

OFFICIAL TRANSLATION

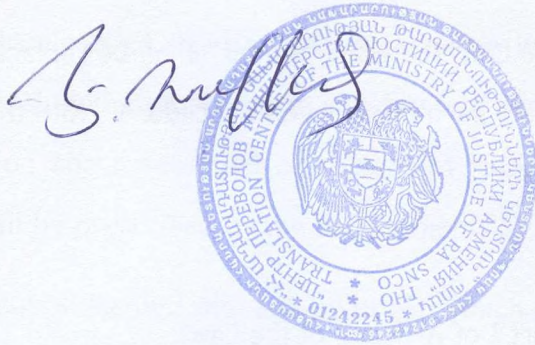
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"TRANSLATION CENTRE OF THE MINISTRY OF JUSTICE
OF THE REPUBLIC OF ARMENIA" STATE NON-COMMERCIAL ORGANISATION

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LAW

OF THE REPUBLIC OF ARMENIA

Adopted on 30 June 2021

ON MAKING SUPPLEMENTS AND AMENDMENTS TO THE LAW
"ON PUBLIC-PRIVATE PARTNERSHIP"

Article 1. In Article 1 of the Law HO-113-N of 28 June 2019 "On public-private partnership" (hereinafter referred to as "the Law"), the words ", the private partner selection procedure" shall be added after the word "criteria".

Article 2. In the Law, the words "PPP procedures" shall be replaced with the words "PPP procedure", with the relevant conjugated forms.

Article 3. In the Law, the word "tender" shall be replaced with the words "private partner selection procedure", with the relevant conjugated forms.

Article 4. In part 1 of Article 2 of the Law:

(1) point 5 shall be amended as follows:

"(5) **applicant** — a legal person or a consortium of legal persons that participate in a private partner selection procedure for the purpose of becoming a private partner and concluding a contract with a public partner. Moreover, a company with direct or indirect equity participation of the Republic of Armenia or a community or a company, wherein the Republic of Armenia or a community may otherwise, *i.e.* in another manner not prohibited by law, predetermine decisions of the company, or a consortium with participation of the above-mentioned company may not be an applicant;"

(2) in point 6, the words "a successful tenderer" shall be replaced with the words "a successful applicant";

(3) point 13 shall be amended as follows:

"(13) **PPP project** — a project targeted at construction and/or improvement and/or operation and/or technical maintenance of a public infrastructure with participation of a private sector, the risks whereof are allocated among

the public partner and the private sector, and which has at least five years duration, which is calculated from the day of fulfilment of all conditions precedent necessary for the entry into force of a PPP contract;"

(4) point 16 shall be amended as follows:

"(16) **permissible limit of PPP contingent liabilities** — a maximum limit of contingent liabilities of the Republic of Armenia with respect to the PPP contracts concluded after the entry into force of this Law. The methodology for calculation and assessment of contingent liabilities of the Republic of Armenia shall be prescribed by the Government;"

(5) point 16 shall be supplemented with sub-point 16.1 which reads as follows:

"(16.1) **permissible limit of PPP direct liabilities** — an annual limit of direct liabilities of the Republic of Armenia, prescribed by the Government with respect to the PPP contracts concluded after the entry into force of this Law;"

(6) point 24 shall be amended as follows:

"(24) **private partner selection procedure** — entirety of actions aimed at implementing the procedures, exercising rights and responsibilities provided for by the legislation of the Republic of Armenia on PPP for the purpose of making a selection of a private partner;"

(7) point 24 shall be supplemented with sub-points 24.1-24.10 which read as follows:

"(24.1) **Request for Qualification (RFQ)** — qualification criteria and conditions offered to the applicant for the purpose of being qualified under the private partner selection procedure;

(24.2) **Request for Proposal (RFP)** — conditions offered to the applicant for the purpose of concluding a PPP contract;

- (24.3) **bid for qualification** — a proposal submitted by the applicant based on the Request for Qualification;
- (24.4) **bid** — a proposal submitted by the applicant based on the Request for Proposal, which includes a financial proposal and/or may include a technical proposal;
- (24.5) **bid security (security of bid for qualification)** — a means securing fulfilment of the obligations assumed under the bid (bid for qualification) in the stage of the Request for Proposal;
- (24.6) **contract security** — a means securing fulfilment of the obligations assumed under a PPP contract, which is provided for by a decision of the Government on implementation of the PPP project, by invitation and the PPP contract;
- (24.7) **quality and value-based selection** — an evaluation method used in the stage of the Request for Proposal, in which case technical and financial proposals are concurrently evaluated in accordance with the weights provided for by the Request for Proposal;
- (24.8) **value-based selection** — an evaluation method used in the stage of the Request for Proposal, in which case the applicant having submitted the best financial proposal complying with the technical criteria is selected;
- (24.9) **financial proposal** — a financial, price and/or quantitative proposal in compliance with the criteria prescribed by the qualified applicant in the stage of the Request for Proposal;
- (24.10) **technical proposal** — a proposal being submitted in compliance with the technical criteria prescribed by the qualified applicant in the stage of the Request for Proposal;";

(8) point 26 shall be amended as follows:

"(26) **fiscally affordable** — a PPP project shall not result in exceeding the permissible limit of the PPP contingent and/or direct liabilities, where such are prescribed."

Article 5. Article 4 of the Law shall be amended as follows:

"1. To render a decision by the Government on implementation of a PPP project, the PPP project needs to comply with all the criteria mentioned below:

- (1) ensure allocation of risks between a public partner and a private partner, pursuant to the PPP procedure;
- (2) ensure economic return for the Republic of Armenia, *i.e.* have Economic Internal Rate of Return, which will exceed the base rate prescribed by the PPP procedure;
- (3) be assessed and selected as a project to be implemented in accordance with the procedure for identifying, developing, evaluating public investment programmes and determining priorities, and be approved by the Government;
- (4) be fiscally affordable;
- (5) have VfM, which is greater than zero, where applicable.

2. From the perspective of managing fiscal risks and ensuring fiscal sustainability, the authorised body may, based on the analysis conducted as prescribed by Article 11 of this Law, provide a negative opinion, where the calculations reveal that the sum total of the PPP contingent and/or direct liabilities for each year — with regard to the contract to be concluded — will result in exceeding the permissible limits of the PPP contingent and/or direct liabilities during any year of the implementation period of the contract.

3. For determining whether the permissible limit of the PPP contingent and/or direct liabilities will be exceeded, the following shall be taken into consideration:
 - (1) the PPP projects being implemented pursuant to PPP contracts concluded following the entry into legal force of this Law;
 - (2) the PPP projects following the entry into legal force of this Law, for which a decision on holding private partner selection procedure has been adopted."

Article 6. Article 5 of the Law shall be amended as follows:

- "1. The decision of the Government shall define the sectors of public services being rendered within the scope of PPP projects."

Article 7. Point 2 of part 1 of Article 6 of the Law shall be amended as follows:

- "(2) perform the functions of promotion and dissemination of PPP projects;"

Article 8. In point 2 of part 1 of Article 7 of the Law, the words "and direct" shall be added after the word "contingent".

Article 9. Part 1 of Article 8 of the Law shall be supplemented with points 2.1-2.4 which read as follows:

- "(2.1)submit to the policy-making body proposals for improvement of the legislation regulating the PPP sector;
- (2.2) provide the Government, as provided for by the PPP procedure, with an opinion on compliance of the processes of preparation and implementation of a PPP project with this Law and the PPP procedure;

(2.3) maintain the database of PPP projects;

(2.4) participate in the promotion of possible PPP projects."

Article 10. In part 1 of Article 9 of the Law:

(1) point 3 shall be amended as follows:

"(3) organise the private partner selection procedure;"

(2) in point 4, the words "a successful tenderer" shall be replaced with the words "a successful applicant".

Article 11. In Article 10 of the Law:

(1) the title shall be amended as follows:

"Article 10. Identification and preparation of PPP projects";

(2) Article 10 shall be supplemented with parts 5-13 which read as follows:

"5. A legal person (private initiator) may, as provided for by the PPP procedure, submit to the competent body a proposal for implementation of a possible project (PPP project on private initiative) for the purpose of evaluating it as a project to be implemented in the PPP format. The regulations provided for by this Law shall apply to the PPP project on private initiative to the extent that this Law does not prescribe otherwise.

6. A proposal for a PPP project on private initiative shall be subject to evaluation by the competent body, where:

(1) the private initiator has experience prescribed by the PPP procedure for entrepreneurial activities in the sector being a subject of proposal;

- (2) the proposal includes information on the PPP project on private initiative and is accompanied by a preliminary technical and economic rationale or technical and economic study, the minimum requirements applicable whereto shall be prescribed by the PPP procedure;
 - (3) the minimum internal rate of financial return of the proposed PPP project on private initiative, provided for by the PPP procedure is being ensured without direct impact on the state and/or community budgets, as well as without alienation at a value lower than the market value (and in case of immovable property — at a value lower than the cadastral value) or gratuitous provision of property falling under the ownership of the State and/or a community;
 - (4) the private initiator has undertaken a public and irrevocable — in the manner provided for by the PPP procedure — obligation to participate in the private partner selection procedure.
7. Evaluation of the proposal of a PPP project on private initiative must at least include the following:
- (1) preliminary verification of the data submitted through preliminary technical and economic rationale or technical and economic study of the PPP project on private initiative, as prescribed by the PPP procedure;
 - (2) compliance assessment of the proposal with the criteria provided for by part 1 of Article 4 of this Law. Compliance assessment of the proposal with the criterion provided for by point 4 of part 1 of Article 4 of this Law shall be carried out in accordance with parts 2 and 3 of Article 4 and part 1 of Article 11 of this Law, and the compliance with the criterion provided for by point 3 of part 1 of Article 4 — in accordance with the procedure approved by the Government for

identifying, developing, evaluating public investment programmes and determining priorities. Moreover, during evaluation of the proposal of a PPP project on private initiative, the competent body or the authorised body may request from the private initiator additional information on the latter and the PPP project on private initiative, as well as make — on the initiative thereof — amendments and supplements in the proposal of the project.

8. Where as a result of evaluation of the proposal of the PPP project on private initiative, provided for by part 7 of this Article, it is established that the proposal does not comply with the criteria provided for by part 1 of Article 4 of this Law, it shall not be subject to implementation in the PPP format.
9. The PPP procedure may provide a procedure for reimbursement of the costs incurred by the competent body in relation to evaluation of the proposal of the PPP project on private initiative before carrying out the evaluation, as well as a procedure for application of the means of securing the obligation to participate in the private partner selection procedure by the private initiator in case that procedure is carried out.
10. As a result of evaluation of the proposal of the PPP project on private initiative, the Government may, upon recommendation of the competent body, adopt a decision provided for by part 4 of Article 10 of this Law. In such a case, the preliminary technical and economic rationale or technical and economic study to be included in the proposal of the PPP project on private initiative shall be subject to publication.
11. The decision of the Government on implementation of the PPP project may provide for any of the following privileges to be granted to the private initiator in case of participation in the private partner selection procedure:

- (1) reimbursement of costs estimated by the competent body as prescribed by the PPP procedure in connection with preparation of the project by the successful applicant which is not a private initiator;
 - (2) the right to bring own financial proposal into compliance with the financial proposal of the applicant which is not a private initiator. Moreover, the privilege may be provided in case of simultaneous existence of all the following circumstances:
 - a. no provision of such public service or ensuring of public infrastructure has been carried out in the Republic of Armenia, or the volume of the envisaged project exceeds the total volume of such public services being provided and the public infrastructures being ensured in the Republic of Armenia, in monetary terms. The volume of the project, as well as the total volume of public services and public infrastructure in monetary terms referred to in this sub-point shall be determined as prescribed by the PPP procedure;
 - b. the private initiator has a high rating provided for by the PPP procedure in the given sector.
12. Where the proposal of the PPP project on private initiative is accompanied only by a preliminary technical and economic rationale, the latter may be granted only the privilege provided for by point 1 of part 11 of this Article.
13. The specifics of risk allocation between public and private partners within the scope of PPP projects on private initiative, as well as possible sectors for their implementation, proposals submitted beyond the scope of which shall not be subject to evaluation, irrespective of the requirements prescribed by part 6 of this Article, shall be approved under the PPP procedure.”.

Article 12. Part 1 of Article 11 of the Law shall be amended as follows:

"1. A draft PPP project shall be analysed by the authorised body, after which the authorised body shall provide an opinion on the compliance of a PPP project with the criteria prescribed by point 4 of part 1 and by part 2 of Article 4 of this Law."

Article 13. Part 1 of Article 13 of the Law shall be amended as follows:

"1. The information on PPP projects, preparation and implementation thereof shall be published on the website prescribed under the PPP procedure. The Government may prescribe the requirements for such publication."

Article 14. In part 1 of Article 14 of the Law, the word "procedures" shall be replaced with the word "procedure".

Article 15. The Law shall be supplemented with Articles 14.1-14.12 which read as follows:

"Article 14.1. Principles of the private partner selection procedure

1. The principles of the private partner selection procedure shall be as follows:
 - (1) organising the selection of a private partner and other processes having an impact thereon on competitive, transparent, public and non-discriminatory bases;
 - (2) ensuring equal opportunity for a legal person to participate in the selection process of a private partner, irrespective of the fact that the legal person is a foreign organisation;
 - (3) establishing flexible procedures for selection of a private partner.

Article 14.2. Right to participate in the private partner selection procedure and qualification criteria

1. The scope of persons not entitled to participate in the private partner selection procedure shall be prescribed by the PPP procedure or other legal acts. Participation of a legal person which is a resident of any country, in the private partner selection procedure may be restricted only by a decision of the Government, where it is necessary for ensuring national security and defence of the Republic of Armenia. The right of applicants to participate in the private partner selection procedure (legal qualification) and requirements related to the documents necessary for the certification thereof may be provided for by the PPP procedure.
2. An applicant must comply with the following qualification criteria necessary for fulfilment of the obligations provided for by the draft PPP contract and prescribed by the Request for Qualification:
 - (1) professional experience;
 - (2) technical competence and experience;
 - (3) financial and economic capacities.
3. No criteria related to the right to and qualification for participation in the private partner selection procedure may be prescribed, where such criteria:
 - (1) are not provided for by this Article;
 - (2) are discriminatory and unreasonably restrict competition;
 - (3) fail to directly derive from the necessity to fulfil the obligations provided for by the PPP contract.
4. The Request for Qualification shall define the necessary criteria and procedure for qualification of an applicant for the given private partner selection procedure and the requirements for the documents (information) necessary for qualification.

5. Concurrent participation of affiliated legal persons in the private partner selection procedure shall be prohibited, except for cases of participation as a consortium. Within the meaning of this part, two or more persons shall be deemed affiliated persons where:
 - (1) one of them directly or indirectly possesses — with the right to vote — 20 or more percent of equity securities carrying voting right of the other (others);
 - (2) more than half of the members of the board of directors of any of them, the director or other official having such competence is simultaneously a member of the board of directors of the other (others), the director or other official having such competence;
 - (3) one of them controls the other, or they are under common control, or one of them has an actual opportunity or opportunity enshrined by the contract to essentially influence the decisions of the other or to predetermine them;
 - (4) they have been acting in agreement in the given case, based on common economic interests.
6. The procedure for participation in the private partner selection procedure as a consortium shall be established by the PPP procedure.

Article 14.3. Consequences of unlawful actions of applicants

1. Where a *prima facie* unlawful act within the framework of the private partner selection procedure, committed by the applicant or representative of the management body thereof is detected, the competent body shall, on the day of emergence thereof, inform the law enforcement bodies thereof in writing.

Article 14.4. Official language of the private partner selection procedure

1. Request for Qualification and announcement, Request for Proposal and announcement, as well as other documents provided for by the PPP procedure, with regard to the private partner selection procedure shall be drawn up and published in Armenian, English and Russian on the website defined by the PPP procedure as prescribed by this Law.
2. The official language of the private partner selection procedure shall be Armenian. In case of being prescribed by announcement on and/or invitation to the private partner selection procedure, the official language may, in addition to Armenian, also be English or Russian.

Article 14.5. Forms of the private partner selection procedure and evaluation of the results

1. Forms of holding the private partner selection procedure shall be open procedure and closed procedure.
2. In case of application of the open procedure, the decision of the Government on implementation of a PPP project, the announcement on the private partner selection procedure and the Request for Qualification shall be public and accessible.
3. Open procedure shall be carried out in the stages of the Request for Qualification and the Request for Proposal. Holding of a one-stage open procedure may be prescribed by a decision of the Government on implementation of the PPP project.
4. In case of application of the closed procedure, the decision of the Government on implementation of the PPP project shall not be subject to publication, and the Request for Qualification shall be provided only to persons previously

determined by the competent body. Closed procedure shall be carried out as prescribed by a decision of the Government on implementation of the PPP project, where the draft PPP project is directly related to the defence of the Republic of Armenia and comprises state secret.

5. The methods of evaluation of the bid in the private partner selection procedure shall be the following:
 - (1) quality and value-based selection, or
 - (2) value-based selection.
6. Method of evaluation of the private partner selection procedure, requirements for technical and financial proposals and, where available, the weights given thereto shall be prescribed by a decision of the Government on implementation of the PPP project.
7. The procedure for recording of the process of the private partner selection procedure, including of the sessions of the evaluation commission, for the preparation and submission of reports on declaring the session as not having taken place and for evaluation of the results, the requirements for formation of the evaluation commission, the powers and the procedure for carrying out activities (including grounds and procedure for recusal of the members) shall be prescribed by the PPP procedure.

Article 14.6. Announcement on and invitation to the private partner selection procedure

1. The requirements for announcement on the private partner selection procedure, the Request for Qualification and the Request for Proposal, the procedure for publishing them on the website defined under the PPP procedure, for making amendments thereto and providing clarifications thereon shall be prescribed by the PPP procedure.

Article 14.7. Stage of the Request for Qualification

1. The private partner selection procedure shall begin with the stage of the Request for Qualification, whereon an announcement and a request for qualification shall be published.
2. Submitted bids for qualification shall be evaluated as prescribed by the Request for Qualification, based on the results whereof the evaluation commission shall draw up and approve the list of qualified applicants.
3. Where up to three applicants have submitted a bid for qualification, and/or less than two applicants have been qualified, except for the cases provided for by point 1 of part 1 of Article 14.10 of this Law, by the decision of the evaluation commission:
 - (1) the announcement on the stage of the Request for Qualification may be republished;
 - (2) the stage of the Request for Qualification may be declared as not having taken place.
4. An applicant shall fill in and submit the bid for qualification as prescribed by the Request for Qualification. An applicant may not submit more than one bid for qualification for the same private partner selection procedure.
5. The minimum amount of information subject to inclusion in the bid for qualification, the procedure for preparation of bids for qualification, including the requirements for the documents certifying compliance with the qualification criteria, the procedure for submission and record-registration thereof, for opening of envelopes of applicants, for evaluation of bids for qualification and correction thereof in case of existing discrepancies, as well as the validity terms of bids for qualification, the procedure for withdrawing and making changes to the bids for qualification, for publication of the list of qualified applicants and provision of the Request for Proposal shall be prescribed by the PPP procedure.

Article 14.8. Stage of the Request for Proposal

1. The Request for Proposal shall include the method of evaluation of the private partner selection procedure, the requirements for technical and financial proposals and, where available, the weights given thereto, the draft PPP contract and other information provided for by the PPP procedure.
2. A fee may be charged for provision of the Request for Proposal, the amount or the procedure for calculation whereof shall be defined by the announcement on the private partner selection procedure.
3. In case of quality and value-based selection, bids having crossed the threshold provided for in the stage of the Request for Proposal as a result of evaluation of the technical proposal shall be evaluated on the basis of the technical and financial proposals calculated in accordance with the weights provided for by the Request for Proposal.
4. In case of value-based selection, bids having crossed the threshold provided for by the Request for Proposal as a result of evaluation of the technical proposal shall be evaluated on the basis of the best financial proposal.
5. By the decision of the evaluation commission, working discussions may, before the stage of the Request for Proposal, be organised with qualified applicants for the purpose of identifying questions and issues related to the draft PPP project (where available). During the working discussions provided for in this part, the evaluation commission must ensure equal opportunity for concurrent participation of all the qualified applicants, as well as ensure keeping of minutes of such discussions, providing them to all the qualified applicants within five working days following the discussion.
6. As a result of evaluation of bids, the successful applicant in the private partner selection procedure shall be announced upon the decision of the evaluation commission. The procedure for determining the successful applicant in case of

application of the privilege provided for by point 2 of part 11 of Article 10 of this Law shall provided for by the PPP procedure.

7. The procedure for preparation, submission and record-registration of technical and financial proposals, the keeping of minutes of working discussions organised by the evaluation commission, the opening of envelopes of technical and financial proposals, the evaluation of bids and correction thereof in case of existing discrepancies, as well as the validity terms of bids, the procedure for withdrawing and making changes to bids and the procedure for publication of the results of evaluation of bids shall be approved under the PPP procedure.

Article 14.9. Procedure for appeal

1. Each person with interest in the results of the private partner selection procedure shall, pursuant to this Law, have the right to appeal the actions (inaction) and decisions of the competent body and the evaluation commission through judicial procedure.
2. The relations pertaining to the private partner selection procedure, including the consideration of appeals, shall not be regarded as administrative relations and shall be regulated by the legislation of the Republic of Armenia regulating civil law relations.

Article 14.10. Declaring the private partner selection procedure as not having taken place

1. The private partner selection procedure shall be declared as not having taken place, where:
 - (1) none of the qualification bids or of the bids complies with the conditions of the Request for Qualification or the Request for Proposal, or no qualification bid or bid has been submitted;

- (2) no PPP contract has been concluded.
2. The procedure for declaring the private partner selection procedure as not having taken place and the information subject to publication on the website defined by the PPP procedure in this regard shall be prescribed by the PPP procedure. In case of closed procedure, the information provided for by this part shall not be subject to publication.

Article 14.11. Bid security and contract security

1. In the stage of the Request for Proposal, an applicant shall, in the amount and as prescribed by the invitation, submit the bid security.
2. The successful applicant shall, in the amount and as prescribed by the PPP contract, submit the contract security. The requirement to submit a separate contract security for each stage of implementation of the PPP project may be provided for by a decision of the Government on implementation of the PPP project.
3. Bid security and contract security shall be submitted in the form of a unilaterally approved announcement through surcharge or bank guarantee.
4. An applicant shall pay the bid security, where he or she:
 - (1) has been announced as a successful applicant, but refuses or is deprived of the right to conclude a PPP contract;
 - (2) has violated the obligation assumed under the private partner selection procedure which has led to termination of further participation of the applicant concerned in the procedure.
5. The requirements applicable to bid security and contract security, the procedure for submission, the grounds and procedure for rejection, as well as the procedure for payment thereof shall be prescribed by the PPP procedure.

6. The cases of and procedure for submission of security of the bid for qualification and the grounds for payment of security of the bid for qualification by the applicant may be provided for by the PPP procedure.

Article 14.12. Direct negotiations

1. In exceptional cases directly related to defence of the Republic of Armenia, by a decision of the Government, a PPP contract may be concluded without the private partner selection procedure, based on direct negotiations.
2. The requirements applicable to direct negotiations and the procedure for conduct thereof shall be prescribed by the PPP procedure."

Article 16. In Article 15 of the Law:

- (1) in part 1, the words "a successful tender applicant" shall be replaced with the words "a successful applicant";
- (2) part 2 shall be amended as follows:

"2. Where a PPP contract is concluded with the legal person founded by the successful applicant, such a legal person must comply with the requirements and criteria prescribed in the stages of the Request for Qualification and the Request for Proposal.";
- (3) the Article shall be supplemented with part 5 which reads as follows:

"5. In case of non-compliance of the successful applicant with the conditions of conclusion of a PPP contract with the successful applicant, as well as the conditions of legal qualification before concluding a PPP contract due to new circumstances, the procedure for determining the successful applicant shall be prescribed by the PPP procedure."

Article 17. In part 1 of Article 16 of the Law:

(1) point 2 shall be amended as follows:

"(2) rights and obligations of the parties, which must include the risks of the PPP project and allocation of these risks between public and private partners;"

(2) point 3 shall be repealed;

(3) point 10 shall be amended as follows:

"(10) contract security, procedure for submission thereof, as well as grounds and procedure for payment thereof by a private partner;"

Article 18. Part 2 of Article 30 of the Law shall be repealed.

Article 19. Final part and transitional provisions

1. This Law shall enter into force on the tenth day following the day of its official promulgation.
2. The provisions of Law HO-113-N of 28 June 2019 "On public-private partnership" and those of this Law shall not extend to the PPP projects implemented or to be implemented under the investment programmes approved by the Government prior to the entry into force of the Law "On public-private partnership". The procedure for implementation of these programmes and the requirements applicable thereto shall be prescribed by the Government.
3. The regulations prescribed by the Law "On public-private partnership" and this Law on the PPP procedure and the permissible limit of PPP liabilities shall be adopted by decisions of the Government within 180 calendar days after the entry into force of this Law.

- The provisions of this Law containing references to the PPP procedure and the regulations on the permissible limit of PPP liabilities shall take effect upon the entry into force of relevant regulations.

**President
of the Republic**

A. Sarkissian

13 July 2021

Yerevan

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