conducted, taking into account the commitments undertaken by the Republic of Azerbaijan under the international agreements to which it is a party.

28.3. When enforcing the encumbrance stipulated by Article 28.1 of this Law, if provided for through a direct agreement with the creditors, the competent authority may possess right of superiority to acquire the encumbered property.

28.4. Within the public-private partnership contract and/or direct agreement with creditors, additional provisions may be stipulated, agreed upon by the parties and regarding the protection and assurance of creditor rights not contradicting the legislation of the Republic of Azerbaijan (including compensations payable to creditors in cases of premature termination of the public-private partnership contract, or provisions pertaining to the disbursement of payments to be paid to a private partner directly to the creditor (creditors)).

Article 29. Rights of the public partner and creditors to manage the public-private partnership project

29.1. Upon the occurrence of risk circumstances stipulated in the public-private partnership contract, the public partner must be vested with the authority to exercise the right to manage the project in a manner prescribed by the competent authority, in accordance with the rules of the public-private partnership, or a new private partner may designated by the competent authority or, with its consent, the creditor (creditors) in accordance with Article 24 of this Law..

29.2. The direct contract with the creditors must define the provisions on the right to manage the public-private partnership project to be exercised either by the public partner or by the creditor (creditors).

Article 30. Guarantee pertaining to the selection of financing methods in public-private partnership

In cases where multiple financing methods are deemed applicable to a public-private partnership project, bidders may be offered the opportunity to select, upon providing justification, one of the financing methods for the public-private partnership project.

Article 31. Guarantee pertaining to the financial settlements and currency operations

31.1. With a view to fulfilling commitments arising from loans obtained by the private partner from non-resident banks for the financing of the public-private partnership project, the private partner shall have the right to open accounts in non-resident banks and to deposit (or transfer) funds in foreign currency into these accounts, to the extent required for the fulfillment of those commitments, to transfer income acquired within the Republic of Azerbaijan to bank accounts opened by them in non-resident banks, maintain funds within these accounts, and make payments from those accounts..

31.2. Within the framework of the competition's terms of reference provisions the public-private partnership contract incorporating a foreign element may be

envisaged the provisions aimed at mitigating or eradicating the adverse impact of fluctuations in the exchange rate of the national currency of the Republic of Azerbaijan against foreign currencies on the public-private partnership project.

Article 32. Guarantee pertaining to the regulated tariffs

In cases where alterations in tariffs for services rendered in accordance with the law of the Republic of Azerbaijan 'On Regulated Tariffs' exert an adverse impact on the economic indicators of the public-private partnership project, provisions aimed at mitigating or eradicating such adverse impact may be delineated within the public-private partnership contract.

Article 33. Guarantee pertaining to the utilization and ownership of property

33.1. The public-private partnership contract must delineated the property to be transferred to the private partner upon the completion or termination of that contract, as well as the assets to be returned or transferred to the State.

33.2. In the absence of contrary provisions within the public-private partnership contract, the private partner shall be authorized, with prior written consent from the public partner, to lease or grant the use of the infrastructure for a duration not exceeding what is stipulated in the public-private partnership contract.

33.3. In the absence of contrary provisions within the public-private partnership contract, upon its termination or completion:

33.3.1. the infrastructure established by the private partner may either remain under the ownership of the private partner or be transferred to the ownership of the public partner;

33.3.2. the public partner may be entitled to right of superiority or incur such commitment regarding the acquisition of the infrastructure, established by the private partner, from the latter;

33.3.3. the state-owned infrastructure may be transferred to the ownership of the private partner, or the private partner may hold right of superiority to acquire the infrastructure transferred to its management from the state.

Article 34. Allocation of land plot to the private partner

34.1. The allocation of land plots required for the implementation of the public-private partnership project to the private partner shall be conducted by the competent authority, in accordance with the requirements of the Civil and Land Codes of the Republic of Azerbaijan, within the form and timeframe as provided for in the competition's terms of reference, but not exceeding the duration of the public-private partnership.

34.2. A land plot held in state ownership may be leased, granted for use of the private partner, or invested in the project company as a share. If the implementation of the public-private partnership project requires the leasing of a state-owned land plot to

the private partner, the lease agreement for land plot with the private partner shall be concluded by the competent authority. The rental fee for the land plot leased to the private partner shall be determined by the body (institution) designated by the relevant executive authority, considering the financial and economic indicators of the public-private partnership project in accordance with the law of the Republic of Azerbaijan 'On Land Lease'. In accordance with Articles 34.3 and 34.4 of this Law, leased land plots may be transferred for lease or use of a private partner.

34.3. For the purpose of transferring rights to land plots owned by the municipal entity and requested for the implementation of the public-private partnership project to the private partner, these land plots shall be transferred to state ownership or leased without conducting open land auctions or competitions.

34.3. For the purpose of transferring rights to land plots owned by private entities and requested for the implementation of the public-private partnership project to the private partner, these land plots shall be acquired or leased by the state pursuant to an agreement with the owners.

34.5. In accordance with the Law of the Republic of Azerbaijan 'On Land acquisition for state needs', when a public-private partnership project is deemed a state need, acquisition of land are conducted based on this Law.

Chapter 7

MONITORING AND ACCOUNTABILITY OF PUBLIC-PRIVATE PARTNERSHIP PROJECT IMPLEMENTATION

Article 35. Information database of public-private partnership projects

35.1. The competent authority shall establish and manage an electronic information database pertaining to the public-private partnership project, the terms, and criterias for selecting the winner of the competition, the key terms of the public-private partnership contract, project preparation, and implementation, including ongoing and concluded projects within the framework of the public-private partnership contract, and reports pertaining to the project implementation status.

35.2. The parties to the public-private partnership contract shall submit a duplicate of the public-private partnership contract, including any amendments thereto, along with pertinent documentation, to the competent authority within 7 (seven) working days following the conclusion of the contract or the introduction of amendments thereto, for the purpose of incorporation into the information database, as provided by Article 35.1 of this Law.

35.3. The information database, as provided by Article 35.1 of this Law, must be publicly accessible, with the exception of data classified as state, commercial, and tax secrets, as well as personal data.

Article 36. Monitoring of public-private partnership project implementation

The competent authority shall have the right to conduct monitoring of the implementation status of commitments envisaged in the public-private partnership contract, in accordance with the rules of public-private partnership.

Article 37. Accountability of public-private partnership project

37.1. Annually, the parties to the public-private partnership contract must submit to the competent authority a report pertaining to the status of the implementation of the public-private partnership project and the parties commitments, in the format and manner, provided by the rules of public-private partnership.

37.2. The competent authority shall publish annual reports pertaining to the public-private partnership projects in the format specified in the rules of public-private partnership on its official website and in the information database, envisaged in Article 35.1 of this Law.

37.3. When reviewing the report, as provided by Article 37.1 of this Law, if the competent authority determines that the project implementer of the public-private partnership has failed to fulfill or is incapable of fulfilling its contractual commitments, it shall conduct a competition in accordance with the rules of public-private partnership or organize the signing of a contract through direct negotiations to select a new partner for the purpose of project completion.

37.4. The competent authority shall prepare proposals for the improvement of public-private partnership based on the reports, provided by Article 37.1 of this Law, and submit them to the body (institution) designated by the relevant executive authority.

Chapter 8

FINAL PROVISIONS

Article 38. Settlement of disputes

38.1. Bidders may appeal decisions, actions (or inaction) of the competent authority regarding the organization and conduct of the competition through administrative and judicial procedures.

38.2. Disputes among the parties to the public-private partnership contract and other contracts pertaining to the public-private partnership project shall be settled in accordance with the procedures provided for in these contracts. In the absence of dispute resolution mechanisms provided for in these agreements, disputes shall be resolved in accordance with the laws of the Republic of Azerbaijan.

Article 39. Liability for violation of this Law

Persons who violate the requirements of this Law held responsible in cases provided for in the Civil Code of the Republic of Azerbaijan, the Code of Administrative Offenses of the Republic of Azerbaijan, and the Criminal Code of the Republic of Azerbaijan.

Article 40. Transitional provisions

40.1. From the day this Law entered into force, the Law of the Republic of Azerbaijan 'On the Implementation of investment projects associated with construction and infrastructure objects based on special financing' (Compilation of Legislation of the Republic of Azerbaijan, 2016, No. 4, Article 633; 2019, No. 1, Article 30, No. 6, Article 990, No. 11, Article 1689; 2021, No. 7, Article 701) shall be repealed.

40.2. The provisions of the Civil Code of the Republic of Azerbaijan and the Law of the Republic of Azerbaijan 'On Investment activities' shall be applicable to contracts concluded under the Law of the Republic of Azerbaijan 'On the Implementation of investment projects associated with construction and infrastructure objects based on special financing'.

**Ilham ALIYEV,
President of the Republic of
Azerbaijan**

Baku city, December 9, 2022
No. 691-VIQ