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ACT No. 12.610 OF DECEMBER 27, 2012

Authorizes the Executive Branch to create Bahia's Fund for Partnerships Guarantees - FGBP, amends Act no. 9.290, of December 27, 2004, and no. 7.599, of February 7, 2000, and makes other provisions.

I, THE GOVERNOR OF THE STATE OF BAHIA, make it known that the Legislative Assembly decrees and I sanction the following Act:

Art. 1 - The State of Bahia, its instrumentalities, public foundations and its dependent state-owned enterprises are hereby authorized to hold interest, up to the overall limit of seven hundred-fifty million reais (BRL 750,000,000), in Bahia's Fund for Partnerships Guarantees - FGBP, whose purpose shall be to secure the payment of pecuniary obligations undertaken by the public state partners, by virtue of the partnerships addressed in Act No. 9.290, of December 27, 2004.

Paragraph 1 - The FGBP shall have private nature and its own equity, separate from the equity of the members, and shall observe its separate rights and obligations.

Paragraph 2 - The assets of the Fund shall be composed of assets and rights contributed by the members, through the payment of shares and the proceeds from their management.

Paragraph 3 - The assets and rights transferred to the FGBP shall be valued by a specialized company, which shall present a substantiated report, listing the appraisal criteria used, and supported by the documents relating to the assets valued.

Paragraph 4 - The payment of shares can be made in cash, government bonds, immovable disposable property, movable property or other rights with property value, including:

- I - credit arising from financing agreements of the Fund for Social and Economic Development - FUNDESE, created by Act No. 7.599, of February 7, 2000;
- II - proceeds from bank deposits and financial investments of the State of Bahia;
- III - internal and external credit transactions;
- IV - royalties payable to the State of Bahia, subject to the applicable legislation;
- V - property specifically intended to this function, by prior legislative authorization;
- VI - ordinary or preferred shares held by the State and its instrumentalities, in the stock of corporations, which are not required to secure the performance of the respective controlling interest on unconditional basis;
- VII - government bonds issued in accordance with the applicable legislation;
- VIII - capital contributions arising from credit facilities of official financial institutions;

IX - other assets and rights directly or indirectly held by the State, including federal revenues whose transfer does not require specific legislative authorization.

Paragraph 5 - The FGBP shall remain liable for its obligations to the property and rights that are part of its assets, and shall not be liable to the members for any obligation of the Fund, except for the payment of all shares subscribed by it.

Paragraph 6 - The payment with property referred to in Paragraph 4 of this article shall be made upon prior appraisal and specific authorization by the State Government, by a proposal of the Secretary of Treasury.

Paragraph 7 - The special or common use property contributed to the FGBP shall be conditioned on the withdrawal from public access and use on case-by-case basis.

Paragraph 8 - The capitalization of the FGBP, if by budget funds, shall be made through specific budget action for this purpose.

Paragraph 9 - The location and venue of the FGBP shall be in Salvador - Bahia, and it may keep offices, agencies, premises and branches in other Municipalities of the State.

Art. 2 - The FGBP shall be created, administered, managed and represented, either judicially and extrajudicially, by Agência de Fomento do Estado da Bahia S.A. - DESENBAHIA, a legal entity governed by private law, organized as a closely-held corporation, as authorized by Act No. 2.321, April 11, 1966, a financial institution directly or indirectly controlled by the State of Bahia.

Paragraph 1 - The bylaws and regulations of the FGBP shall be approved at the meeting of members.

Paragraph 2 - The financial institution shall discuss on the management and disposal of the property and rights of the FGBP, ensuring the maintenance of its profitability and liquidity.

Art. 3 - The bylaws and the regulation of the FGBP shall discuss the guarantee provision policy, also regarding the Fund assets-to-liabilities ratio.

Paragraph 1 - The guarantee shall be provided in the form approved by the meeting of members, in the following modalities:

- I - suretyship, without benefit of order for the surety;
- II - pledge of movable property or rights held by the FGBP, without transferring the possession of the pledged thing before the execution on the collateral;
- III - mortgage of immovable property held by the FGBP;
- IV - fiduciary alienation, the direct possession of the property being held by the FGBP or with a fiduciary agent engaged by it before the execution on the collateral;
- V - other contracts with the effect of a guarantee, provided that they do not transfer the ownership or direct possession of property to the private partner before the execution on the collateral;
- VI - in rem or personal guarantee, relating to appropriation assets established as a result of the separation of the property and rights held by the FGBP.

Paragraph 2 - The FGBP may present counter-guarantees to insurers, financial institutions and international bodies to secure the performance of the pecuniary obligations of the members under public-private partnership contracts.

Paragraph 3 - The discharge by the public partner of each portion of the debt secured by FGBP shall result in a proportional release of the guarantee.

Paragraph 4 - The FGBP may present guarantee contracting the instruments available in the market, also for supplementing the modalities provided in Paragraph 1 of this article.

Paragraph 5 - The private partner may sue the FGBP in case of:

I - liquid and certain claim, included in an enforceable deed accepted and not paid by the public partner after fifteen (15) days counted from due date;

II - debts invoiced and not accepted by the public partner, after forty-five (45) days counted from due date, provided that there is no express refusal by substantiated act.

Paragraph 6 - The discharge of the debt by FGBP shall result in its subrogation with the rights of the private partner.

Paragraph 7 - In case of default, the property and rights of the FGBP may be subject to judicial constriction and sale to satisfy the secured obligations.

Paragraph 8 - The FGBP may use a portion of the State share to guarantee its special funds, instrumentalities, public foundations and dependent state-owned companies.

Paragraph 9 - The FGBP shall pay the invoices accepted and unpaid by the public partner.

Paragraph 10 - The FGBP shall not pay invoices refused expressly by substantiated act.

Paragraph 11 - The public partner shall notify the FGBP of any invoice refused and on the reasons for the refusal, within forty (40) days from due date.

Paragraph 12 - The absence of acceptance or express refusal of any invoice by the public partner within forty (40) days from due date shall result in tacit acceptance.

Paragraph 13 - The public agent contributing by action or omission for the tacit acceptance mentioned in Paragraph 12 of this article or refusing an invoice without cause shall be liable for any damage it causes, in accordance with the civil, administrative and penal legislation in force.

Art. 4 - The FGBP shall not pay interest to its members, being secured to any of them the right to demand the redemption in whole or in part of their shares, corresponding to the assets not yet used for the granting of collateral, the settlement being made based on the patrimonial position of the Fund.

Art. 5 - The dissolution of the FGBP, discussed by the meeting of members shall be conditioned on the prior discharge of all debts secured or the release of the collateral by lenders.

Sole paragraph - Dissolved the FGBP, its assets shall be allocated between the members, based on the assets position on the date of dissolution.

Art. 6 - An appropriation property may be created, which shall not communicate with the remaining assets of the FGBP, being solely bound to the collateral based on which it was created, and it shall not be subject to pledge, seizure, sequestration, search and confiscation or any judicial constriction act resulting from other obligations of FGBP.

Sole paragraph - The appropriation property shall be created by registration with a Registry of Deeds and Documents, or in case of immovable property, with the corresponding Real Estate Registry.

Art. 7 - The FGBP may take any action or engage in any activity necessary to the fulfillment of its purposes, as appropriate, even if said action or activity is not expressly provided by this Act.

Art. 8 - The FGBP shall:

I - provide guarantees to the obligations undertaken by any of the entities of the Direct and Indirect Administration of the State of Bahia, within the scope of the public-private partnership contracts, if provided in a project p, created by art. 24 of Act 9.290, of December 27, 2004;

II - perform other activities inherent to its purposes, pursuant to its bylaws.

Art. 9 - To fulfill its purposes, the FGBP may:

I - act as intervening consenting party in the public-private partnership contracts executed by the Direct or Indirect Public Administration of the State of Bahia;

II - undertake, in whole or in part, the rights and obligations arising from the contracts mentioned in item I of this article, required for fulfilling its purpose;

III - provide in rem or personal guarantees, and take insurances;

IV - exploit, encumber, and sale its assets;

V - manage its assets to secure its value and any increase thereof, pursuant to its bylaws, reinvesting any gains from that management in its operation and in furtherance of its corporate purposes.

Sole paragraph - The FGBP is hereby authorized to engage in any activities provided or otherwise required for the due fulfillment of its purposes, as provided in this Act.

Art. 10 - FGBP resources include:

I - resources from appropriations consigned in the State budget, subject to the provisions in this Act;

II - proceeds from:

a) sales of assets and rights;

b) financial investments made;

c) property rights, including rents, emphyteutic rent, dividends and bonus;

d) contracts and agreements with national and international entities;

III - gifts, bequests, subventions and other proceeds transferred to it by individuals or legal entities governed by public or private law;

IV - proceeds from other sources.

Art. 11 - The FGBP shall be subject to the inspection of the internal control bodies of the Executive Branch and to the external control performed by the Legislative Assembly, assisted by the State Accounting Court.

Art. 12 - The dissolution of the FGBP, by resolution of the general meeting, shall be conditioned on the prior discharge of all debts secured or release of collateral by lenders.

Art. 13 - In order to ensure the performance of the obligations undertaken by the State of Bahia and its entities of the indirect administration under public-private partnership contracts, the FGBP shall keep, for each public-private partnership contract, a specific checking account, with funds capable of being executed and entirely segregated from other funds held by it, pursuant to the respective contracts.

Paragraph 1 - The specific accounts mentioned in the main section of this article shall keep the balance corresponding to six (6) monthly remunerations under the public-private partnership contracts they relate to, computed the charges and adjusts for inflation.

Paragraph 2 - The FGBP may authorize the financial agent manager to transfer the funds directly to the account of the concessionaire or its funders, as provided in the respective public-private partnership contracts.

Paragraph 3 - The State of Bahia, its instrumentalities, public foundations and dependent government-owned companies are hereby authorized to recompose the volume of the guarantee provided in this Act, in case of any execution, in the form and within the time established under each contract.

Paragraph 4 - The need of contribution shall be notified by the FGBP, no later than five (5) days after verified the absence of its own funds.

Paragraph 5 - To comply the provision in the main section of this article the credits from financing contracts of the Fund for Social and Economic Development, created by Act No. 7.599, of February 7, 2000, may be used, as provided in its art. 1, Paragraph 1, item VI.

Art. 14 - The granting of guarantees by the FGBP shall be limited to the public-private partnership contracts, commencing on the promulgation of this Act, that expressly provides the adoption of the mechanisms it creates.

Art. 15 - The main section of art. 1 and its sole paragraph, of Act No. 11.477, of July 1, 2009, are amended to read as follows:

Art. 1 - For the purposes of performing the obligations undertaken by the State of Bahia and entities of its indirect administration under public-private partnership contracts, pursuant to State Act No. 9.290, of December 27, 2004, the financial agent shall be responsible for transferring the resources of the Participation Fund of the States and Federal District – FPE authorized to transfer the amount corresponding to eighteen percent (18%) of the financial funds from this Fund, allocated to the State of Bahia, to Agência de Fomento do Estado da Bahia S.A. - DESENBAHIA, a legal entity governed by private law, organized as a closely-held corporation, as authorized by the State Act No. 2.321, of April 11, 1966.

Sole paragraph - The Agência de Fomento do Estado da Bahia S.A. - DESENBAHIA - shall keep the resources transferred to it pursuant to the main section of this article separated from other funds held by it, in specific checking accounts to be opened with the financial agent responsible for the transfer of the FPE resources, allocating them, solely, to the performance of the obligations undertaken by the State of Bahia and the entities of its indirect administration under public-private partnership contracts, under penalty of their administrators being liable, pursuant to the Law, and DESENBAHIA - Agência de Fomento do Estado da Bahia may authorize the financial agent to transfer the resources directly to the account of the concessionaire or of their funders, as provided under the public-private partnership contracts.”

Art. 16 - Item VI shall be added to Paragraph 1 of art. 1 of Act No. 7.599, of February 7, 2000, to read as follows:

“**Art. 1-**

Paragraph

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.....
VI - assign its credit from financing agreements or the funds from the payment of such credit to be contributed to Bahia’s Fund for Partnerships Guarantees - FGBP, subject to the conditions provided by Law.”

Art. 17 - To comply the provisions in this Act, the Executive Branch is authorized to adapt financial planning instruments and, pursuant to arts. 40 to 43, 45 and 46 of Federal Act No. 4.320, of March 17, 1964, open an additional credit to the current budget, and reopen it through its balance for the next year.

Art. 18 - The provisions not expressly repealed by this Act shall remain effective.

Art. 19 - This Act shall enter into force on the day of its publication.

PALACE OF THE GOVERNMENT OF THE STATE OF BAHIA, on December 27, 2012.

JAQUES WAGNER
Governador

Rui Costa
Chief of Staff

Luiz Alberto Bastos Petitinga

Secretary of the Treasury

José Sérgio Gabrielli de
Azevedo Secretary of
Planning