The Presidency of the Republic
Office of the Chief of Staff
Office of the Deputy Chief for Legal Affairs

Act no. 11.079, OF DECEMBER 30, 2004.

Veto message

Institutes general rules for bidding processes and contracts for public-private partnership within the scope of the public administration

Compiled text .

I, THE PRESIDENT OF BRAZIL, inform that the Brazilian Congress enacts and I sanction the following Act:

Chapter I

PRELIMINARY PROVISIONS

Art. 1 This Act institutes general rules for bidding process and contracts for public-private partnership within the scope of the Branches of the Federal Government, States, Federal District and Municipalities.

Sole paragraph. This Act applies to the bodies in the direct public administration of the Executive and Legislative Branches, special funds, instrumentalities, public foundations, state-owned enterprises, government-controlled companies and other entities directly or indirectly controlled by the Federal Government, States, Federal District and Municipalities. (Wording provided by Act no. 13.137, of 2015)

Art. 2 A public-private partnership is an administrative concession contract, of the sponsored or administrative type.

Paragraph 1 Sponsored concessions are concessions of public services or of public works regulated by Act no. 8.987, of February 13, 1995, when they involve, in addition to the fee charged from users, a pecuniary consideration from the public partner to the private partner.

Paragraph 2 Administrative concessions are contracts for provision of services of which the Public Administration is the direct or indirect user, even if they involve the performance of work or delivery and installation of goods.

Paragraph 3 An ordinary concession, meaning the concession of public services or of public works regulated by Act no. 8.987, of February 13, 1995, shall not consist in a public-private partnership if it does not involve a pecuniary consideration from the public partner to the private partner.

Paragraph 4 A public-private partnership shall not be executed if:

- the contract value is lower than ten million reais (BRL 10,000,000); (Wording provided by Act no. 13.529, of 2017)

I – the service provision period is shorter than five (5) years; or

II – its subject matter is solely the provision of labor, the supply and installation of equipment or the performance of public work.

Art. 3 Administrative concessions are governed by this Act, being cumulatively applicable to them the provisions in articles 21, 23, 25 and 27 to 39 of Act no. 8.987, of February 13, 1995, and in art. 31 of Act no. 9.074, of July 7, 1995. (Regulation)

Paragraph 1 Sponsored concessions are governed by this Act, and the provisions in Act no. 8.987, of February 13, 1995, and in the related legislation shall be applicable to them for matters not covered in this Act. (Regulation)

Paragraph 2 Ordinary concessions continue to be governed by Act no. 8.987, of February 13, 1995, and by the related legislation, the provisions in this Act not being applicable to them.

Paragraph 3 Administrative contracts that do not consist in ordinary, sponsored or administrative concession continue to be governed solely by Act no. 8.666, of June 21, 1993, and by the related legislation.

Art. 4 In contracts for public-private partnership the following guidelines shall be observed:

I – efficiency while fulfilling the missions of the State and using society's resources;

II – observance of the interests and rights of the beneficiaries of the services and private entities in charge of performing them;

III – non-assignment of regulatory and jurisdictional functions, exercise of police power and other exclusive activities of the State;

IV –fiscal responsibility in execution and performance of partnerships;

V – transparency of procedures and decisions;

VI – objective allocation of risks between the parties;

VII – financial sustainability and socioeconomic advantages of the partnership's projects.

Chapter II

PUBLIC-PRIVATE PARTNERSHIP CONTRACTS

Art. 5 The clauses of the public-private partnership contracts shall meet the provisions in art. 23 of Act no. 8.987, of February 13, 1995, as applicable, and shall also provide on:

I – the term of the contract, consistent with the amortization of the investments made, not shorter than five (5), nor longer than thirty-five (35) years, including any extension;

II – the penalties applicable to the Public Administration and to the private partner in case of contractual default, always determined proportionally to the seriousness of the misconduct, and to the obligations undertaken;

III – the allocation of risks between the parties, including those relating to Acts of God, force majeure, *factum principis* and extraordinary economic risk;

IV – the manners of compensation and updating of contractual amount;

V – the mechanisms for keeping the service provision updated;

VI – the facts that characterize pecuniary default of the public partner, the manners and term for regularization and, as appropriate, the manner for enforcement of the guarantee;

VII – objective criteria for assessing the private partner's performance;

VIII – the provision, by the private partner, of performance guarantees that are sufficient and consistent with the burden and risks involved, subject to the limits of Paragraphs 3 and 5 of art. 56 of Act no. 8.666, of June 21, 1993, and, with respect to sponsored concessions, the provisions in item XV **of art.** 18 of Act no. 8.987, of February 13, 1995;

IX – sharing with the Public Administration of actual economic gains of the private partner arising from the reduction in the credit risk of the credit lines used by the private partner;

X – inspection of the reversible assets, the public partner being entitled to withhold payments to the private partner, in the necessary amount to redress any irregularities verified.

XI - the time schedule and the milestones for transferring to the private partner the portions of the amount contributed, during the project investments phase and/or after the services are made available, whenever the case provided for in Paragraph 2 of art. 6 of this Act is verified. (Included by Act no. 12.766, of 2012)

Paragraph 1 The contractual clauses for automatic updating of amounts based on indices and mathematical formulas, if any, shall apply without requirement for any approval by the Public Administration, except if it publishes, in the official press, where applicable, within fifteen (15) days after the invoice is presented, reasons based on this Act or on the contract for rejecting the updating.

Paragraph 2 Contracts may also provide:

I - the requirements and conditions on which the public partner shall authorize the transfer of control or temporary management of the specific purpose entity to its funders and guarantors with whom it has no direct corporate relationship, to carry out its financial reorganization and ensure the ongoing performance of the services, for which purpose it shall not apply the provision in item I of sole paragraph of art. 27 of Act no. 8.987, of February 13, 1995; (Wording provided by Act no. 13.097, of 2015)

II – the possible issuance of a spending authorization on behalf of the funders of the project with respect to the pecuniary obligations of the Public Administration;

III – the legitimacy of project funders to receive compensation for the early termination of the contract, and payments made by funds and government-owned companies guarantors of public-private partnerships.

Art. 5-A. For purposes of item I of Paragraph 2 of art. 5, the following is considered: (Included by Act no. 13.097, of 2015)

I - the control of the special purpose entity means the resolvable ownership of shares or quotas by its funders and guarantors that meet the requirements of art. 116 of Act no. 6.404, of December 15, 1976; (Included by Act no. 13.097, of 2015)

II - The temporary management of the special purpose entity, by funders and guarantors when, without the appropriate transfer of the ownership of shares or quotas, the following powers are granted: (Included by Act no. 13.097, of 2015)

a) appointing the members of the Board of Directors, to be elected at General Meeting by shareholders, in the companies governed by Act 6.404, of December 15, 1976; or managers, to be elected by quota-holders, in other companies; (Included by Act no. 13.097, of 2015)

b) appointing the members of the Audit Committee, to be elected by the controlling shareholders or quota-holders at General Meeting; (Included by Act no. 13.097, of 2015)

c) exercise the veto power on any proposal submitted to the vote of the shareholders or quota-holders of the concessionaire, which represent, or might represent, losses for the purposes provided in the main section of this article;
(Included by Act no. 13.097, of 2015)

d) other powers required to achieve the purposes provided in the main section of this article; (Included by Act no. 13.097, of 2015)

Paragraph 1 The temporary management authorized by the awarding authority shall not result in responsibility of the funders and guarantors in relation to the taxation, charges, burden, sanctions, obligations or covenants to third parties, including the awarding authority or employees. (Included by Act no. 13.097, of 2015)

Paragraph 2 The Awarding Authority shall regulate the duration of the temporary management. (Included by Act no. 3.097, of 2015)

Art. 6 The Public Administration consideration in the public-private partnership contracts may be fulfilled by:

I – bank order;

II – assignment of non-tax credit;

III – grant of rights against the Public Administration;

IV – grant of rights in disposable public assets;

V – other means admitted by law.

Paragraph 1 The contract may provide the payment to the private partner of variable remuneration linked to its performance, as quality goals and standards and availability defined in the contract. (Included by Act no. 12.766, of 2012)

Paragraph 2 The contract may provide the contribution of funds to the private partner to perform works and acquire reversible assets, pursuant to items X and XI of the main section of art. 18 of Act no. 8.987, of February 13, 1995, if authorized in the bid notice, for new contracts, or by specific law, for contracts executed by August 8, 2012. (Included by Act no. 12.766, of 2012)

Paragraph 3 The amount contributed pursuant to Paragraph 2 may be removed in the determination: (Included by Act no. 12.766, of 2012)

I - of the net profit when assessing the taxable income and the tax base of the Social Contribution on the Net Profit - CSLL; and (Included by Act no. 12.766, of 2012)

II - of the tax base of the PIS/Pasep Contribution and the Social Security Funding Contribution - COFINS. (Included by Act no. 12.766, of 2012)

III - of the tax base of the Social Security Contribution on Gross Income - CPRB payable by the companies mentioned in articles 7 and 8 of Act no. 12.546, of December 14, 2011, commencing on January 1, 2015. (Included by Act no. 13.043, of 2014) Effectiveness

Paragraph 4 Until December 31, 2013, for optants pursuant to art. 75 of Act no. 12.973, May 13, 2014, and until December 31, 2014, for non-optants, the portion excluded pursuant to Paragraph 3 shall be computed to determine the net income to assess the taxable income, the tax base of CSLL and the tax base of PIS/Pasep Contribution and Cofins, in the same proportion the cost for performing the works and acquiring the goods mentioned in Paragraph 2 of this is incurred, inclusive upon depreciation or concession termination, pursuant to art. 35 of Act no. 8.987, of February 13, 1995. (Wording provided by Act no. 13.043, of 2014)
Effectiveness

Paragraph 5 At the time of contract termination, the private partner shall not receive any compensation for the portions of investments linked to reversible assets not yet amortized or depreciated, when such investments are made with amounts contributed with funds mentioned in Paragraph 2. (Included by Act no. 12.766, of 2012)

Paragraph 6 Commencing on January 1, 2014, for the optants pursuant to o art. 75 of Act no. 12.973, of May 13, 2014, and January 1, 2015, for non-optants, the portion excluded pursuant to Paragraph 3 shall be computed to determine the net profit in the assessment of the taxable income, the tax base of the CSLL and the tax base of the PIS/Pasep Contribution and Cofins for each assessment period during the remaining period of the contract, considered from the beginning of the public services provision. (Included by Act no. 13.043, of 2014)
Effectiveness

Paragraph 7 In the case of Paragraph 6, the amount to be added in each assessment period should be the amount of the portion excluded divided by the number of assessment periods included in the remaining term of the contract. (Included by Act no. 13.043, of 2014) Effectiveness

Paragraph 8 For the concession contracts where the concessionaire already started the provision of the public services on the dates mentioned in Paragraph 6, the subsequent accretions shall be made in each assessment period during the remaining term of the contract, considering the outstanding balance not added yet. (Included by Act no. 13.043, of 2014) Effectiveness

Paragraph 9 The portion excluded pursuant to item III of Paragraph 3 shall be computed to determine the tax base of the social contribution mentioned in item III of Paragraph 3 in each assessment period during the remaining term provided in the contract for building, recovering, renovating, enhancing or improving the infrastructure to be used in the public service performance. (Included by Act no. 13.043, of 2014) Effectiveness

Paragraph 10. In the case of Paragraph 9, the amount to be added in each assessment period should be the amount of the portion excluded divided by the number of assessment periods in the remaining term provided in the contract for the construction, recovery, renovation, enhancement or improvement of the infrastructure to be used in the provision of public services. (Included by Act no. 13.043, of 2014) Effectiveness

Paragraph 11. Upon the termination of the concession before the expiration of the contract term, the outstanding balance of the portion excluded pursuant to Paragraph 3, not added yet, shall be computed to determine the net profit in the assessment of the taxable income, the tax base of the CSLL and the tax base of PIS/Pasep Contribution, of Cofins and the social contribution addressed in item III of Paragraph 3 for the termination assessment period. (Included by Act no. 13.043, of 2014) Effectiveness

Paragraph 12. It shall apply to the revenues accrued by the private partner pursuant to Paragraph 6 the regime of assessment and the tax rates for the PIS/Pasep Contribution and Cofins applicable to its revenues arising from the provision of the public services. (Included by Act no. 13.043, of 2014) Effectiveness

Art. 7 The consideration of the Public Administration shall be preceded by the availability of the serviced under the public-private partnership contract.

Paragraph 1 The public administration may, pursuant to the contract, pay the consideration relating to the usable portion of the service under the public-private partnership contract. (Included by Act no. 12.766, of 2012)

Paragraph 2 The contribution of funds mentioned in Paragraph 2 of art. 6, when made during the investment phase at the private partner's expenses, shall be proportional to the stages effectively performed. (Included by Act no. 12.766, of 2012)

Chapter III

GUARANTEES

Art. 8 The pecuniary obligations undertaken by the Public Administration under the public-private partnership contract may be secured by:

I – appropriation of revenues, observed the provision in item IV of art. 167 of the Federal Constitution;

II – establishing or use of special funds provided by law;

III – performance bond taken from the insurance companies that are not controlled by Government Authorities;

IV – guarantee provided by international bodies or financial institutions that are not controlled by Government Authorities;

V – guarantees provided by a guarantor fund or government-owned company created for that purpose;

VI – other mechanisms admitted by law.

Sole paragraph. (VETOED). (Included by Act no. 13.043, of 2014) Effectiveness

Chapter IV

SPECIAL PURPOSE ENTITY

Art. 9 Before the contract is executed, a special purpose entity, in charge of implementing and managing the subject matter of the partnership, shall be organized.

Paragraph 1 The transfer of control of the special purpose entity is dependent on Public Administration's express authorization, pursuant to the bid notice and the contract, observed the provision in sole paragraph of art. 27 of Act no. 8.987, of February 13, 1995.

Paragraph 2 The special purpose entity may take the form of a public company, with securities admitted for negotiation in the market.

Paragraph 3 The special purpose entity shall observe corporate governance standards and adopt standardized bookkeeping and financial statements, in accordance with the regulation.

Paragraph 4 The Public Administration shall not hold the majority voting interest in the companies mentioned in this Chapter.

Paragraph 5 The prohibition provided in Paragraph 4 of this article shall not apply to any acquisition of majority voting interest in the special purpose entity by a financial institution controlled by the Public Authority in case of default of financing contracts.

Chapter V

BIDDING PROCESS

Art. 10. The public-private partnership contract shall be preceded by a bidding process in the competitive type, the opening of the bidding process being conditioned on:

I – the authorization of the competent authority, substantiated with a technical study demonstrating:

a) contracting convenience and timeliness, identifying the reasons that justify the option for the public-private partnership;

b) that the expenses incurred or increased will not affect the goals forecast for the fiscal results in the Annex mentioned in Paragraph 1 of art. 4 of Supplementary Act no. 101, of May 4, 2000, and the financial effects thereof, in the following years, shall be offset by the permanent increase of revenue or by the permanent reduction of expense; and

c) where appropriate, in accordance with the rules published pursuant to art. 25 of this Act, the observance of the limits and conditions arising from the enforcement of articles 29, 30 and 32 of the Supplementary Act no. 101, of May 4, 2000, for the obligations undertaken by the Public Administration relating to the subject matter of the contract;

II – preparation of an estimate of the budgetary-financial impact to the years in which the public-private partnership contract shall remain in force;

III – declaration of the expense computer that the obligations undertaken by the Public Administration during the contract term are compatible with the law of budgetary guidelines and are provided in the annual budget law;

IV – estimate of the public flow of resources sufficient to fulfill, during the term of the contract and financial year, the obligations undertaken by the Public Administration;

V – its subject matter being provided in the multiannual plan in force within the scope where contract will be executed;

VI – submission of the draft of the bid notice and contract to public consultation, upon publication in the official press, in newspapers of general circulation and by electronic means, that should inform the reason for contracting, the identification of the subject, the term of the contract, its estimated value, fixing the minimum term of thirty (30) days to receive suggestions, whose term shall be seven (7) days before the estimated date for bid notice publication; and

VII – prior environmental license or issuance of the guidelines for the environmental licensing of the enterprise, with the form of the regulation, whenever the subject matter of the contracts so requires.

Paragraph 1 The evidence referred to in letters b and c of item I of the main section of this article shall include the calculation assumptions and methodologies used, observed the general rules for the consolidation of the public accounts, without prejudice to the examination of compatibility of the expenses with the remaining rules of the multiannual plan and the budget law.

Paragraph 2 Whenever the signature of the contract occurs in a different year from that in which the bid notice is published, it shall be preceded by the update of the studies and statements referred to in items I to IV of the main section of this article.

Paragraph 3 The sponsored concessions in which more than seventy percent (70%) of the remuneration of the private partner is paid by the Public Administration shall depend on specific legislative authorization.

Paragraph 4 The engineering studies defining the value of the PPP investment shall have a level detail of a draft project, and the investment amount for defining the reference price for the bidding process shall be calculated based on the market values considering the global cost of similar works in Brazil or abroad or based on cost systems using as input market values of the project specific sector, accrued, in any case, upon a summary budget, prepared with expedite or parametric methodology. (Included by Act no. 12.766, of 2012)

Art. 11. The bid notice shall include the draft contract, expressly indicate the adhesion of the bidding process to the rules of this Act and observe, as applicable, the Paragraphs 3 and 4 of art. 15, articles 18, 19 and 21 of Act no. 8.987, of February 13, 1995, and may also provide:

I – requirement of guarantee of bidder's proposal, observed the limit of item III of art. 31 of Act no. 8.666, of June 21, 1993;

II – (VETOAD)

III – the employment of private mechanisms of dispute resolution, inclusive arbitration, to take place in Brazil and in Portuguese, pursuant to Act no. 9.307, of September 23, 1996, to resolve disputes arising from or related to the contract.

Sole paragraph. The bid notice shall specify, if any, the guarantees for the consideration of the public partner to be provided to the private partner.

Art. 12. The bidding process for public-private partnerships shall observe the procedure provided by the applicable legislation on bidding processes and administrative contracts and the following:

I – the judgement may be preceded by a technical proposal qualification step, being disqualified the bidders that fail to reach the minimum score, who shall not participate in the following steps;

II – the decision may use, in addition to those provided in items I and V of art. 15 of Act no. 8.987, of February 13, 1995, the following criteria:

a) lower consideration value payable by Public Administration;

b) best proposal considering the combination of the criteria in letter a with the best technique, according to the weights established in the bid notice;

III– the bid notice shall define the form of presentation of the economic proposals, being admitted:

a) written proposals in sealed envelopes; or

b) written proposals, followed by open outcry bidding;

IV – the bid notice may provide the possibility of remediation of failures, supplementation of insufficiencies, or corrections of formal nature during the procedure, provided that the bidder can meet the requirements within the term fixed in the bid notice.

Paragraph 1 In the event of letter b of item III of the main section of this article:

I - the open outcry bidding shall be always offered in the reverse order of classification of written proposals, being prohibited the limitation of the number of bids in the bid notice;

II – the bid notice may restrict the presentation of open outcry bids to bidders whose written proposal is at most twenty percent (20%) higher than the value of the best proposal.

Paragraph 2 The review of technical proposals, for qualification or decision purposes, shall be bade by a substantiated act, based on requirements, parameters and indicators of result that are consistent with the purpose, clearly and objectively defined in the bid notice.

Art. 13. The bid notice may provide the inversion of the order of qualification and decision phases, in which event:

I – completed the phase of classification of proposals or bidding, it shall be opened the sealed envelope with the qualification documents of the best ranked bidder, before verifying the compliance with the conditions established in the bid notice;

II – verified the compliance with the bid notice requirements, the bidder shall be declared winner;

III – disqualified the best ranked bidder, it shall be reviewed the qualifying documents of the bidder with the second (2nd) ranked proposal, and so on, successively, until a ranked bidder meets the conditions established in the bid notice;

IV – proclaimed the result of the bidding process, the subject matter shall be awarded to the winner under the technical and economic conditions offered by the winner.

Chapter VI

PROVISIONS APPLICABLE TO THE FEDERAL GOVERNMENT

Art. 14. It shall be established, by decree, the managing body of federal public-private partnerships, with competence to: (See Decree no. 5.385, of 2005)

I – define the priority services to be performed under the public-private partnership regime;

II – regulate the procedures for executing such contracts;

III – authorize the opening of the bidding process and approve its bid notice;

IV – review the reports on contract performance.

Paragraph 1 The body mentioned in the main section of this article shall be formed by nominal appointment of one acting representative and the respective alternate of each of the following bodies:

I – Ministry of Planning, Budget and Management, which shall perform the task of coordinating the respective activities;

II – Ministry of Finance;

III – Office of the Chief of Staff of the Presidency of Brazil.

Paragraph 2 The meetings of the body referred to in the main section of this article for reviewing the public-private partnership projects shall be attended by a representative of the direct body of the Public Administration whose area of competence pertains to the subject matter of the concerned contract.

Paragraph 3 To discuss with the managing body the hiring of a public-private partnership, the routine shall have been directed with a prior and substantiated statement:

I – of the Ministry of Planning, Budget and Management, on the merits of the project;

II – of the Ministry of Finance, regarding the feasibility of the concession of guarantee and its form, in relation to the risks for the National Treasury and the compliance with the limit discussed in art. 22 of this Act.

Paragraph 4 For performing its functions, the body mentioned in the main section of this article may create a technical support structure with the presence of representatives from public institutions.

Paragraph 5 The body discussed in the main section of this article shall sent to the Brazilian Congress and to the Federal Accounting Court, annually, performance reports for the public-private partnership contracts.

Paragraph 6 For purposes of compliance with the provision in item V of art. 4 of this Act, except for information classified as confidential, the reports discussed in Paragraph 5 of this article shall be made available to the public, by the public data transmission network.

Art. 14-A. The House of Representatives and the Federal Senate, through the acts of their respective Boards, may provide on the matter addressed by art. 14 in case of public-private partnerships they carry out, keeping the competence of the Ministry of Finance described in item II of Paragraph 3 of said article. (Included by Act no. 13.137, of 2015)

Art. 15. The Ministries and the Regulatory Agencies shall, in their respective areas of competence, submit the bid notice to the managing body, proceed to the bidding process, monitor and inspect the public-private partnership contracts.

Sole paragraph. The Ministries and Regulatory Agencies shall forward to the body mentioned in art. 14 of this Act, twice annually, references regarding the application of the public-private partnership contracts, as defined in regulation.

Art. 16. The Union, its special funds, its municipalities, its public foundations and its state-owned subsidiaries are authorized to participate, within the overall limit of BRL 6,000,000,000.00 (six billion reais), in the Guarantor Fund of Public-private partnerships - FGP which shall have the purpose of guaranteeing the payment of pecuniary obligations assumed by the federal, district, state or municipal public partners due to the partnerships referred to in this Act. (Wording provided by Act no. 12.766, of 2012)

Paragraph 1 The FGP shall be private in nature and have its own equity separate from shareholders' equity, and shall be subject to its own rights and obligations.

Paragraph 2 The assets of the Fund shall be formed by the contribution of assets and rights made by the quota holders, through the payment of quotas and the income obtained from their administration.

Paragraph 3 The assets and rights transferred to the Fund shall be appraised by a specialized company, which shall present a reasoned report, indicating the evaluation criteria adopted and informed with the documents related to the evaluated assets.

Paragraph 4 The payment of quotas may be made in cash, public debt securities, disposable public estate, movable property, including shares of federal government-controlled companies exceeding what is necessary to hold its control by the Union, or other rights with net asset value.

Paragraph 5 The FGP shall remain liable for its obligations to the assets and rights consisting in its equity, and the quota holders shall not be liable for any obligation of the Fund, other than the payment of the quotas they subscribe.

Paragraph 6 The payment with goods referred to in Paragraph 4 of this article shall be made independently of bidding, upon prior evaluation and specific authorization of the President of the Republic, upon proposal of the Minister of Finance.

Paragraph 7 The contribution of goods of special use or common use in the FGP shall be conditional on their individualized reversal of appropriation.

Paragraph 8 The capitalization of the FGP, when carried out through budgetary resources, shall be made by specific budgetary action for this purpose, within the scope of Financial Charges of the Union. (Wording provided by Act no. 12.409, of 2011)

Paragraph 9 (VETOED). (Included and vetoed by Act no. 12.766, of 2012)

Art. 17. The FGP shall be created, administered, managed and represented judicially and extrajudicially by a financial institution controlled, directly or indirectly, by the Union, observing the norms mentioned in item XXII of art. 4 of Act no. 4.595, of December 31, 1964.

Paragraph 1 The bylaws and regulation of the FGP shall be approved at the quota holders' meeting.

Paragraph 2 The Government representation at the meeting of quota holders shall be in the form of item V of art. 10 of Decree-Act no. 147, of February 3, 1967.

Paragraph 3 The financial institution shall be responsible for deliberating on the management and disposal of the assets and rights of the FGP, ensuring its profitability and liquidity.

Art. 18. The FGP's statute and regulation should deliberate on the policy of granting guarantees, including the ratio between assets and liabilities of the Fund. (Wording provided by Act no. 12.409, of 2011)

Paragraph 1 The guarantee shall be provided in the form approved by the quota holders' meeting, in the following modalities:

I – suretyship, without benefit of order to the guarantor;

II – pledge of movable property or rights belonging to the FGP's assets, without transfer of ownership of the property before the guarantee is executed;

III – mortgage of real estate of the equity of the FGP;

IV – fiduciary alienation, while the direct possession of the assets remains with the FGP or with the fiduciary agent hired by it before the execution on the guarantee;

V – other collateralized contracts, provided that they do not transfer the ownership or direct ownership of the assets to the private partner prior to the execution of the guarantee;

VI – guarantee, in rem or in personam, linked to appropriated assets constituted as a result of the separation of debts and claims belonging to the FGP.

Paragraph 2 The FGP may provide counter-guarantees to insurers, financial institutions and international bodies that secure the fulfillment of the pecuniary obligations of the quota holders in public-private partnership contracts.

Paragraph 3 The discharge by the public partner of each portion of debt guaranteed by FGP shall release the guarantee.

Paragraph 4 The FGP may provide collateral by contracting instruments available in the market, also to supplement the modalities provided in Paragraph 1. (Wording provided by Act no. 12.766, of 2012)

Paragraph 5 The private partner may activate the FGP in cases of: (Wording provided by Act no. 12.766, de 2012)

I - net and certain credit, included in an instrument receivable accepted and not paid by the public partner fifteen (15) days after due date; and (Included by Act no. 12.766, of 2012)

II - debts included in invoices issued and not accepted by the public partner forty-five (45) days after the expiration date, provided there has not been express rejection by reasoned act. (Included by Act no. 12.766, of 2012)

Paragraph 6 The discharge of debt by the FGP shall result in its subrogation into the rights of the private partner.

Paragraph 7 In the event of default, the assets and rights of the Fund may be subject to judicial restriction and sale to satisfy the guaranteed obligations.

Paragraph 8 The FGP may use a portion of the Federal Government's interest to guarantee its special funds, its local authorities, its public foundations and its state-owned companies depending on it. (Included by Act no. 12.409, of 2011)

Paragraph 9 The FGP is required to pay invoices accepted and unpaid by the public partner. (Included by Act no. 12.766, of 2012)

Paragraph 10. The FGP shall not pay invoices refused expressly by a reasoned act. (Included by Act no. 12.766, of 2012)

Paragraph 11. The public partner shall notify FGP of any rejected invoice and the reasons for rejection within forty (40) days from the expiration date. (Included by Act no. 12.766, of 2012)

Paragraph 12. The absence of acceptance or express rejection of the invoice by the public partner within forty (40) days from the due date shall be construed as tacit acceptance. (Included by Act no. 12.766, of 2012)

Paragraph 13. The public agent who contributes by action or omission to the tacit acceptance referred to in Paragraph 12 or who rejects an unreasonable invoice shall be liable for damages caused in accordance with existing civil, administrative and penal legislation. (Included by Act no. 12.766, of 2012)

Art. 19 The FGP shall not pay any funds to its quota holders, any of them being entitled to request the total or partial redemption of their quotas, corresponding to the assets not yet used for the provision of guarantees, the liquidation being based on the financial situation of the Fund.

Art. 20. The dissolution of the FGP, as decided by the quota holders' meeting, shall be conditional on the prior discharge of the totality of the guaranteed debts or release of the guarantees by the creditors.

Sole paragraph. Once the FGP is dissolved, its equity shall be apportioned among the quota holders, based on the equity situation at the date of dissolution.

Art. 21. It may be established appropriation assets that shall not communicate with the rest of the assets of the FGP, being bound exclusively to the guarantee by which it was constituted, not being subject to attachment, arrest, kidnapping, search and seizure or any act of judicial restriction arising from other obligations of the FGP.

Sole paragraph. The constitution of appropriation assets shall be made by registration with the Registry of Deeds and Documents or, in the case of immovable property, with the corresponding Real Estate Registry Office.

Art. 22. The Federal Government may only hire public-private partnership when the sum of the ongoing expenses arising from all the partnerships already hired does not exceed, in the previous year, one percent (1%) of the net current revenue for the year, and expenses for the effective contracts in the subsequent ten (10) years do not exceed one percent (1%) of the net current revenue forecast for the respective years.

Chapter VII

FINAL PROVISIONS

Art. 23. The Federal Government is authorized to grant incentives, under the Incentive Program for the Implementation of Projects of Social Interest - PIPS, established by Act no. 10.735, of September 11, 2003, to investments in investment funds, created by financial institutions, in credit rights arising from public-private partnerships contracts.

Art. 24. The National Monetary Council shall establish, in accordance with the relevant legislation, the guidelines for granting credit for the financing of public-private partnerships, and for participation of private supplementary pension entities.

Art. 25. The National Treasury Secretariat shall publish, in accordance with the relevant legislation, general rules on consolidation of public accounts applicable to public-private partnership contracts.

Art. 26. Item I of Paragraph 1 of art. 56 of Act no. 8.666, of June 21, 1993, shall become effective with the following wording:

> "Art. 56 .....
>
> Paragraph 1 .....
>
> I - bond in cash or in government securities, which must have been issued in book-entry form, through a centralized system of liquidation and custody authorized by the Central Bank of Brazil and evaluated for their economic values, as defined by the Ministry of Finance;
>
> ....." (NR)

Art. 27. Credit transactions carried out by government-owned or government-controlled companies shall not exceed seventy percent (70%) of the total sources of financial resources of the special purpose entity, and for the areas of the North, Northeast and Center-West, where the HDI is below the national average, this participation shall not exceed eighty percent (80%).

Paragraph 1 It shall not exceed eighty percent (80%) of the total sources of financial resources of the special purpose entity or ninety percent (90%) in the areas of the North, Northeast and Central West regions, where the Human Development Index the national average the credit transactions or capital contributions carried out cumulatively by:

I – closed private pension entities;

II – government-owned or government-controlled companies.

Paragraph 2 For the purposes of this article, "source of financial resources" shall mean the credit and capital contribution transactions in special purpose entity.

Art. 28. The Federal Government shall not grant guarantee or voluntary transfer to the States, Federal District and Municipalities if the sum of the expenses of continuous nature derived from all the partnerships already contracted by these entities has exceeded, in the previous year, five percent (5%) of the net current revenue for the year or if the annual expenses of the contracts in force in the subsequent ten (10) years exceed 5% (five percent) of the net current revenue forecast for the respective years. (Wording provided by Act no. 12.766, of 2012)

Paragraph 1 The States, the Federal District and the Municipalities that contract projects through public-private partnerships shall submit to the Federal Senate and the National Treasury Department, prior to contracting, the necessary information to comply with the provisions in the main section of this article.

Paragraph 2 While applying the cap established in the main section of this article, expenses derived from partnership contracts executed by direct public administration, municipalities, public foundations, government-owned and government-controlled companies and other companies directly or indirectly controlled by respective political entity, excluding non-dependent government-owned companies, shall be computed. (Wording provided by Act no. 12.024, of 2009)

Paragraph 3 (VETOED)

Art. 29. It shall apply, as appropriate, the penalties provided by Decree-Act no. 2.848, of December 7, 1940 - Penal Code, Act no. 8.429, of June 2, 1992 – Administrative Improbity Act, and Act no. 10.028, of October 19, 2000 - Fiscal Crimes Act, Decree-Act no. 201, of February 27, 1967, and Act no. 1.079, of April 10, 1950, without prejudice to contractual financial penalties.

Art. 30. This Act becomes effective on the date it is published.

Brasília, December 30, 2004; 183rd anniversary of the Independency and 116th anniversary of the Republic.

LUIZ INÁCIO LULA DA SILVA
Bernard Appy
Nelson Machado

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