

DECREE LAW no. 8/2014 March 19

REGULATES THE LEGAL REGIME OF PUBLIC-PRIVATE PARTNERSHIPS

Following the approval of the Legal Regime for Public-Private Partnerships, by Decree-Law No. 42/2012, of September 7, there is a need to regulate it by approving the necessary structures for the implementation of public-private partnerships, as well as establishing a legal basis for the approval of the procurement procedure, according to the public-private partnership projects cycle.

Therefore, the present diploma establishes the legal powers and functions of the Public-Private partnerships Unit, and defines the procedures related to the public-private partnerships projects cycle from the Initial and Viability Phase, to the Procurement and Negotiation Phase and to the Implementation and Operational Phase.

Thus, the Government decrees, under the subparagraph e) of the paragraph 1 of Article 115 and the subparagraph a) of Article 116, all of the Constitution of the Republic, the following:

Article 1
Subject Matter

The present Decree-Law establishes the structures and the procedures for the implementation of public-private partnerships.

Article 2
Public-Private Partnerships Unit

The Public-Private Partnerships Unit, hereinafter designated shortly as UPPP, operates in the realm of the direct administration, according to the Ministry of Finance Organic law

Article 3
Legal Powers

Without prejudice of the established in the Ministry of Finance Organic law, the UPPP has the following legal powers:

- a) To manage and to implement the public-private partnerships projects cycle in articulation with the public sector organs and the Council of Administration of the Infrastructure Fund (CAFI);
- b) To mobilize consultants and advisors to guarantee technical assistance for the implementation of the public-private partnerships projects cycle;
- c) To prepare agreements and other standard documents to be applied on public-private partnerships agreements, in articulation with all the relevant entities;
- d) To prepare and maintain updated all rules of orientation about public-private partnerships that include all laws, regulations, instructions, directives and orientations, namely models, uniformed documents, and document samples on public-private partnership agreements, along with an easy-to-use guide about its application and implementation .

- e) To request to a public sector body or to a private partner to provide information, details, documents and data related to a given public-private partnership agreement, in order to monitor the cost-quality effectiveness obtained through the project
- f) To provide training to public sector entities on public-private partnership agreements and share good practices and knowledge with both the public and private sector entities;
- g) Any other that is assigned to it by law.

Article 4

Support structures for CAFI in the scope of Public-Private Partnerships

1. The Secretariat for Major Projects provides technical secretariat to CAFI in the scope of public-private partnerships.
2. The Public-Private Partnerships Unit is responsible for the implementation of the PPP projects cycle and provides the following technical support to CAFI through the Secretariat for Major Projects:
 - a) Analysis of the public-private partnerships policy and programs;
 - b) Analysis and evaluation of project proposals, and provide advice to CAFI in order to determine whether a public-private partnership is the most appropriate way to implement a project;
 - c) Issues relating to policy and regulations likely to have an impact on public-private partnership agreements, preceding consultation with the appropriate entities;
 - d) Options and reforms, including regulatory reforms, to streamline procedures and increase the efficiency of public-private partnership agreements;
 - e) Mechanisms for financing investment in public-private partnerships agreements;
 - f) Better financing and structuring of public investment projects;
 - g) Any other that is assigned to it by law.

Article 5

Team, Action Group, Committees and Project Evaluation Team

1. CAFI may, from time to time, create teams, action groups or committees to monitor or supervise a public-private partnership project, providing them terms of reference.
2. The members of the Project Evaluation Team vary depending on the project phase, and for each phase there must be at least one member nominated as follows:
 - a) In the Initial Phase and Feasibility Phase
 - i. Public-Private Partnerships Unit;
 - ii. Body of the public sector responsible for the project area;
 - iii. External consultants specializing in PPP if necessary; and

iv. Other relevant entities

b) In the Procurement and Negotiation Phase, divided into 3 phases:

Phase 1 - Preparation of Contest Documentation

- i. Public-Private Partnerships Unit;
- ii. Body of the public sector responsible for the project area;
- iii. External consultants specializing in PPP if necessary; and
- iv. Other relevant entities.

Phase 2 - Tendering and Bid Evaluation Procedure

- i. National Procurement Committee;
- ii. External consultants specializing in PPP if necessary;
- iii. The Public-Private Partnerships Unit, the Public Sector Authority responsible for the project area and other relevant entities will be at this stage only as observers in order to ensure the transparency of the procedure.

Phase 3 - Negotiation Procedure

- i. National Procurement Committee;
- ii. Public-Private Partnerships Unit;
- iii. Body of the public sector responsible for the project area;
- 1v. External consultants specializing in PPP if necessary; and
- v. Other relevant entities.

c) Implementation and Operation Phase:

- i. Body of the public sector responsible for the project area;
- ii. Other relevant entities.

Article 6 **PPP Projects Cycle**

1. The PPP Project Cycle describes the phases and procedures of a project until the PPP agreement is concluded and is regulated by the member of the Government responsible for the area of Finance.

2. The PPP Project Cycle consists of the initial phase, the feasibility phase, the procurement and negotiation phase, and the implementation and operation phase of the public-private partnerships, which are included in Annex I to the present Statute of which it forms an integral part .

Article 7
Analysis of Public-Private Partnerships Agreements

1. Without prejudice to Law 13/2009 of 21 October on Budget and Financial Management, the Ministry of Finance shall submit independent periodic reports containing the following : a) the content of the public- Private agreement; b) the process by which a public-private partnership agreement is procured; c) whether the procurement of a project through a public-private partnership agreement fulfills the objectives and meets the criteria underlying the decision to sign the public-private partnership agreement; d) recommendations for improving the results of public-private partnership agreements.

2. The Ministry of Finance shall publish the reports reviewing the public-private partnership agreement within one month of its completion.

Article 8
Entry into force

This Decree-Law shall enter into force on the day following its publication.

Approved in the Council of Ministers on 21 November 2013.

The Prime Minister,

Kay Rala Xanana Gusmão

The Minister of Finance,

Emília Pires

Promulgated on 17 . 03 . 2014

To be Published.

The President of the Republic,

Taur Matan Rua