

## **LAW no 3389**

### **Partnerships between the public and private sectors**

#### **CHAPTER 1**

#### **DEFINITION AND SCOPE**

##### **Article 1**

##### **Definition of partnerships between public and private sector entities**

###### 1. Definition of partnerships

For the purposes of this law, the phrase 'Public Entities' shall be understood to mean the following:

- a. the State
- b. local government organizations
- c. legal entities under public law
- d. sociétés anonymes whose share capital belongs wholly to Entities included under a. to c. above, or to another one or more sociétés anonymes under this clause.

2. The aforementioned Public Entities may, within their respective areas of competence, conclude for pecuniary interest in writing collaboration contracts (hereinafter *Partnership Contracts*) with legal entities in the private sector (hereinafter *Private Entities*) for the construction of works or the provision of services (hereinafter *Public-Private Partnerships* or briefly *Partnerships*).

###### 3. Ancillary Agreements

Contracts signed by Public Entities with third parties or by Private Entities with third parties, when they are ancillary agreements to Partnership Contracts or are executed in order to execute Partnership Contracts (hereinafter *Ancillary Agreements*) shall be subject to the provisions of this law, provided that they abide by the conditions of article 2 paragraphs 1 or 2 concerning the Partnership Contracts.

###### 4. Special Purpose Company

The Private Entities shall conclude the Partnership Contracts or Ancillary Agreements described in paragraphs 2 and 3, by means of special purpose companies established by said entities solely and exclusively for the purposes of the Partnership (hereinafter *Special Purpose Company*); they shall have their registered headquarters in Greece and shall

operate in accordance with the provisions of Law 2190/1920. The only parties eligible to hold shares in a Special Purpose Company are the Private Entities as defined in this law, and third parties who may acquire shares in accordance with the special provisions of the same law, the articles of incorporation of the Company and any special provisions of the Partnership Contract, except the Entities defined in paragraph 1 of the present article.

## **Article 2**

### **Scope**

1. Partnerships may be subject to the provisions of this law, in accordance with article 4 paragraph 3, provided that all the following conditions are met:

a. their purpose is the construction of works or provision of services in the area of competence of the Public Entities on the basis of a provision of the law, or a contract, or their articles of incorporation ,

b. it is provided that the Private Entities, against payment to be made as a lump sum or in instalments by the Public Entities or by the final users of these works or services, shall assume a substantial part of the risks associated with the financing, construction, availability of or demand for the Partnership object , and related risks such as, indicatively, management and technical risk,

c. it is provided that the financing, in whole or in part, of the construction of the works or the provision of services, shall be accomplished with capital and resources secured by the Private Entities, and

d. the total contractually budgeted cost for implementing the Partnership object does not exceed two hundred million Euros, not including the Value Added Tax payable.

2. By unanimous decision of the Joint Ministers' Committee for Public-Private Partnerships as defined in article 3, it is possible, in exceptional circumstances, for Partnerships to be subject to the provisions of this law even though one or more of the conditions set out in sections b. to d. of paragraph 1 are not met.

3. Public-Private Partnerships shall not be allowed to engage in projects or activities that are the direct and exclusive province of the State under the terms of the Constitution of the Hellenic Republic, such as national defence, police work, the award of justice, and the execution of judicially imposed penalties.

## **CHAPTER 2**

## **JOINT MINISTERS' COMMITTEE AND SPECIAL SECRETARIAT FOR PUBLIC-PRIVATE PARTNERSHIPS**

### **Article 3**

#### **Joint Ministers' Committee**

A Joint Ministers' Committee for Public-Private Partnerships (hereinafter *DESDIT*) is hereby established. DESDIT shall comprise as regular members the Minister of Economy and Finance, the Minister of Development, and the Minister of the Environment, Planning and Public Works; and as special members the Minister or Ministers supervising each of the Public Entities participating in a Partnership, or party to a Partnership Contract, or to Ancillary Agreements. The Minister of Economy and Finance will chair DESDIT, will supervise its work and will be responsible for submitting the respective proposals to the committee. DESDIT shall make its decisions following proposals by the Special Secretariat for Public-Private Partnerships, pursuant to the special provisions of sections aa. to ff. of article 4 paragraph 2.

The operation of DESDIT is governed by the provisions of Law 1558/1985 (Government Gazette 137A). The purpose of DESDIT is to elaborate government policy on the construction of works and the provision of services with private capital involvement.

With its decisions, DESDIT will:

- a. approve the inclusion of Partnerships under the provisions of this law or revoke such approval decisions, pursuant article 5 paragraph 3,
- b. approve the inclusion in the Public Investment Programme of the contractual fee to be paid to the Private Entities,
- c. decide whether the public sector will participate in financing the construction of works or the provision of services, which consist the object of the partnership,
- d. make all other relevant decisions.

### **Article 4**

#### **Special Secretariat**

##### **1. Establishment and responsibilities**

A Special Secretariat for Public-Private Partnerships (hereinafter *EGSDIT*) shall be established within the Ministry of Economy and Finance, in order to provide support and assistance to DESDIT and the Public Entities. EGSDIT shall be responsible for:

- a. identifying the works or services which might be constructed or provided through Partnerships and be included under the provisions of this law in accordance with paragraph 2,
- b. promoting in general the construction of works or the provision of services through the Partnership framework,
- c. facilitating and supporting Public Entities in pursuing the Contract Award Procedures, as defined in article 8 of the present law, for the selection of Private Entities that will be undertaking the construction of works or the provision of services under Partnership arrangements,
- d. monitoring the implementation of Partnership Contracts and Ancillary Agreements, regularly briefing of DESDIT, and preparing and submitting recommendations for the resolution of any problems that might arise and
- e. preparing and presenting an annual report to the respective committee of the Parliament.

## 2. General responsibilities of EGSDIT

In order to realize its objectives, EGSDIT may:

- a. request and receive details of works or services whose construction or provision is being promoted or planned by Public Entities,
- b. request and receive from any Public or Private Entity any details or information required to ascertain whether the construction of a work or provision of a service can be achieved through a Public-Private Partnership in accordance with the provisions of this law,
- c. process the information it receives from professional and business entities or associations including, indicatively, the Greek Banking Association, the Technical Chamber of Greece, the Economic Chamber of Greece, and the Association of Contracting Companies,
- d. assess comprehensive proposals elaborated by Public or Private Entities for the construction of works or the provision of services, or invite Public or Private Entities to prepare such proposals, offering them all reasonable assistance,
- e. in collaboration with the respective departments of the Ministry of Economy and Finance, as well as the respective departments of the Public Entities involved, to monitor all financial obligations undertaken by Public Entities, especially the future burden upon the Public Investment Programme that may or will result from the payments to be made to Partnerships subject to the provisions of this law,
- f. draft and distribute printed material with information and instructions related to Partnerships, the purposes they serve, the internationally accepted methods of establishing such Partnerships and the provisions of this law,

g. produce standardized documents, which can be used for the needs of the Contract Award Procedures, as defined in article 8,

h. produce all kinds of standardized Partnership Contracts or Ancillary Agreements, in order to assist Public and Private Entities in formulating the terms and conditions of their Partnership Contracts,

i. submit to DESDIT proposals intended to improve the legislative framework regulating the Partnerships,

j. coordinate the elaboration of designs and the provision of supplementary services in general to persons recruited pursuant to the provisions of paragraph 4, article 6.

Pursuant its responsibilities a. to j. above, it shall collect the information necessary to decide which works or services can be implemented through Partnerships, and it shall evaluate the financial and technical parameters, as well as the associated legal and other problems. EGSDIT will then proceed to draw up a non-binding list of works and services (hereinafter *List of Proposed Partnerships*) that may be implemented through Partnerships and may be included to the provisions of this law. For each work or service included in the List of Proposed Partnerships, EGSDIT will draw up a brief report setting out its rationale for:

aa) the financial, technical, socio-economic and legal reasons for which it considers

that the construction of the specific works or provision of the specific services ought to proceed by means of a Public-Private Partnership,

bb) the criteria that it has taken into account to select the specific works or services that have been included in the List of Proposed Partnerships,

cc) the actions which may have been taken by the Public Entity involved to meet the needs of preparing the award of the relevant Contracts, such as – for example – the recruitment of financial, technical and legal advisors, the elaboration of preliminary designs and/or studies and the preparation of draft contracts,

dd) the form of the proposed Contract Award Procedure, as defined in article 8, which is deemed most appropriate for the particular case, as well as the Public Entities acting as contracting authorities,

ee) an indicative time-schedule of the Contract Award Procedure

ff) a report of the indicative budget of the work or services to be undertaken by the partnership under the Contract and, where appropriate, the Ancillary Agreements.

### 3. Application and Decision for Inclusion

EGSDIT shall notify the respective Public Entities about the decision to include works or services (in their area of competence) in the List of Proposed Partnerships, and shall invite them to submit, within a deadline of no more than two months from the date of notification, an

application to DESDIT for the inclusion of the proposed Partnership to the provisions of this law (hereinafter *Application for Inclusion*).

If more than one Public Entity is party to the Partnership Contract included in the List of Proposed Partnerships, then the Application for Inclusion must be signed by authorized representatives of all the Public Entities involved. Within two months from receiving the Application for Inclusion, DESDIT will issue a decision (hereinafter *Inclusion Decision*) by which it approves or rejects, in whole or in part, the Applications for Inclusion.

#### 4. Revision of the List of Proposed Partnerships

EGSDIT will supplement and revise the List of Proposed Partnerships every six months; although the list may be amended at other times by adding new Partnership proposals deemed mature or submitted for evaluation after the regular issue of the List.

## **Article 5**

### **Consequences of an Inclusion Decision**

1. Following approval of the inclusion, EGSDIT will undertake the coordination of the Contract Award Procedures, as defined in article 8, to select the Private Entity that will participate in the Partnership.

#### 2. Obligations of Public Entities

The Public Entities included under the provisions of this law shall be obligated:

a. to follow the suggestions of EGSDIT in respect of the Contract Award Procedure to be followed in selecting the Private Entity to participate in the Partnership,

b. to prepare all the texts involved in the Contract Award Procedure, including the tender documents, such as the invitation to tender, the special and technical terms of contract, the invitation to submit tenders and the draft of the contract in accordance with the instructions, amendments and changes recommended by EGSDIT, which shall be notified of all the texts and correspondence concerning the Contract Award Procedure before their distribution or publication,

c. to ensure the participation of a representative of EGSDIT in the evaluation committees or other bodies set up to serve the Contract Award Procedure for selection of a Private Entity that will participate in the Partnership.

#### 3. Revocation of an Inclusion Decision

In the event that the Public Entities involved fail to comply with the provisions of paragraph 2 of this article, DESDIT may, either before or during the Contract Award Procedure, revoke the Inclusion Decision.

## **Article 6**

### **Dispositions on EGSDIT**

#### 1. Staffing

- a. By joint decision of the Prime Minister and the Minister of Economy and Finance, a Special Secretary for Public-Private Partnerships is to be appointed.
- b. By decision of the Minister of Economy and Finance, following an invitation to submit declarations of interest, a Director of EGSDIT is to be appointed, with a definite duration contract for full-time and exclusive employment under private law.
- c. The remaining staff of EGSDIT shall be hired under contracts for provision of independent services or labour following a respective decision by the Minister of Economy and Finance, or seconded to EGSDIT in accordance with the provisions of paragraph 5 hereinbelow.

#### 2. Qualifications and experience of EGSDIT staff

The EGSDIT staff must come from a broad range of disciplines and possess extensive experience and authority in their respective specialization fields; they should possess experience in the following areas:

- a. financial techniques
- b. the drafting, elaboration, analysis and evaluation of financial models
- c. legal competence in drafting tender documents, legal support for the conducting of public contract award procedures, drafting and negotiating contracts, including concession contracts, funding, loan and other contracts necessary for securing required funding,
- d. technical, insurance, tax and accounting issues,
- e. design, construction, operation and maintenance of works and compilation of specifications

#### 3. Incompatible activities

The staff of EGSDIT shall be employed on an exclusive, full-time basis and as long as they are providing their services to the Secretariat may not:

- a. engage in any other paid professional activity, or
- b. invest in the share capital or participate in the formation/incorporation or in the board of any Private Entity which is participating in a Partnership or a related Contract Award Procedure as defined in article 8, or
- c. invest in the share capital or participate in the formation/incorporation or in the board of a company associated, in the sense of article 42e of Law 2190/1920, with the Entities referred to in the previous section.

In case the above restrictions are violated, and regardless of any other penalties, the authority which appointed the person that failed to abide by the preceding restrictions, shall be entitled to revoke its appointment.

In cases b. and c. in particular, the aforementioned restrictions shall remain in force for a period of six months after the person involved has ceased to provide its services to EGSDIT

#### 4. Hiring consultants and persons with specific qualifications

By decision of DESDIT, taken following a reasoned suggestion by EGSDIT, the latter may enter into contracts for provision of independent services or labour with financial, technical, tax, legal, insurance or other consultants, as well as specialist professionals and experts, who shall be persons or legal entities of recognized status and specific experience in projects similar to those for which their services are solicited.

A similar decision will define the services to be provided by the aforesaid consultants and specially qualified persons, as well as their fees.

#### 5. Secondments

By joint decision of the Minister of Internal Affairs, Public Administration and Decentralisation, and the Minister of Economy and Finance, as well as the *ad hoc* competent Minister, the necessary staff may be secured by means of secondment to EGSDIT of staff already employed in government ministries and in entities supervised by government ministries; any other existing provisions on secondment shall not apply hereto. During the period of their secondment, the salaries of these employees will be paid from the budget of the Ministry of Economy and Finance.

#### 6. Further details on issues concerning EGSDIT

Future joint decisions made by the Minister of Internal Affairs, Public Administration and Decentralisation, and the Minister of Economy and Finance, may regulate and further define detailed issues concerning EGSDIT, such as its powers and responsibilities, the ways of exercising these powers, the procedures to be applied, the organization and operation of EGSDIT, its necessary secretarial support, and any other related issue.

## **CHAPTER 3**

### **CONTRACT AWARD PROCEDURES**

#### **Article 7**

#### **Provisions to be applied in Contract Award Procedures**



The Contract Award Procedures for the selection of the Private Entity to assume the construction of the work or the provision of the services under a Partnership Contract, included under this law, shall be subject to the provisions of articles 9 to 16.

## **Article 8**

### **Definitions**

In applying articles 9 to 16 of this law, the following terms should be construed as defined below:

*Contracting Authority* shall mean the Public Entity referred to in article 1 paragraph 1, which announces a competition to select a Private Entity with which it will execute a Partnership Contract to carry out works or provide services.

*Contract Award Procedures* shall mean the procedures followed by the Contracting Authorities in selecting a Private Entity to undertake the construction of works or the provision of services under a Work or Service Partnership Contract. Contract Award Procedures are differentiated into *Open Procedures*, *Restricted Procedures*, *Competitive Dialogue*, and *Negotiated Procedures*.

*Open Procedures* shall mean those procedures in whereby any interested Private Entity may submit a tender, provided that it is qualified and able as indicated in the Invitation to Tender.

*Restricted Procedures* shall mean those procedures in which any Private Entity may request to participate and whereby only those Private Entities invited by the Contracting Authority may submit a tender.

*Competitive Dialogue Procedures* shall mean those procedures in which:

- any Private Entity may request to participate,
- the Contracting Authority will conduct a dialogue with the candidates admitted to that procedure, with the aim of developing one or more suitable alternatives capable of meeting its requirements, and
- on the basis of which the candidates chosen are invited to submit tenders.

*Negotiated Procedures* shall mean those procedures whereby the Contracting Authorities consult the Private Entities of their choice and negotiate directly with them the terms of the Contracts that will eventually be executed with one or more of these Entities.

*Work* shall mean the outcome of building or civil engineering works taken as a whole which is sufficient of itself to fulfil an economic or technical function.

*Particularly Complex Contract* shall mean any contract whose basic parameters (technical, financial, functional, legal or other) cannot be objectively defined *ab initio* by the Contracting Authority.

*Mixed Contract* shall mean any contract having as its object not exclusively the construction of works or the provision of services, but containing elements of both these activities.

*Invitation to Tender* shall mean the document whereby the Contracting Authority:

- defines the form and individual stages of the Contract Award Procedure,
- describes the object of the contract to be awarded and, possibly, certain specific substantial terms of that contract,
- describes the estimated contract price or fee for the provision of services, provided that an objective estimation is possible,
- sets out the rights and obligations of the Contracting Authority, as well as any special regulations and rights to which it may have recourse, such as the right to limit candidates, the right to seek clarifications and additional information,
- sets out the legislative provisions applicable to the Contract Award Procedure,
- defines the required qualifications and abilities of candidates, and
- defines other terms and conditions to be in force throughout the Contract Award Procedure, as well as the various parts of that procedure.

*Tenderer* shall mean any Private Entity that has submitted a tender under the Contract Award Procedure. Tenderers may be any professional contractor or services' provider, and any person or legal entity whose activity includes the construction of the work or the provision of the service being tendered, provided that is experienced in executing comparable projects in the open market.

*Tender* shall mean the entire folder of financial, technical, funding and other proposals submitted by the candidates offering to construct the works or provide services under the Contract Award Procedure, as invited by the Contracting Authority and in accordance with the requirements the latter has specified in the Invitation to Tender and the annexes thereto, and any other documents issued in the context of the Contract Award Procedure.

*Contracts* shall mean the Mixed Contracts, Works Contracts and Service Contracts.

*Works Contracts* shall mean contracts having as their object either the execution, or both the design and execution related to the realisation, by whatever means, of a work corresponding to the requirements specified by the Contracting Authority.

*Service Contracts* shall mean contracts, other than Work Contracts, having as their object the provision of services of any nature.

*Candidate* shall mean any Private Entity (or association or joint ventures of Private Entities) participating in a Contract Award Procedure.

## **Article 9**

### **General Principles**

#### 1. General Principles

a. The Contract Award Procedures and the relations of the Contracting Authority with the Candidates or Tenderers, and with any third party involved, shall be governed by the principles of equal treatment, transparency, proportionality, mutual recognition, protection of the public interest, protection of the rights of private individuals, freedom of competition, protection of the environment and sustainable development, as defined in paragraph 2.

b. The provisions of paragraph 2 shall apply to all Contract Award Procedures, regardless of the type of contract intended to be executed.

#### 2. Detailed definition of general principles

In this law the general principles referred to in paragraph 1 of the present article are to be construed as follows:

a. The principle of *Equal treatment* requires the avoidance of any discrimination on the basis of nationality or any other criterion that can't be objectively justified. The application of this principle entails not only defining non-discriminatory terms of access to an economic activity, but also the adoption and application by the public authorities of all measures necessary to ensure the exercise of this activity.

b. The principle of *Transparency* means that the Contracting Authority ought to publicise its intention to conclude a Work Contract, Service Contract or Mixed Contract, in order to ensure conditions of fair competition without distortion.

c. The principle of *Proportionality* means that any measure adopted by the Contracting Authority should be necessary and suitable for attaining the respective objective, and cause the fewest possible problems in the exercise of an economic activity. In the specific context of the Contract Award Procedures, there ought to be no requirements for technical, professional or financial capabilities that are disproportionate or excessive in respect of the object of the Work Contract, Service Contract or Mixed Contract in question.

d. The principle of *mutual recognition* means that the Contracting Authority ought to accept the technical specifications, controls, qualifications and certifications required in another member state of the European Union, insofar as these are recognized as equivalent to those required in Greece.

e. The principle *protection of the public interest* means that all decision-making concerning the award of a Work, Service or Mixed Contract ought to take into account the following factors:

- the respective funding needs, and the need to minimize as far as possible the financial burden or contribution of the Contracting Authority,
- the needs of the users for improved services, and
- the need to employ specialised know-how.

f. The principle *protection of the rights of private individuals* means that all decisions – positive, negative or decisions to reject proposals – must be properly reasoned and may give rise to judicial protection for Private Entities and private individuals in general. The concept of judicial protection also includes the notion of provisional judicial protection.

g. The principle *free competition* means that:

- there should be the greatest possible participation of candidates capable of constructing the works or providing the services desired by the Contracting Authority,
- the competition should be conducted on equal terms and using objective criteria, and
- the creation of monopolistic or quasi-monopolistic situations or distortions should be avoided.

h. The principle *protection of the environment and sustainable development* requires that the planning and implementation of the Work, Service or Mixed Contracts ought to take into account that the natural and man-made environments are assets that must be protected *per se*, in order to maintain the environmental balance, and to preserve natural resources for the sake of coming generations.

## **Article 10**

### **Contract award**

#### 1. Criteria for contract award

Contracts shall be awarded by the Public Entity acting as Contracting Authority either on the criterion of the tender being the most economically advantageous, or on the criterion of lowest price.

#### 2. The most advantageous tender

When the contract is to be awarded to the most economically advantageous tender, the Contracting Authority will examine and take into account not only the economic parameters but also various other parameters of the contract object, for example, quality, price, technical

merit, aesthetic and functional characteristics, environmental characteristics, running cost, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion. These criteria must be clearly specified by the Contracting Authority as part of the Contract Award Procedure. The relative weighting the Contracting Authority gives to each of the criteria chosen to determine the most economically advantageous tender must also be announced to candidates. Those weightings can be expressed by providing for a range with an appropriate maximum or minimum limit (spread). Where weighting is not possible, the Contracting Authority shall indicate the priority of the criteria it has selected, compiling a table in which these criteria are presented in descending order of importance.

3. When the criterion for the award is that of the most economically advantageous tender, the Contracting Authority may authorise tenderers to submit variants. This option must be explicitly indicated in the Invitation to Tender; otherwise variants shall be rejected by the Contracting Authority. When permitted, the minimum requirements to be met by the variants , and the way they are to be submitted, shall be stated in the Invitation to Tender or the annexes thereto. The Contracting Authority shall take into consideration solely and exclusively variants meeting the minimum requirements it has laid down.

#### 4. Abnormally low tenders and State aid

If the tenders submitted to the Contracting Authority appear to be abnormally low in relation to the estimated cost of the object of the contract, the Contracting Authority shall, before it may reject those tenders, request in writing clarifications from the Tenderers. These clarifications may relate in particular to the method of construction of the works or the provision of services, the technical solutions proposed, any exceptionally favourable conditions, which may assist the construction of the works or the provision of services, and any possible State aid to be obtained by the Tenderer. If it is ascertained that a tender is abnormally low because the Tenderer has obtained State aid, the tender may be rejected on these grounds alone only after consultation with the Tenderer and after the Tenderer where the latter is unable to prove, within a sufficient time-limit fixed by the Contracting Authority, that the state aid in question is to be granted legally.

## **Article 11**

### **Contract Award Procedures**

#### 1. Open and Restricted Procedures

To award and execute Mixed, Work and Service Contracts, the Contracting Authorities may apply either Open or Restricted Procedures.

#### 2. Terms of Competitive Dialogue Procedure

Under the terms set out in article 13, the Contracting Authorities may conclude Mixed, Work and Service Contracts by following the Competitive Dialogue Procedure.

### 3. Terms of Negotiated Procedure

Under the terms set out in article 14, the Contracting Authorities may conclude Work and Service Contracts by following Negotiated Procedures.

## **Article 12**

### **General provisions for administering Contract Award Procedures**

#### 1. Minimum qualifications and abilities

Subject always to the general principles set out in article 9, the Contracting Authority is entitled to determine the minimum qualifications and abilities of the candidates. These minimum qualifications and abilities shall be set out in the Invitation to Tender.

#### 2. Limits on candidates

In Restricted Procedures, Negotiated Procedures (if conducted with the publication of an Invitation to Tender) and Competitive Dialogue Procedures, the Contracting Authority may limit the number of suitable candidates they will invite to tender, to negotiate or to conduct a dialogue with, provided a sufficient number of suitable candidates is available. In the Invitation to Tender, the Contracting Authority shall indicate the objective and non-discriminatory criteria or rules it intend to apply, the minimum number of candidates it intend to invite and, where appropriate, the maximum number. In Restricted Procedures the minimum number of candidates shall be five. In the Negotiated Procedure (if conducted with the publication of a Invitation to Tender) and in the Competitive Dialogue Procedure, the minimum number of candidates shall be three. In any event the number of invited candidates shall be sufficient to ensure genuine competition. The Contracting Authorities shall invite a number of candidates at least equal to the minimum number of candidates set in advance. Where the number of candidates meeting the selection criteria and the minimum qualifications and abilities set out in the Invitation to Tender is below the minimum number, the Contracting Authority may continue the Contract Award Procedure by inviting the candidate or candidates meeting the minimum qualifications and abilities. The Contracting Authority may not include in the Contract Award Procedure individuals who did not request to participate, or candidates who do not have the required capabilities.

## **Article 13**

### **Competitive dialogue**

### 1. Particularly Complex Contracts

In the case of Particularly Complex Contracts, where the Contracting Authority consider that the use of the Open or Restricted Procedure will not permit the awarding of a particular contract, it can have recourse to the Competitive Dialogue Procedure, in accordance with this article.

### 2. Criterion for contract award using the Competitive Dialogue Procedure

In the Competitive Dialogue Procedure, the Partnership Contract is awarded exclusively and solely using the criterion of the most economically advantageous tender.

### 3. Definition of needs and requirements of the Contracting Authority

The Contracting Authority will publish an Invitation to Tender setting out its needs and requirements; these can be presented, if necessary, in annexes to the Invitation to Tender.

### 4. Dialogue, and definition of the most advantageous solutions

The Contracting Authority shall open, with the candidates selected pursuant to article 15, a dialogue the aim of which shall be to identify and define the means best suited to satisfy the Authority's needs. During this dialogue, the Contracting Authority shall ensure equality of treatment among all candidates making sure, *inter alia*, that all candidates are provided with exactly the same information. The solutions, proposals and in general all confidential information entrusted to the Contracting Authority by a candidate are confidential and must not be communicated to other candidates without the consent of the candidate providing the information.

### 5. Dialogue in successive phases

The Contracting Authority may provide for the Competitive Dialogue Procedure to take place in successive phases in order to reduce the number of solutions being examined during the dialogue phase by applying the contract award criteria indicated in the Invitation to Tender. This option shall be indicated in the Invitation to Tender or in a separate document communicated to all the candidates.

### 6. Completion of dialogue and Tender submittal

After selecting the solution or solutions which best meet its needs, the Contracting Authority will declare the dialogue concluded and inform accordingly the candidates, asking them to submit their final tender on the basis of the solution(s) selected during the dialogue.

### 7. Completeness of tenders

The tenders must contain all elements necessary for implementation of the solution selected during the dialogue procedure.

### 8. Clarifications and supplementary information – relevant conditions

The Contracting Authority may request the Tenderers, if it deems expedient, to supply clarifications or additional information concerning their tenders, provided that such clarifications or additional information:

- do not entail any change to the basic features of the Tender,
- do not distort competition,
- do not introduce a discriminatory effect against any other Tenderer.

#### 9. Evaluation of Tenders. Selection of the most economically advantageous tender

The Contracting Authority shall evaluate the tenders on the basis of the contract award criteria laid down in the Invitation to Tender, and choose the most economically advantageous Tender pursuant article 10 paragraph 2. The Contracting Authority may request the Tenderer having submitted the most economically advantageous tender to supply clarifications or additional information in respect of the Tender, provided that the said clarifications or additional information:

- does not have the effect of modifying substantial aspects of the Tender,
- does not risk distorting competition,
- do not cause discrimination against any other Tenderer.

#### 10. Prices

If the Contracting Authority deems that the cost of participation in the Competitive Dialogue Procedure is high, it may award prices or pay part of the respective expenses incurred by the Tenderers. A relevant reference must be made in the Invitation to Tender.

### **Article 14**

#### **Negotiated procedures**

##### 1. Procedures following Invitation to Tender

After publication of the Invitation to Tender, the Contracting Authority may award and conclude Work, Service or Mixed Contracts using the Negotiated Procedure, in the following cases:

- a. After an Open or Restricted Procedure, or Competitive Dialogue, provided that:
  - aa. The Tenders submitted were unacceptable under the provisions of the law or did not meet the terms and conditions of this law, particularly article 15, or of the Invitation to Tender,
  - bb. The terms of the proposed contract are not substantially altered from the terms proposed during the Open or Restricted Procedure, or the Competitive Dialogue.



- b. In exceptional cases involving works or services whose nature or various non-definable factors do not allow prior overall pricing.
- c. In the case of Service Contracts and particularly intellectual services, insofar as the nature of the services is such that the contract specifications cannot be determined with sufficient precision and for this reason the contract cannot be awarded on the basis of the selection of the best tender according to the rules governing the Open or Restricted Procedures.
- d. In respect of Work Contracts, for works performed exclusively for the purposes of research, testing or development and not with the aim of ensuring profitability or recovering research and development costs.

## 2. Negotiation of tenders

In the cases referred to in paragraph 1, the Contracting Authority shall negotiate each and all Tenders with the respective Tenderer in order to adapt them to the specifications of the Invitation to Tender, the ultimate objective being to achieve the best possible Tender.

## 3. Contract award criterion

In the Negotiated Procedure the Contract is awarded solely and exclusively on the criterion of the most economically advantageous tender.

## 4. Equal treatment

During the Negotiated Procedure, the Contracting Authority shall ensure the equal treatment of all Tenderers taking care, *inter alia*, for making available exactly the same information to all of them. Specifically it shall not provide – in a discriminatory manner – any information which may give some Tenderers an advantage over others.

## 5. Negotiated Procedure in successive phases

The Contracting Authority is entitled to determine that the Negotiated Procedure may be carried out in successive phases, thereby reducing the number of Tenders examined by applying the contract award criteria laid down in the Invitation to Tender. Reference to this option shall be made in the Invitation to Tender or in a separate document communicated to all the candidates.

# **Article 15**

## **Grounds for disqualification of candidates**

### **Financial standing. Evaluation.**

### **Candidates' qualifications and abilities**

#### 1. Grounds for disqualification

As part of the contract award procedures, and before Contract Award, the Contracting Authority shall ascertain whether there are any grounds for the disqualification of candidates or Tenderers. Specifically:

a. The Contracting Authority excludes candidates from the contract award procedures, if they themselves or the persons having powers of representation or control have been sentenced by irrevocable judgement of a criminal court for an offence punishable with imprisonment or confinement of at least three months. In order to implement this provision, the Contracting Authority may request that the candidates submit appropriate documentation. When the candidate is not established in Greece, but in another EU member State, the Contracting Authority may seek the cooperation of the respective authorities in that member State.

b. The Contracting Authority is entitled to exclude any candidate or Tenderer from participation or further participation in the contract award procedures in cases where the candidate or Tenderer:

aa. has been declared bankrupt, ordered into liquidation, placed under compulsory administration or ordered to reach composition with its creditors, or is in any comparable state arising from similar procedures as determined under the provisions either of Greek law or the laws of its country of origin,

bb. is subject of proceedings for a declaration of bankruptcy, for an order for liquidation, compulsory winding up or administration, a composition with its creditors or any similar proceedings as determined under the provisions of Greek law or the laws of its country of origin,

cc. has been convicted of any offence related to its professional conduct, by a judgement which has the force of *res judicata* in accordance with the provisions of Greek law or the laws of its country of origin,

dd. has committed a serious breach of professional conduct proven by any means which the Contracting Authority can demonstrate,

ee. has not fulfilled its obligations relating to the payment of social security contributions as required by Greek law or the laws of its country of origin,

ff. has not fulfilled its obligations relating to the payment of taxes as required by Greek law or the laws of its country of origin or registration,

gg. has demonstrably made serious misrepresentations in providing the information required to implement this paragraph, or has failed to provide the said information.

## 2. Financial standing

Following the ascertainment described in paragraph 1, the Contracting Authority shall proceed to verify the economic and financial standing of the candidates or Tenderers, including the details set out in sections a. to c. of article 18 paragraph 1, and also to verify

details of the candidate's or Tenderer's ability to secure credit. In order to carry out the above verifications, the Contracting Authority may, *inter alia*, request that the candidates or Tenderers present documentation showing:

- a. the existence of bank funding or support, in accordance with the conditions to be set out in the Invitation to Tender,
- b. their financial condition (as demonstrated in balance sheets or extracts thereof),
- c. their overall turnover, or their turnover in the fields of activity related to the Contract, for a maximum of the last three financial years,
- d. the formal commitment of third parties to support the candidate or Tenderer during execution of the Contract, or to participate in its financing (for example, in the form of a declaration by the third party), if the Tenderer has invoked such a commitment,
- e. in cases where the candidate or Tenderer is a joint venture, the nature and extent of the commitment to financial participation of the various parties participating in the joint venture, or third parties (for example, in the form of a declaration or certification supplied by the members of the joint venture),
- f. their ability to secure credit (for example, in the form of certification of credit ranking from an international credit agency).

In the event that the candidate or Tenderer is unable, for any valid reason, to provide the documentation required by the Contracting Authority, it may prove its economic and financial standing by any other document the Contracting Authority deems appropriate.

### 3. Evaluation of technical and professional ability

In addition to the assessments described in paragraphs 1 and 2 above, the Contracting Authority shall also assess the technical and professional abilities of the candidates or Tenderers.

a. The technical abilities of the candidates or Tenderers may be evidenced by one or more of the following means, depending on the nature, quantity or importance of the Contract object, and also its intended function. For the specific needs of the above assessment, the Contracting Authority may require that the Tenderers submit:

- aa. a list of projects carried out over the past five years, accompanied by certificates and documentation of satisfactory execution, the contract values, the date and site of the work, and its proper and timely completion,
- bb. a list of the principal projects completed or services carried out or provided during the past three years, with reference to the corresponding sum, date and name of the recipient,
- cc. a report on the technical staff or technical services available, whether these belong directly to the candidate or Tenderer or not,

dd. a description of technical equipment and of the measures undertaken by the candidate or Tenderer to ensure quality, and a description of the design and research facilities owned by its company,

ee. a report on the professional qualifications of the candidate or Tenderer, or an account of the formal educational qualifications of its executive management, especially the staff responsible for providing the services or performing the work in question,

ff. an indication of the environmental management measures to be taken by the candidate or Tenderer during performance of the contract, where relevant,

gg. a formal statement reporting the average annual workforce (labour and administration) of the candidate or Tenderer, and the number of managers in the business over the last three years,

hh. a formal statement indicating the tools, plant and technical equipment owned by or available to the candidate or Tenderer, for carrying out the contract project,

ii. an indication of the proportion of the Contract Object the candidate or Tenderer intends to sub-contract out to third parties, and a description of the basic terms and conditions of the sub-contracting arrangement,

jj. in cases where the candidate or Tenderer has cited the financial support of a third party for performing the contract, a certification from the third party in question confirming its commitment to bear all or part of the relevant cost,

kk. in the case of a joint venture, a certification demonstrating the nature and extent of the commitment to financial participation of the parties participating in the joint venture, or any third parties.

b. The Contracting Authority shall require the candidates or Tenderers to demonstrate their matriculation in the appropriate professional or commercial register, or to supply a comparable declaration under oath or certification. In the case of Service Contracts, if the candidates or Tenderers must possess a special professional license according to law, or if they must be members of a particular organization in order to provide the service in question in their country of origin or registration, the Contracting Authority may require proof of such professional license or of membership in such an organization.

c. Should the Contracting Authority require that the candidates or Tenderers produce certificates issued by independent bodies attesting their compliance with certain quality assurance standards, reference must be made to quality assurance systems based on the relevant European standards series and certified by bodies conforming to European standards series concerning certification. The Contracting Authority shall recognize equivalent certificates issued by quality assurance bodies in other EU member states.

d. Should the Contracting Authority require that the candidates or Tenderers produce certificates issued by independent bodies attesting their compliance with certain

environmental management standards, reference must be made either to the European Eco-Management and Audit System (EMAS), or to environmental management standards based on comparable European or international standards.

e. The Contracting Authority may call on the candidates or Tenderers to supplement or clarify the documents they have submitted for the contract award procedures.

f. The manner and time of submitting these documents shall be set forth by the Contracting Authority in the Invitation to Tender.

## **Article 16**

### **Exceptional application of Law 3049/2002**

In exceptional circumstances, and in deviation from the contract award procedures set out in articles 9 to 15, DESDIT may, by virtue of a special reasoned decision, provided it maintains the general principles laid down in article 9, undertake act as Contracting Authority, implementing as appropriate the provisions of articles 5, 6 and 7 of Law 3049/2002. In this case, any reference to the Joint Ministers' Committee for Privatisation (DEA) shall be construed to refer to DESDIT, and any reference to the Special Secretariat for Privatisation (EGA) shall be understood to refer to the EGSDIT.

## **CHAPTER 4**

### **CONTRACT FRAMEWORK**

## **Article 17**

### **Partnership Contract**

#### **1. Contract Framework – Applicable legislation**

The Partnership Contracts and Ancillary Agreements contain the terms and regulations defined by the Public Entity in the relevant Invitation to Tender during the contract award procedure, and represent the sole contract framework binding the Public and Private Entities involved.

The Partnerships included under this law shall be subject to the terms of the Partnership Contract, and also of the Greek Civil Code.

#### **2. Content of Partnership Contract**

The Partnership Contracts and Ancillary Agreements shall contain clear and detailed descriptions of the rights and obligations of the Parties under the Partnership concerning its object. Specifically, the above contracts shall make special provision for the following:

- a. The Partnership object, including the specifications of the work or service to be provided, the sum to be paid to the Private Entity under the contract, and the provisions defining how any amounts paid by the final users for use of the work or provision of the service shall be shared by the parties to the contract.
- b. The method of monitoring the performance and operation of the work or provision of the service either by independent companies recruited for this purpose by the Public and Private Entities acting in common, or by the competent State agencies.
- c. The methods of ensuring quality during implementation and operation of the work or provision of the service.
- d. The time-schedule for the performance of the object of the Partnership, the conditions under which it may be amended, the penalties and bonuses to be applied in the event of failure to comply with the time-schedule or early completion, the duration of the Partnership Contract, and the conditions under which its term may be extended or abridged.
- e. The formal concession to the Private Entity of the use or exploitation of the fixed assets necessary for implementation and operation of the work or provision of the service, and any payments which may be envisaged.
- f. The way of financing the implementation of the Partnership object.
- g. Any approval which may be required by the Public Entity for the financing contracts executed by the Private Entity, and the procedure for amending that approval.
- h. The allocation of risk between the parties and the consequences of events representing *force majeure*.
- i. The insurance policies for the Contract object, or for the Private Entity.
- j. Protection of the environment and of antiquities.
- k. Protection of rights of intellectual and industrial property.
- l. The mode of operation, maintenance and exploitation of the Partnership object.
- m. The amounts to be paid for use of the work or service by the users; the manner in which these payments will be collected, and the grounds and methods for revision of such payments.
- n. The method of allocating between the Public and Private Entity the benefits that will accrue either from a re-structuring of the loans of the Private Entity, or after a specific percentage return on its own capital has been attained.

- o. The extent of the guarantees to be provided by the Private Entity for the proper implementation, operation and maintenance of the work, or for proper provision of the service.
- p. The substitution of the Private Entity or the creditors by decision of the Contracting Authority, the circumstances under which such substitution may be permitted, and all related issues.
- q. The payment of compensation and in general the reparation of any loss or damage caused in the event that either of the contracting parties is in violation of its contractual obligations.
- r. The grounds for termination of each contract and the consequences thereof.
- s. The applicable law.
- t. The procedure for resolving disputes.
- u. The order of priority of any appendices or annexes to each contract.
- v. A detailed definition of the minimum operation and maintenance requirements contained in the tender documents.
- w. Determining the procedures for delivery of the project to the public sector upon the end of the exploitation period, the eventual obligations for training and transfer of know-how from the Private Entity to the Public Entity, the specifications applicable to the object on handover and the guarantees, as well as their duration, following the handover of the work or the service by the Public Entity.
- x. The requirements for the hygiene and safety of the employers and the users of the work or the service.
- y. The procedures for the resolution of disputes that may arise, by an experts panel nominated by a joint decision of the involved parties.

## **Article 18**

### **Financing issues**

#### 1. Financial Standing and evidence thereof

The Special Purpose Companies described in article 1 paragraph 4, which undertake to execute works or provide services in Partnership arrangements, shall bear all responsibility and risk concerning the required financing for the proper performance of their obligations under the relevant Partnership Contracts or Ancillary Agreements. They must furnish to the Public Entities all necessary documentation demonstrating the availability of funding that is sufficient for the performance of the overall obligations to be undertaken by them under the relevant Invitation to Tender. Funding items shall involve in particular:

- a. the own capital of the Special Purpose Company,
- b. the capital secured by the Special Purpose Company in any form of credit or loan, and especially in the form of loans, bonds and securitisation of future and existing receivables.
- c. the necessary guarantees or assurances required for obtaining the capital or credits of a. and b. above,
- d. the resources from exploitation of the Partnership object during the construction period.

## 2. Participation of Public Entities and forms of participation. Other compensation

a. Public Entities may participate to the financing for the implementation of projects or the provision of services under this law. This support may be in money or in kind. In the latter case, a payment mode might be, for example, the concession of the use of real property (partially or in whole), the concession of real titles in property, and the assignment of rights to operate and exploit projects. In the cases referred to in the previous section, the rights assigned to the Special Purpose Company cannot be extended into the period after the end of the Partnership Contract.

b. Public Entities may participate in the operation and/or exploitation of the Partnership object.

c. In all cases, the participation of the Public Entity and the form(s) such participation may take must be clearly defined in the respective Invitation to Tender.

## 3. Direct contracts with creditors

In order to regulate special matters and facilitate the financing of project implementation and/or the provision of services in general, the Public Entities may also execute agreements with the creditors of the Special Purpose Company.

# **CHAPTER 5**

## **SPECIAL PROVISIONS**

### **Article 19**

#### **Charges payable by the users of the works or services**

##### 1. Definition of procedure for collecting the contractual fee

In case the contractual fee of the Special Purpose Company is to be collected, in whole or in part, directly from the final users of the work or service, the collection procedure and any related details shall be determined by decision of DESDIT

##### 2. Assistance by the Public Entity



Each Public Entity involved, and any other competent public authority, shall offer all necessary assistance to help the Special Purpose Company collect without hindrance the sums referred to in the previous paragraph, namely its contractual fee.

## **Article 20**

### **Granting of permits**

All permits required for the design, construction, financing, operation, exploitation and maintenance of the works or provision of services under the Contract shall be issued in the name of and for the account of the Special Purpose Company. These permits shall be deemed to have been issued, if the authorities responsible for issuing them have not proceeded to issue a written, reasoned refusal to issue the permits within a period of sixty days after the Special Purpose Company has submitted the application for the permit. An application for a permit shall be deemed to have been legally submitted only if (a) it is accompanied by the supporting documentation required by law for the issuing of the permit in question (b) it has been pre-approved for the fulfilment of the needed documents in case such pre-approval is provided for by law.

## **Article 21**

### **Archaeological finds**

In the event that archaeological remains are uncovered during construction, the Public Entity shall, upon being notified by the Special Purpose Company, communicate the event to the appropriate Archaeological Authority, which within sixty days must indicate ways for continuing the project works and proceed to the necessary actions in order to secure the protection of the antiquities. If the above deadline is not met by the Archaeological Service, the Special Purpose Company may request, and the Public Entity is obligated to grant, an extension of the contract deadlines equal to the delay caused by the non-compliance of the competent Archaeological Service or the execution of the possibly needed actions for the preservation of the Archaeological finds. In this case, the Special Purpose Company has the right to seek redress for any loss it may sustain as a result of such delay.

## **Article 22**

### **Protection of the environment**

## 1. Environmental impact studies

The environmental impact studies required in each project shall be prepared and submitted for approval, and need to be approved before the award of the Partnership Contract. If the Public Entity involved, for reasons that could not originally have been predicted even if special care was applied, imposes additional regulations, it must indemnify the Special Purpose Company for any additional cost or expense it may have sustained.

## 2. Additional protection measures

The Partnership Contract may include measures for increased protection of the natural and cultural environment, as long as these measures have been included in the respective Invitation to Tender.

## **Article 23**

### **Expropriations**

#### 1. Urgency – Cost - Decision

The expropriations required for the construction of works or the provision of services under this law, or the constitution of rights *in rem* or liens to those properties, where permitted, serve purposes of obvious public interest and shall be regarded as urgent and of major significance, provided that the official approval of the compulsory purchase includes adequate evidence that the particular expropriation serves objectives of public interest. The expropriation of such properties or the constitution of rights *in rem* or liens to those properties, shall be effected to the benefit of the Public Entity involved in each case. The expropriation shall be declared by joint decision of the Minister of Economy and Finance, and the Minister in the field of competence relevant to the project. If the scheduled deadline for completion of the expropriation or for constitution of rights *in rem* or liens to those properties passes and the relevant procedures are still pending, then the Special Purpose Company shall be entitled to request, and the Public Entity shall be obligated to grant, an extension of the Contract time-schedule and deadlines equivalent to the effective delay. In these cases, the Special Purpose Company shall be entitled to seek redress for any loss it may have sustained as a result of the said delay.

#### 2. Definition

If the compulsory expropriation or the constitution of right *in rem* or liens to the above properties is made at the expenses of the Special Purpose Company, these expenses shall be construed as payment for the use of these properties or the rights thereon.

## **Article 24**

### **Public agencies and projects undertaken by and/or on behalf of Public Utility companies**

Public Agencies, Public Enterprises and Public Utility companies are entitled to proceed immediately in order of priority to carry out work and implement measures within their area of responsibility, which are necessary or useful for the smooth and unhindered execution of works or provision of services under this law. If the public agencies, enterprises and utility companies do not fulfil their obligations as set out above, the Special Purpose Company may request and the Public Entity shall be obligated to grant an extension of the deadlines laid down in the Contract equal to the delay caused by this failure to fulfil obligations. In these cases, the Special Purpose Company shall be entitled to seek redress for any loss it may have sustained as a result of the said delay.

## **CHAPTER 6**

### **LEGAL ISSUES**

## **Article 25**

### **Assignment of claims**

The Special Purpose Companies participating to Partnership Contracts may assign, in part or in whole, their claims under the contract, existing or future (provided that these are defined or can be defined in any way), to banks or credit agencies or any other financial institution subject to the supervision of a central bank or other competent independent authority, which are involved in the financing of the Partnership, or participate to contracts with such banks or credit agencies or any other financial institutions subject to supervision in any capacity, such as assignee, successor or contracting party in order to secure their claims arising from that financing. The above assignment is also permitted to foreign or domestic special purpose companies for the purpose of conversion to securities in application of article 10 of Law 3156/2003.

## **Article 26**

### **Validity of sureties *in rem***

1. Subsequent bankruptcy

The validity of the sureties *in rem* supplied at any time by the Special Purpose Company, or any third party in favour of any bank or credit agency or any other financial institution subject to the supervision of a central bank or other competent independent authority or Public Entity or third party, as security for their claims against the Special Purpose Company in relation to the financing or any other relevant or ancillary contract or act for the performance of the works or the provision of services falling within the scope of this law, [the validity of the sureties] shall not be compromised by the imposition of any collective measure to satisfy creditors, resulting in prohibiting or limiting the power to transfer the assets of the Special Purpose Company or the third party which constituted the security, nor by submission of a petition to that effect against them. The same also holds for future claims, which may originate after the imposition of the collective measure or the submittal of the said petition.

## 2. Indicative enumeration

The said sureties may especially not be challenged as indicated in the previous paragraph:

- a. in mortgages or prenotations of mortgages, registered in any form of security, after they have been registered,
- b. in pledges with or without delivery pursuant the provisions of the Greek Civil Code, Law 177/13.8.1923 or the provisions of Law 2844/2000, as relating to moveable assets or groups of assets, after their due legal constitution,
- c. in pledges or surety assignments constituted to cover current or future claims or groups of claims, defined as a whole in accordance with article 12 paragraph 2 of Law 2844/2000 (published in Government Gazette 220A) following the due legal constitution of the pledge or announcement of the assignment, and
- d. to cases of granting a fluctuating surety in accordance with articles 15 to 18 of Law 2844/2000, after the due legal constitution of the pledge or announcement of the transfer.

## 3. Creditors *in entirety*

All kinds of surety *in rem* such as mortgages, prenotations of mortgage, pledges, and/or surety assignments, provided to secure claims arising from loans or other credit and granted by consortia of banks, credit agencies or other financial institutions subject to the supervision of a central bank or other competent independent authority, for the execution of works or the provision of services under this law; if the creditors are creditors *in entirety* for all or part of the loan or credit in the sense of article 489 of the Civil Code; [all kinds of surety] shall be registered, constituted or executed in their entirety (or their corresponding part) in favour of a representative of the creditors, who will be appointed in the relevant credit contract and will exercise all the rights arising from those securities as mortgagee or pledge-holding creditor or assignee. If the financing is granted in the form of a bond, the relevant sureties or other securities shall be received by the representative of the bondholders pursuant the provisions of Greek Law 3156/2003.

## **Article 27**

### **European Investment Bank**

For the application of legal provisions relating to claims by banks and/or to their sureties, the European Investment Bank shall be subject to the respective terms and conditions concerning loan agreements and related contracts executed in relation to the construction of the works or the provision of services under this law.

## **Article 28**

### **Transfers of shares, and listing in a stock exchange**

#### 1. Transfers of shares, increases in share capital and changes in corporate status

The following shall not be valid without the written consent of the Public Entity:

- a. any transfer outside the stock exchange of shares in the Special Purpose Company, or any other transaction involving the transfer of voting rights, if such transactions take place before commencement of project operation and/or provision of services,
- b. any increase in share capital, or any amendment of the articles of incorporation of the Special Purpose Company, apart from those that are mandatory under the Partnership Contract, the Ancillary Agreements or the law,
- c. any issue of bonds,
- d. any form of merger, break-up, takeover or other change in corporate status of the Special Purpose Company.

In those cases, the special terms and conditions involved in granting consent shall be determined in the Partnership Contract.

#### 2. Stock exchange listing

The listing of the shares of the Special Purpose Company in a Greek or foreign organized securities market and the issuing of a transferable bond, or bond convertible into shares shall be permitted only following a prior approval decision of the Greek Minister for Economy and Finance and the Ministers in charge of the field of competence of the project in question.

## **Article 29**

### **Other regulations**

#### 1. Income tax exemption on accrued interest

Special Purpose Companies awarded Partnership Contracts are exempt from income tax on accrued interest payable up until the date of commencement of the operation.

#### 2. Tax regime applicable to financing contribution by a Public Entity

In those cases where a Public Entity has paid financial aid pursuant the provisions of article 9 paragraph 3 section e of Greek Law 2052/1992, the amount of aid shall be construed to be a capital subsidy and shall not be subject to VAT, income tax or any other tax, and shall be paid free of any withholdings in favour of any third parties.

#### 3. Return of VAT credit balance

Within ninety days from submitting the relevant application, any VAT credit balance shall be returned to third parties under contract with the Special Purpose Company to construct works or provide services. After expiration of this deadline, they shall be entitled to overdue interest on the overdue amounts.

#### 4. Transfer and settlement of accumulated losses of Special Purpose Company

Any losses accumulated by the Special Purpose Company may be accounted against the taxable profits of the next ten financial years.

### **Article 30**

#### **Amortisation**

The total cost of implementing the Partnership, including the construction cost arising from the respective Partnership Contract or Ancillary Agreement, including the initial cost of all the equipment required and all other expenses of any kind including interest payments during the period of construction, shall be included in amortisation accounting, at the choice of the Special Purpose Company, either by the gradual method throughout the whole duration of the operation of the project, or by the method stipulated in article 50 paragraph 5 of Greek Law 1914/1990 (published in Government Gazette 178A), which added a fifth paragraph to article 97 of Law 1892/1990 (published in Government Gazette 101A) and in accordance with the procedure stipulated in that paragraph.

### **Article 31**

#### **Resolution of disputes – Applicable Law**

### 1. Arbitration

Any dispute arising in relation to the application, interpretation or validity of the Partnership Contracts or Ancillary Agreements shall be resolved by arbitration.

### 2. Rules of Arbitration

In deviation from the provisions in force for public sector arbitration, the Partnership Contract or Ancillary Agreements set out rules for the appointment of arbitrators, the rules of arbitration to be applied, the place of the Arbitration court (or other body), the fees to be paid to the arbitrators (where fees are not specified in the applicable arbitration rules) and the language in which the arbitration shall be conducted. The arbitrators' decision shall be final and irrevocable, and not subject to any further judicial or extra-judicial appeal; it shall be carried out without any requirement of ratification by the regular courts, and the parties involved shall be committed to comply immediately with its terms and conditions.

### 3. Applicable Law

For the resolution of disputes involving the interpretation, application or validity of the Partnership Contract, Greek substantial Law shall be applicable.

## **Article 32**

### **Effective Date**

The present Law shall come into effect starting on the date of its publication in the Government Gazette of the Hellenic Republic.

**THE MINISTER OF ECONOMY AND FINANCE G. Alogoskoufis**

**THE MINISTER OF INTERNAL AFFAIRS, PUBLIC ADMINISTRATION AND  
DECENTRALISATION P. Pavlopoulos**

**THE MINISTER OF DEVELOPMENT D. Sioufas**

**THE MINISTER OF THE ENVIRONMENT, PLANNING AND PUBLIC WORKS G. Souflias**