

Țuca Zbârcea & Asociații, major contribution to the amendment of Romania's PPP and concession laws



Țuca Zbârcea & Asociații has partnered up with the International Finance Corporation, part of World Bank Group, in the efforts to adapt Romania's regulatory framework to country's current needs of public-private partnership projects and works concessions and service concessions.

Government Decision No. 1116/16 November 2023 was published in Official Journal of Romania No. 1058/23 November 2023, amending and supplementing the Government Decision No. 907/2016 on the elaboration stages and framework content of the technical and economic documentation related to publicly funded investment objectives/projects ("GD No. 907/2016").

This normative act was adopted as a result of an intense and long-term collaboration between the Romanian Government (in particular, the General Secretariat of the Government, the Ministry of Finance, the Ministry of Development, Public Works and Administration, the Ministry of Transport and Infrastructure) and International Finance Corporation. The objective of amending the Government Decision was to align the content of the pre-feasibility and feasibility studies for public-private partnerships and concessions to European and international best practice, namely enabling the opportunity to tap into the know-how and innovation brought in by the private partner into the project.

Essentially, a new section regulating the framework content of the technical and economic documentation for investment objectives carried out as public-private partnerships or works concessions or service concessions was included in Chapter III of GD No. 907/2016 (as regards the technical and economic documentation related to publicly funded investment objectives), and two new annexes were also included, regulating the framework content of the pre-feasibility study and the framework content of the feasibility study related to this type of projects.

The main amendments and supplementations regarding the preparation of public-private partnerships, and works concessions or service concessions, respectively, are the following:

1. The framework content of the technical and economic documentation for investment objectives carried out as public-private partnerships, works concessions or service concessions including works, which are publicly funded in part or in full, and where design and construction risks are in part or in full transferred to the private partner/concessionaire, shall be adapted depending on the performance indicators that the investment has to meet during the operational phase.
2. The pre-feasibility study and the feasibility study will propose conceptual solutions for implementing

investments by reference to minimum technical criteria, concrete functionalities and expected results that investment objectives must achieve during the operational phase; the constructive technical solutions will be subsequently developed by the private partner/concessionaire during the contract implementation stage.

3. The preparation of the general estimate and of the itemised estimate, as part of the feasibility study, is no longer required in this stage and is to be drawn up by the private partner/concessionaire, during the public-private partnership/concession contract implementation phase, on the basis of the technical solution declared successful in the award procedure.

4. The maximum indicators are determined as the total expenditure that is publicly funded, which consists of the total amount of expenditure expressed as payment during the project preparation phase, as payments during the project construction phase and as payments during the operational phase of the project.

5. The framework content of the pre-feasibility study is regulated in Annex 31, while the framework content of the feasibility study is regulated in Annex 41.

Țuca Zbârcea & Asociații worked closely with International Finance Corporation during the preparation and drafting phase of the new legislation with the public authorities responsible for public contracts (in particular, the Public Investment Management Unit of the Ministry of Public Finance).

The firm deployed an experienced team of lawyers consisting of **Iuliana Leon**, Managing Associate and **Tudor Bonifate**, Associate.

Iuliana Leon has extensive experience in regulatory services in the field of public-private partnerships, public works and service concessions, and public procurement, gained by drafting primary and secondary acts enacted in Romania and Moldova. Recently, Iuliana Leon has coordinated interdisciplinary teams of lawyers selected by the International Finance Corporation (IFC), part of the World Bank Group, for the preparation of major public projects in the field of infrastructure, including port infrastructure. Iuliana Leon is the initiator of the First International Summit in the field of Public-Private Partnership organized in Bucharest which is intended to become a tradition and is a renowned lecturer at the international forums in the Public-Private Partnership field.

Tudor Bonifate is a PhD student in Administrative Law at the Faculty of Law of the University of Bucharest, with a research topic funded by grants from the State Budget and concerning the concept of interest in administrative claims. He holds a Master's degree from the same university, specialising in Public Procurement, Concessions and Public-Private Partnerships, having previously completed his undergraduate studies at the top of his class and having been admitted to the Bucharest Bar Association with the highest score at national level. Tudor Bonifate is part of Țuca Zbârcea & Asociații's Litigation & Arbitration department and works closely with the firm's specialised Public Law team.