

Unofficial translation

*Law No 345-3 of the Republic of Belarus "On Public-Private Partnership" as of 30.12.2015  
(CinsultantPlus)*

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# **LAW No 345-3 OF THE REPUBLIC OF BELARUS**

## **ON PUBLIC-PRIVATE PARTNERSHIP**

**Os of December 30, 2015**

*Adiyped be the Chamber of Representatives on December 10, 2015*

*Approved by the Council of Ministers on December 18, 2015*

This Law is designed to attract investments in the Republic of Belarus, shall define the legal environment for public-private partnership, regulate public relations arising out of execution, performance and/or termination of public-private partnership agreements hereafter.

### **CHAPTER 1**

#### **GENERAL PROVISIONS**

##### **Article 1. Terms and Definitions**

1. For the purposes hereof, the following key terms and definitions shall be used herein:

public partner – the Republic of Belarus, on whose behalf acts any state body or any other state organisation authorised by the President of the Republic of Belarus, any republican governing body or any other state organisation authorised by and subordinate to the Council of Ministers of the Republic of Belarus, or any administrative-territorial unit on whose behalf a local executive and regulatory body act, that have entered into a public-private partnership agreement;

private partner – any legal entity (except state unitary enterprise, state institutions and national unions, as well as commercial companies with more than share of 50 percent owned by the Republic of Belarus or its administrative-territorial units), any foreign company other than legal entities, any individual

entrepreneur, that have entered into a public-private partnership agreement;

public-private partnership – any legally executed, timeline-specific, mutually beneficial cooperation between public partner and legal entities with the aim of pooling of resources and risk diversification that meets the goals, objectives and principles set forth herein, which are carrying out an agreement on public-private partnership;

public-private partnership project – any project of infrastructural asset that meets the goals, objectives and principles set forth herein;

public-private partnership project advisor – any legal entity, foreign company other than legal entities, any individual entrepreneur, which provides consulting, engineering, marketing, legal and any other services for public-private partnership project milestone monitoring;

private partner loan suppliers – any bank, nonbank credit and financial organization, any other organization, which provides any private partner credits and/or loans for any public-private partnership project implementation.

public-private partnership agreement – any written agreement between public and private partners, which defines rights, duties and responsibilities of the parties and any other terms and conditions in regard of public-private partnership project implementation;

project coordination contract – civil contract, entered by and between any public partner, private partner, loaners of public partner and (or) another entities for the purposes of the public-private project implementation, which sets forth conditions of its interactions in regard of delivery arrangements of the public-private partnership agreement;

infrastructural facilities – any sites and facilities of engineering, industrial, social and transport infrastructure owned by the Republic of Belarus and/or its administrative-territorial units or constructed within the framework of a public-private partnership;

authorised state body or organisation in the field of public-private partnership – any state body or any other state organisation authorised by the President of the Republic of Belarus to do acts and things on behalf of the Republic of Belarus or any republican government authority or public organisation subordinate to and authorised by the Council of Ministers of the Republic of Belarus to do acts and things on behalf of the Republic of Belarus; a local executive and administrative body acting on behalf of the respective administrative-territorial unit;

infrastructural facility modernization– activities to restructure such facility through via implementing new technologies, production mechanization and automation, replacing outdated and worn-out equipment with new more efficient units;

infrastructural facility maintenance – maintaining the said facility in a functioning, safe and operational state in line with its intended purpose;

infrastructural facility operation – any use of such facilities in line with the intended purpose, including manufacturing of products, performing works, and

providing services.

2. The terms “designing”, “construction”, “reconstruction”, “restoration”, “repairs” referred to herein shall be used as defined in Article 1 of the Republic of Belarus’ National Law “On Architectural, Urban Planning and Building Activity in the Republic of Belarus” as of. 05.06.2004 (National Register of Legal Acts of the Republic of Belarus, 2004, No109, 2/1049).

## **Article 2. Goals and Objectives of Public-Private Partnership**

1. Public-private partnership goals shall include consolidation of material, financial, intellectual, scientific, technical and other resources, ensuring the balance of interests and risks, raising extra-budgetary funds to implement investment projects, plans and initiatives aimed at infrastructural facilities development.

2. Core public-private partnership objectives shall include the following:

- creating the conditions for sustainable socio-economic development and national security of the Republic of Belarus;
- improving the standards of living;
- higher efficiency of the use of assets, including state-owned land plots;
- development of innovations, high-technology industries;
- higher technological level of production, improved technological processes;
- infrastructural facilities development;
- more advanced equipment for technical protection, security means and systems used to prevent and identify terrorism and other illegal activities;
- efficient use of budgetary funds;
- higher quality of products (works, services) sold (performed, provided) to the population;
- ensuring employment growth.

### **Article 3. Public-Private Partnership Principles**

Public-private partnership shall be exercised in accordance with the following principles:

- rule of law;
- social focus in regulating the economic activity;
- prioritised public interests;
- transparency;
- fair competition;
- efficiency of public-private projects;
- ensured balance of interests and risks between parties to public-private partnership;
- equality between the parties to public-private partnership;
- freedom of contracts;
- environmental protection.

### **Article 4. The Republic of Belarus' Legislation on Public-Private Partnership**

1. The Republic of Belarus' legislation on public-private partnership shall be based on the Constitution of the Republic of Belarus and comprised of this Law and other legal acts of the Republic of Belarus.

2. In the event that an international treaty of the Republic of Belarus should establish rules other than those set forth herein, the rules of the international treaty shall govern.

### **Article 5. Public-Private Partnership Areas**

Public-private partnership can be implemented in regard of infrastructural facilities in various areas, including:

- traffic and transport activities;
- municipal services and utilities;
- healthcare;
- social services;
- education and culture;
- physical culture, sports, tourism
- electrical telecommunications;
- energy;
- oil refining, transportation, storage and distribution;
- gas transportation, storage, distribution and supply;
- agricultural production;
- defence, law enforcement;
- science and technology;
- other areas

**Article 6. Public-Private Partnership Milestones**

Public-private partnership project shall include the following milestones:  
preparation, consideration and evaluation of the offer concerning public-private partnership project implementation;  
decision-making on public-private partnership project implementation;  
tender for choosing public partner in order to enter a public-private partnership agreement;  
execution and performance of a public-private partnership agreement.

## CHAPTER 2

### GOVERNMENT REGULATION OF PUBLIC-PRIVATE PARTNERSHIP

#### **Article 7. The Scope of Competence of the President of the Republic of Belarus in the Field of Public-Private Partnership**

In the field of public-private partnership, the President of the Republic of Belarus shall:

- define common state policy;
- exercise general governance over public authorities and other government bodies regarding public-private partnership project implementation;
- exercise other powers under the Constitution of the Republic of Belarus, pursuant to this Law and other legislative acts of the Republic of Belarus.

#### **Article 8. The Scope of Competence of the Council of Ministers of the Republic of Belarus' in the Field of Public-Private Partnership**

In the field of public-private partnership, the Council of Ministers of the Republic of Belarus shall:

- ensure the implementation of common state policy;
- determine procedures of preparation, consideration and evaluation of offers concerning public-private partnership project implementation;
- determine procedures of tender arrangement and conducting;
- determine procedures of maintenance of State Register of public-private partnership agreements;
- exercise other powers under the Constitution of the Republic of Belarus, pursuant to this Law and other legislative acts of the Republic of Belarus

#### **Article 9. the Scope of Competence of the Ministry of Economy of the Republic of Belarus' in the Field of Public-private partnership**

Within its scope of competence in the field of public-private partnership, the Ministry of Economy of the Republic of Belarus shall:

- ensure common state policy implementation;
- coordinate activity of national governing bodies and other state organisations subordinate to and authorised by the Council of Ministers of the Republic of Belarus;
- consider and evaluate offers concerning public-private partnership projects implementation
- consider and allign tender documents;
- participate in the Tender Committee via sending its representatives;

set feasibility study requirements of offers concerning public-private partnership project implementation;

elaborate estimation procedures of offers concerning public-private partnership project implementation;

give an explanation on issues regarding application of legal acts of the Republic of Belarus on public-private partnership;

collaborate with foreign and international organizations other than legal entities;

render methodological assistance, provide advisory services and recommendations;

exercise other powers under the Constitution of the Republic of Belarus, pursuant to this Law and other legislative acts of the Republic of Belarus

### **Article 10. The Scope of Competence of the Ministry of Finance of the Republic of Belarus in the Field of Public-private partnership**

Within its scope of competence in the field of public-private partnership, the Ministry of Finance of the Republic of Belarus shall:

consider and evaluate offers concerning public-private partnership project implementation;

consider and align tender documents;

participate in the Tender Committee via sending its representatives;

exercise other powers under the Constitution of the Republic of Belarus, pursuant to this Law and other legal acts of the Republic of Belarus.

### **Article 11. The Scope of Competence of the State Committee on Property of the Republic of Belarus' in the Field of Public-private partnership**

Within its scope of competence in the field of public-private partnership, the State Committee on Property of the Republic of Belarus shall:

consider and evaluate offers concerning public-private partnership project implementation;

consider and align tender documents;

participate in the Tender Committee via sending its representatives;

exercise other powers under the Constitution of the Republic of Belarus, pursuant to this Law and other legal acts of the Republic of Belarus.

### **Article 12. The Scope of Competence of State Bodies, Other Government Authorities Subordinate to the President of the Republic of Belarus, of Other Republican Governing Bodies, Other Government Authorities Subordinate to the Council of Ministers of the Republic of Belarus in the Field of Public-private partnership**

Within their scope of competence in the field of public-private partnership, state bodies, other government authorities subordinate to the President of the Republic of Belarus, other republican governing bodies, other government authorities subordinate to the Council of Ministers of the Republic of Belarus shall:

- implement common state policy;
- exercise preparation, consideration and evaluation of the offer concerning public-private partnership project implementation;
- participate in public-private partnership;
- exercise other powers in accordance herewith and pursuant to any other legal acts of the Republic of Belarus.

**Article 13. The Scope of Competence of Local Deputy Councils, Local Executive and Administrative Authorities in the Field of Public-Private Partnership**

1. Local Deputy Councils shall implement common state policy in the respective administrative-territorial unit in line with their competence in the field of public-private partnership as defined under the Constitution of the Republic of Belarus, this Law and other legal acts of the Republic of Belarus.

2. Within their scope of competence in the field of public-private partnership, local executive and administrative authorities shall:

- implement common state policy within the administrative-territorial units in accordance herewith and pursuant to any other legal acts of the Republic of Belarus;
- consider and align tender documents;
- participate in the Tender Committee via sending its representatives
- participate in public-private partnership;
- exercise other powers in accordance herewith and pursuant to any other legal acts of the Republic of Belarus.

**Article 14. The Scope of Competence of Authorised State Bodies and Authorities in the Field of Public-private partnership**

Authorised state bodies and authorities in the field of public-private partnership shall:

act as organisers of tenders, form tender committees, set tender date, establish tender's terms and conditions, tender documents required, accept bids to participate in tenders;

enter into public-private partnership agreements on behalf of the Republic of Belarus or its respective administrative-territorial unit;

exercise other powers in accordance herewith and under other legislative acts of the Republic of Belarus.

**CHAPTER 3****PUBLIC-PRIVATE PARTNERSHIP AGREEMENT****PREPARATION OF THE OFFER CONCERNING PUBLIC-PRIVATE PARTNERSHIP PROJECT IMPLEMENTATION AND DECISION-MAKING ON PUBLIC-PRIVATE PARTNERSHIP PROJECT IMPLEMENTATION****Article 15. Preparation of the offer concerning public-private partnership project implementation.**

1. Within their scope of competence in the field of public-private partnership, state bodies, other government authorities subordinate to the President of the Republic of Belarus, other republican governing bodies, other government authorities subordinate to the Council of Ministers of the Republic of Belarus (hereinafter referred to as “State Bodies and Authorities”), which initiate public-private partnership projects, shall exercise preparation of offers on public-private partnership project implementation

2. Any Legal entities, foreign companies other than legal entities, individual entrepreneurs shall be able to make an offer on public-private project implementation

3. Preparation, consideration and evaluation of offers on public-private project implementation must be conducted in the procedure, defined by the Council of Ministers of the Republic of Belarus

4. Any offer on public-private partnership project implementation shall hereby include the following:

feasibility study;

an public-private partnership agreement;

any other documents, defined by the Council of Ministers of the Republic of Belarus;

5. State bodies and authorities shall be able to solicit advisors for public-private partnership project at any milestone of implementation pursuant to the Law of the Republic of Belarus other state organisations for account of budget funds, which are factored into its annually functioning as well as for account of other funds, which are not restricted by the Law of the Republic of Belarus

**Article 16. Decision-making on public-private partnership project implementation**

Decisions on public-private project implementation shall be made by:

The President of the Republic of Belarus, In the event that the public partner

is the state body or other government authority of the Republic of Belarus, subordinated and authorized by the President of the Republic of Belarus;

The Council of Ministers of the Republic of Belarus, In the event that the public partner is the state administrative body or any other government authority of the Republic of Belarus, subordinated to the Council of Ministers of the Republic of Belarus;

Local Deputy Councils, In the event that the public partner is a state administrative unit of the Republic of Belarus, on behalf of which a respective local executive and administrative authority acts.

## **CHAPTER 4**

### **TENDER**

#### **Article 17. Private Partner Selection for a Public-Private Partnership Agreement**

1. Private partner selection shall be performed via tender procedure, except as set forth in Paragraph 3 of Article 23 hereof, in accordance herewith and in the manner and procedure determined by the Council of Ministers of the Republic of Belarus.

2. Any tender shall include two stages – preliminary selection of bidders and selecting a private partner via tender procedure.

3. Private partner selection for a public-private partnership agreement devoid of the tender procedure can be performed as specified below :

In the event that a public partner's necessity should arise to design, build and (or) reconstruct, restore, repair, modernize, as well as to maintain and (or) operate any infrastructural facility in the view of any Act of God or any other emergency that makes it impossible to hold a tender;

in cases related to ensuring defensive power and national security of the Republic of Belarus.

#### **Article 18. Basic Tender Procedure Principles**

A tender is held in accordance with the basic principles of public-private partnership as set forth in Article 3 hereof and the principles of:

transparency and openness

equality of bidders' rights and legitimate interests;

common requirements to bidders;

unbiased evaluation of bids by the tender commission.

#### **Article 19. Tender Committee**

1. To arrange and hold a tender, an authorised state body or an authority in

the field of public-private partnership shall form a committee.

A Tender Committee shall be comprised of representatives of relevant government bodies and authorities as well as deputies of the House of Representatives' and members of the Council of the Republic under the National Assembly of the Republic of Belarus, deputies of relevant local Deputy Councils, representatives of public associations, associations of legal entities and/or individual entrepreneurs (associations and unions) and any other organisations.

2. Regulations and procedures of the Tender Committee operation shall be approved by the authorised state body or authority in the field of public-private partnership.

3. A Tender Committee shall:  
 review and evaluate the tenderers' bids;  
 determine the winning bidder;  
 exercise other powers in accordance herewith and under other legal acts of the Republic of Belarus.

4. Based on the tender's results, a Tender Committee shall compile a record with the tender's outcome.

## **Article 20. Preliminary Selection of Bidders**

1. A Tender Committee shall perform preliminary selection of bidders that have sufficient potential and qualification required to perform the public-private partnership agreement.

2. The Bidders - legal entities, foreign companies other than legal entities - must:

not be undergoing liquidation, reorganisation (except cases with legal entities with which another legal entity is being merged), neither have their assets arrested nor have their economic activity suspended under the law of the Republic of Belarus and the law of their country of incorporation;

not be held liable for non-performance or inadequate performance of their obligations under concluded public-private partnership agreements, concession or investment agreements with the Republic of Belarus per court decision that have been terminated;

possess funds in amounts not less than those envisaged by the tender documents. Funds in possession shall hereby refer to amounts legally acquired by a bidder and belonging to him by the rights of ownership, economic management, operating management, with the exception of borrowed funds;

comply with other requirements set forth in the tender documents for bidders.

3. Bidders - individual entrepreneurs - must meet the requirements stipulated in Paragraphs 3 to 5 of Clause 2 hereof, their property must not be arrested, their business must not be in the process of cessation.

4. To confirm their compliance with the requirements stipulated in paragraphs 2 to 4 of Clause 2 hereof and according to the tender documents, a bidder shall submit the following documents to the Tender Committee:

a copy of state registration certificate – for legal entities and individual entrepreneurs of the Republic of Belarus;

a legalised extract from the trade register of the country of incorporation or any other equivalent proof of an organisation's legal status under the law of its country of incorporation (such extract must be dated within one year before the bid submission and translation into Belarusian or Russian (translator's signature authenticity must be certified by a notary)) – for foreign and international legal entities and foreign companies other than legal entities;

an auditor's report certifying the availability of own funds in accordance with Paragraph 4 of Clause 2 hereof.

5. A bidder that does not meet the requirements and (or) has not submitted the documents as per Paragraphs 2 through 4 hereof, or submitted documents containing false information, shall be denied tender participation.

Completeness of information submitted by bidders shall be checked by a Tender Committee when reviewing the documents required under Paragraph 4 hereof.

Bidders shall be held responsible for the accuracy of any information contained in their documents submitted hereunder.

6. Bidders that have passed preliminary selection shall be granted further tender participation.

### **Article 21. Tender documents**

Tender documents may contain the following tender conditions:

- Feasibility study of an infrastructural facility;
- terms and manner of reconstruction, restoration, renovation, modernization of an infrastructural facility;
- terms and procedures of maintenance and/or operation of an infrastructural facility;
- funding sources;
- sources of reimbursement of outlays and realization of profit (revenue) of a private partner;
- risks carried by public and private partners;
- other tender conditions.

### **Article 22. Winning Private Partner Selection**

1. In the course of the tender only bids from participants who have passed preliminary selection shall be reviewed and evaluated.

Bids must comply with the tender terms and conditions specified in the tender documents.

2. The winning bidder shall be the bidder whose offer, upon the decision of the Tender Committee, is deemed as containing the most beneficial terms and conditions compared to the bids of other bidders.

3. The Tender Committee's decision on bids evaluation and tender winner

recognition must be motivated and compliant with the tender conditions.

4. The Tender Committee's decision on bid evaluation and tender winner recognition, actions and failures to act of the Committee and (or) its members can be appealed by any bidder in any authorized state body or authority in the area or public-private partnership in accordance with the law of the Republic of Belarus.

### **Article 23. Recognition of a Tender as Failed or Ineffective**

1. A tender shall be recognised as failed In the event that:  
no bids were submitted or no participants were allowed to participate in the tender;

a tender bid was submitted by the only participant, or only one bidder was granted participation;

no bidders were present to participate in the tender;

only one bidder was present to participate in the tender.

2. A tender shall be recognised as ineffective In the event that no bids from any bidder are compliant with the tender's conditions.

3. In the event that a tender has been recognised as failed due to the fact that any bid had been submitted by one participant only, or only one bidder was present to participate in the tender (hereinafter referred to as "sole bidder"), the Tender Committee shall consider such bidder's proposals and provide a conclusion on compliance or non-compliance of proposed conditions to those of the tender. Should any sole bidder's proposals meet the tender terms and conditions, a public-private partnership agreement shall be entered into on the terms and conditions proposed by such bidder.

4. Any tender can be repeated in the event that the tender was recognised:  
as failed as provided in Paragraphs 2 and 4 of Clause 1 hereof;  
as failed as provided in Paragraphs 3 and 5 of Clause 1 hereof, and the refusal of any sole bidder to enter into a public-private partnership agreement;  
as inefficient.

## **CHAPTER 5**

### **PUBLIC-PRIVATE PARTNERSHIP AGREEMENT**

#### **Article 24. Conclusion of a Public-Private Partnership Agreement**

1. A public-private partnership agreement shall be entered between any authorised state body or authority in the field of public-private partnership and any private partner – any participant who had won the tender, or any tender's sole bidder whose proposals complied with the tender's terms and conditions, or the one selected under Clause 3 of Article 17 hereof.

2. The scope of a public-private partnership agreement shall be designing, construction, reconstruction, restoration, renovation, modernization, as well as

maintenance and/or operation activities regarding any infrastructural facility.

3. The law applicable to public-private partnership agreements shall be the law of the Republic of Belarus.

4. A public-private partnership agreement shall be subject to registration at the Ministry of Economy of the Republic of Belarus.

The procedures for registration and maintaining the state register of public-private partnership agreements and other agreements consistent shall be determined by the Council of Ministers of the Republic of Belarus.

### **Article 25. Public Partner's Obligations under a Public-Private Partnership Agreement**

1. Under any public-private partnership agreement, any public partner can assume the following obligations:

leasing any land plot to the private partner, or granting him/her the right to permanently or temporarily use such land plot where such infrastructural facilities are or must be located, to fulfil the obligations under the public-private partnership agreement;

providing the private partner with any real and personal property intended for the performance of obligations under the public-private partnership agreement, into possession, use, including uncompensated use;

granting the private partner with the exclusive right to use the intellectual property required to perform the public-private partnership agreement;

providing the private partner with any other movable and/or immovable assets intended for the performance of obligations under the public-private partnership agreement, into possession, use, including uncompensated use;

taking ownership of any infrastructural facility built by the private partner within the timeframe, procedures, terms and conditions set forth by the public-private partnership agreement;

granting the private partner funds from the republican and/or local budgets as per the public-private partnership agreement's terms and conditions.

2. The public partner shall have the right to assume other obligations associated with activities envisaged by the public-private partnership agreement.

### **Article 26. Private Partner's Obligations under a Public-Private Partnership Agreement**

1. Under a public-private partnership agreement, any private partner can assume obligations to design, build, reconstruct, restore, repair, modernize, maintain, and/or operate any infrastructural facility.

The private partner shall have the right to provide full or severable financing his obligations on the terms, conditions and manner determined by the public-private partnership agreement.

2. The private partner shall have the right to assume any other obligations associated with the activities under the public-private partnership agreement.

3. The private partner shall be allowed to establish a commercial legal entity in accordance with the laws of the Republic of Belarus so as to ensure the public-private partnership agreement implementation.

The public partner shall be entitled to act as a co-founder of such legal entity under the applicable law of the Republic of Belarus and on terms and conditions specified by the public-private partnership agreement.

**Article 27. Legal structure of the infrastructural facilities and other property, provided to the public partner for on Public-Private Partnership Agreement implementation**

1. Improvements made on infrastructural facilities in state property, technical maintenance and/or operation which are made pursuant to the on public-private partnership agreement shall be deemed state property.

Exclusive rights on intellectual property, arising out of public-private partnership agreement implementation with participation of funds from republican and/or local budgets shall be owned by the state.

2. Property right on infrastructural facilities, constructed in the course of the public-private partnership agreement implementation with participation of funds from republican and/or local budgets shall be assigned to the state on the terms, conditions and manner determined by the applicable law of the Republic of Belarus and the public-private partnership agreement if not otherwise stated by the public-private partnership agreement.

3. Infrastructural facilities in a state property and/or constructed with participation of funds from republican and/or local budgets shall not be a subject of pledge.

4. Infrastructural facilities and any other property shall not be subject to alienation for the full effective period of the public-private partnership agreement hereunder.

5. The private partner shall bear the risk of loss of or accidental damage made to the infrastructural facility or any other property, delivered to him into possession, use, including uncompensated use under the public-private partnership agreement, as well as the property, constructed in the course of such agreement implementation if not otherwise stated by the public-private partnership agreement.

**Article 28. Legal structure of infrastructural facilities and other property, provided to the public partner for the Public-Private Partnership agreement implementation**

1. Financial support for the public-private partnership may be provided as follows:

via the private partner's own resources;

via the private partner's loanable funds and/or borrowings;  
 via funds from the republican and/or local budgets;  
 via other funds under the applicable law of the Republic of Belarus;

2. Sources of cost reimbursement and realization of profit (revenue) within the public-private partnership agreement implementation may include the following:

sales of products (works, services) manufactured (performed, provided) during the operation of infrastructural facility via consumers' payments;

financing via the funds from the republican and and/or local budgets under the applicable budget law of the Republic of Belarus and terms and conditions of the public-private partnership agreement;

any other sources under the applicable law of the Republic of Belarus.

3. Sources of cost reimbursement and realization of profit (revenue) of the public partner shall be determined by the public-private partnership agreement based on the results tender.

## **Article 29. Terms and Conditions of the Public-Private Partnership Agreement**

1. Any public-private partnership agreement must contain the following essential conditions:

the scope of the public-private partnership agreement;

parties' rights and obligations;

funding sources by years;

sources of cost reimbursement and realization of profit (revenue) by years;

schedule of payments with by each source of financing per each source;

settlement proceduress between the parties;

timeframe and procedures for maintenance and/or operation of the infrastructural facility;

procedures, terms and conditions for sharing risk associated with the performance of the public-private partnership agreement between the parties thereto;

liabilities of the Parties for non-performance and/or improper performance of the obligations under the public-private partnership agreement;

procedures and grounds for amending and termination of the public-private partnership agreement;

procedures of determination of the reimbursement amount or the amount of recovery of damages in the event of the public-private partnership agreement's termination;

obligations of the parties with regard to environmental protection, waste collection and other waste management activities, as well as other measures to prevent adverse environmental impact;

type and nature of confidential information concerning the parties that are not subject to disclosure;

effective period of the public-private partnership agreement.

In the event that the public-private partnership agreement should envisage construction of any infrastructural facility by the private partner and transfer of ownership thereof to the Republic of Belarus or its administrative-territorial unit, the essential terms of the public-private partnership agreement shall include, in addition to the essential conditions specified in Part 1 hereof, the following:

timeframe and procedures for designing, construction of any infrastructural facility;

timeframe and procedures for the ownership transfer of the infrastructural facility constructed.

In case any infrastructural facility being transferred to the private partner via the transfer of rights of ownership, use, uncompensated use, essential conditions of the public-private partnership agreement shall include, in addition to such conditions specified in Part 1 hereof, the following:

infrastructural facility's description, including technical and economic indicators;

timeframe and procedures for reconstruction, restoration, renovation or modernization of such infrastructural facility.

The public-private partnership agreement may include other conditions in no violation of the applicable of the Republic of Belarus.

2. The public-private partnership agreement cannot incorporate provisions on the transfer of public governance functions and/or control (supervisory) activities within the scope of the state bodies' competence, to the private partner.

### **Article 30. Amendment and Termination of the Public-Private Partnership Agreement**

1. The public-private partnership agreement may be amended or terminated by mutual consent of the parties, unless otherwise provided by legal acts of the Republic of Belarus and the public-private partnership agreement or as requested by any Party by Court ruling.

2. Any party may bring the demand to amend or terminate the public-private partnership agreement to court only upon the receipt of the other party's refusal to amend or terminate the said agreement, or in the event that no response has been received within the timeframe specified in the bid or in the public-private partnership agreement.

### **Article 31. Information on Amendment and Termination of the Public-Private Partnership Agreement**

1. Any Public partner must place the information concerning the public-private partnership agreement performance on its official web-site in World Wide Web Internet apart from the information containing data being state, commercial secret, bank secret or any other type of secret information not to be disclosed by any Parties of the public-private partnership agreement.

2. The information on the public-private partnership agreement performance should be full, updated and accurate.

### **Article 32. Supervision over the Performance of the Public-Private Partnership Agreement**

Supervision over the performance of the public-private partnership agreement is exercised in accordance with the applicable law of the Republic of Belarus.

## **CHAPTER 6**

### **GUARANTEES OF THE RIGHTS OF THE PUBLIC, PRIVATE PARTNERS AND PRIVATE PARTNER'S LOANERS**

### **Article 33. Ensuring Stability of the Public-Private Partnership Agreement's Terms and Conditions**

In the event that during the effective period of the public-private partnership agreement the legislation in the Republic of Belarus has evolved in such a way that the private partner has been substantially deprived of what he/she was entitled to upon entering into the public-private partnership agreement, the parties thereto shall agree to amend the terms and conditions thereof to ensure the private partner's rights in the event this is envisaged by the public-private partnership agreement.

### **Article 34. Replacing the Private Partner for the Obligations under the Public-Private Partnership Agreement**

1. Replacing the private partner for the obligations under the public-private partnership agreement by assignment of a claim and/or debt transfer, as well as via other remedies provided by civil law of the Republic of Belarus shall be only allowed with the consent of the public partner, unless otherwise provided by the

public-private partnership agreement, and performed via tender procedure except the terms and conditions provided in Clause 3 Article 17 hereof.

2. Replacement of any private partner is allowed in the following events:  
 when envisaged under the public-private partnership agreement;  
 when is required for the reasons of national security (including environmental protection, protection of historical and cultural heritage), public order, protection of rights and freedoms, morality, public health;  
 due to a court decision to initiate liquidation proceedings with respect to the current private partner in accordance with the applicable law of the Republic of Belarus on economic insolvency (bankruptcy).

3. Replacement of any public partner for the obligations under the public-private partnership agreement shall be allowed without the public partner's consent, upon that the terms and conditions of the public-private partnership agreement shall remain unchanged.

Replacement of a public partner shall be allowed in the following events:  
 due to changes in the administrative-territorial division;  
 due to liquidation of a state body, acting as a state partner;  
 other circumstances, determined by the President of the Republic of Belarus.

### **Article 35. Guarantees of the Public Partner's Rights**

1. The private partner must provide the public partner with a free access to the infrastructural facility, as well as submit all the necessary data and documents connected with the public-private partnership agreement implementation upon request, if not otherwise provided by law of the Republic of Belarus.

2. The private partner shall submit the public-private partnership agreement implementation report to the public partner to in the fashion set forth by the public-private partnership agreement.

### **Article 36. Guarantees of the Private Partner's Rights**

1. Private partners shall be guaranteed the same rights as enjoyed by investors under the applicable law of the Republic of Belarus.

2. No interference with private partners' activities shall be allowed, except as provided under the public-private partnership agreement, and/or in the event such intervention should be allowed by the applicable law of the Republic of Belarus for the reasons of national security (including protection of the environment and historical and cultural heritage), public order, protection of rights and freedoms, morality, public health.

3. Any private partner shall be guaranteed protection of property and other rights acquired and exercised by them under the public-private partnership agreement and the applicable law of the Republic of Belarus.

4. Upon payment of taxes, fees (duties) and other obligatory payments to the republican and local budgets, state extra-budgetary funds under the law of the Republic of Belarus, any foreign private partners (foreign and international legal entity; foreign organisation other than a legal entity) shall be guaranteed unhindered

transfer of profit (income) and any other funds legally acquired by them in the Republic of Belarus in regard of the performance of the public-private partnership agreement, beyond the territory of the Republic of Belarus, as well as payments made to such foreign private partner and associated with the performance of the public-private partnership agreement, including the following funds:

received by any foreign private partner after partial or complete termination of the public private partnership agreement in the Republic of Belarus, including funds received by such foreign private partner as a result of investments' alienation, as well as property and other civil rights objects arising out of the performance of the public-private partnership agreement;

payable as remuneration to any foreign citizens and stateless persons engaged in labour activities under an employment contract;

due to any foreign private partners by a court decision adopted as provided by the applicable effective law of the Republic of Belarus.

5. Any public bodies, other state authorities shall enforce the performance of the public partner's obligations under the public-private partnership agreement within their respective scope of competence.

### **Article 37. Guarantees of Private Partner's Loaners' Rights**

Any public partner, private partner, loaners of the private partner and/or other entities shall be able to enter into an agreement on cooperation during the public private partnership agreement implementation period, as well as with its amendment and termination, providing the following terms and conditions:

any public partner must inform the private partner's loaners of any events of the private partner's default on obligations under the public-private partnership agreement, which may result in the public-private partnership agreement termination;

procedures of pledging or charging the infrastructural facility and/or construction in progress of any infrastructural facility to private partner's loaners, constructed by the private partner without raising funds from the republican and/or local budgets during performance of the obligations under the public-private agreement and/or the contract with loaners;

rights of the private partner' loaners to request to change the private partner in the event of his/her failure to perform the contractual obligations under the public-private partnership agreement which can result in its termination under the public-private partnership agreement;

other conditions under the applicable law of the Republic of Belarus.

### **Article 38. The Right to Attract Foreign Citizens and Stateless Persons to Work in the Republic of Belarus**

Any private partner shall have the right to attract foreign citizens and stateless persons, including those having no a permanent residence but temporarily present or residing in the Republic of Belarus to work in the Republic of Belarus under labour contracts under the applicable law of the Republic of Belarus.

### **Article 39. Dispute Resolution**

1. Disputes between the private and public partners arising out of the performance of the public-private partnership agreement shall be resolved via out-of-court means through amicable negotiations, unless otherwise stipulated by legal acts of the Republic of Belarus.

2. Disputes between the private and public partners not resolved out-of-court through amicable negotiations within three months starting with the date of the receipt of the written proposals for such resolution, shall be settled in court in accordance with the applicable law of the Republic of Belarus.

In the event such disputes not exclusively covered by the jurisdiction of the courts in the Republic of Belarus should have arisen between the foreign private partner and public partner and are not resolved via out-of-court means through amicable negotiation within three months starting with the date of the receipt of the written proposals for such out-of-court resolution, at the discretion of the foreign private partner such disputes may also be resolved in the following fashion:

by the arbitration tribunal established to resolve each specific dispute under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), unless the parties to the dispute agree otherwise;

by the International Centre for Settlement of Investment Disputes (ICSID) in the event the private partner should be a foreign citizen or a legal entity of the country-member to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States dd. 18.03.1965.

3. In the event the international agreement entered into by the Republic of Belarus and/or the public-private partnership agreement should stipulate a different approach to the resolution of disputes between the private partner and public partner, the provisions of the said international agreement and/or the agreement on public-private partnership shall govern.

## **CHAPTER 7**

### **CONCLUDING PROVISIONS**

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Article 40 became effective starting with the date of its official publication  
(Paragraph 3 of Article 41 hereof)

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**Article 40. Measures for the Implementation hereof**

Within 6 months, the Council of Ministers of the Republic of Belarus shall:  
ensure harmonisation of the existing legislation of the Republic of Belarus to  
reflect the provisions hereof;

determine the procedures for preparation, consideration and evaluation of  
offers concerning public-private partnership projects implementation;

determine the procedures for tender arrangement and conducting;

determine procedures for the registration and maintenance of the state register  
of public-private partnership agreements;

implement other measures to ensure the implementation of the provisions  
hereof.

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Article 41 became effective starting with the date of its official publication.

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