Albanian Government passes detailed rules on concessions/PPPs

The Albanian Government has recently passed a decision with rules that are necessary for the implementation of the legal framework on concessions/PPPs. Last year the Parliament enacted amending Law no. 50/2019 “On some amendments to Law no. 125/2013 “On Concessions and Public-Private Partnerships” as amended” (“Law on Concessions”).

The Council of Ministers’ Decision no. 420, dated 27 May 2020, by amending previous rules of CMD no. 575, dated 10 July 2013 (“CMD on Concessions”), sets forth detailed regulation fostering the implementation of several legislative amendments of 2019.

**Unsolicited proposals only in key strategic sectors**

An important amendment refers to the limitation of unsolicited proposals to a handful of concession/PPP projects in the key strategic sectors (ports, airports, production and supply of electrical energy and energy for heating and distribution of natural gas). Moreover, concessions on important national roads are no longer excluded from the Law on Concessions and again out of the scope of unsolicited proposals.

**Compensation for unsolicited proposers**

Economic operators submitting unsolicited proposals will no longer benefit a bonus, but will simply be compensated the value of their feasibility study. This compensation shall be available to those operators that have participated in the subsequent bidding process (if any) but have not been awarded the concession. The compensation value shall be calculated based on invoices evidencing the costs incurred for the preparation of the feasibility study and, in any case, it should not exceed 1% of the investment value of the awarded concession project. The value shall be published in the bidding documents and is to be paid by the winning bidder before the execution of the concession/PPP contract.

**Stronger role of the Minister of Finance and Economy in the evaluation, award and monitoring of concession projects**

The Minister responsible for finances (currently Minister of Finance and Economy (“MFE”)) is given a key role in the evaluation and approval of concession projects in terms of the fiscal implications, budgetary expenses, public debt sustainability and eventual contingency obligations. The MFE approval is granted.
where the financial support of a project is found possible and sustainable and where the risks undertaken by the contracting authority do not interfere with the fiscal sustainability. MFE should take a position under each phase (evaluation of potential projects, award of contract, monitoring of contract) within a general term of 40 days from obtainment of full documentation from the contracting authority.

If no winning bidder has been announced within 2 years from the obtainment of MFE approval for a specific project, and the contracting authority considers starting the project again, this can be done only based on a new MFE approval of a revised feasibility study. The evaluation and approval requirements apply also in cases of concession/PPP contract amendments or assignment.

Council of Ministers to approve concession/PPP projects with financial support and fiscal risk

Where concession/PPP contracts contain government financial support and fiscal risks, their entry into force, including any amendments or assignment thereof, is subject not only to MFE approval and parties’ execution, but also to the final approval by the Council of Ministers.

The 2020 amendments to the CMD on Concessions define ‘fiscal risk’ as the possibility of deviations of the fiscal indicators approved by the annual budgetary law resulting from the materialization of risks anticipated in a concession/PPP contract.