



**REPUBLIC OF ALBANIA
COUNCIL OF MINISTERS**

DECREE

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**ON
ORGANIZATON AND FORM OF STATE PARTICIPATION IN STRATEGIC
INVESTMENTS AND RULES ON FUNCTIONING AND MANAGEMENT OF
STRATEGIC INVESTMENT IMMOVABLE PROPERTY FUND**

Pursuant to Article 100 of the Constitution, of Article 30 and dhe of pioint 2 of Article 31 of Law no. 55/2015, “On Strategic Investments in the Republic of Albania”, on the proposal of the Minister of Economic Development, Tourism, Trade and Entrepreneurship, the Council of Ministers

D E C I D E D:

I. RULES ON AND FORMS OF STATE PARTICIPATION IN STRATEGIC INVESTMENTS

- 1.** These rules lay down the procedures, documents, and steps to be followed by strategic investors and the comptent state bodies in relation to the possibilities for state participation as co-participator in an investment, together with the private entities that have received the status of strategic investors, for implementing a stategic investment.
- 2.** State participation in strategic investments may be realized in the following forms:
 - a. The state may act as a co-developer of the strategic investment;
 - b. The state acts as a co-developer in a given territorial zone in which a strategic investment is implemented;
 - c. The state acts as a co-developer in an investment in other forms, in compliance with the Albanian legislation in force.

3. The state may act as co-developer in a strategic investment by participating as a member/shareholder in the commercial company that will implement a strategic investment, through equity contribution, in cash and/or in kind. State participation in a company shall comply with the methods, forms and rules laid down in the Albanian Company Law.

4. The state may be co-participant in the implementation of a strategic investment by playing the role of a developer of a specific territorial area where strategic investments are executed. In such a case, the State may support a strategic investment by taking measures to develop the area, such as: improve and develop existing facilities and infrastructure, construct new infrastructure, or other support measures.

5. In addition to these forms, the Albanian State may act as a co-participant in an investment in any other forms provided for in the Albanian legislation in force. Such forms of co-participation may include, but without being limited to: provision of access to state-owned immovable or movable property, assets, machinery, rights or various facilities, granting of the right to use shores, in line with the provisions of Article 29 of the Law, and a combination of them.

Co-participation of the state in a strategic investment may be remunerated through payment of fees, or distribution of a share of the profits realised by the strategic investment.

The state participation in strategic investments and its relevant benefits shall be specified in the relevant contracts that the state concludes with the strategic investor.

6. State participation in strategic investments shall be realized in compliance with the public interest, by respecting the principles of transparency, impartiality, equity and protection of competition and free market.

The state participation, support and promotion of a strategic investment should not cause obstruction, restriction or distortion of free competition in the market.

State participation should also be at such levels as not to eliminate or significantly reduce the operational risk borne by strategic investors, and at a level that is proportionate with the investment amount and significance.

Therefore, before state participation in a strategic investment is proposed, the Albanian Investment Development Agency shall request a preliminary opinion from the Competition Authority, the State Aid Commission, and other specialised bodies, and shall forward that opinion to the Strategic Investment Committee.

7. Co-participation in a strategic investment may be proposed by the state itself, in the case of a strategic project developed by the state bodies, with the aim to support investors in executing a strategic investment. State participation in strategic investments for which competitive bidding procedures are required shall be announced at the initial stage of tenders or competitions which take place in such cases.

8. State participation may be requested also by strategic investors who propose the execution of a strategic investment, in order to increase the level of support for the project, reduce operational risk, and increase guarantees for its execution.

9. Every investor who seeks state participation in a strategic investment shall, in addition to the documentation for inclusion of the strategic investment in the administrative procedures and documentation on financial guarantees, submit the following documentation to the Albanian Investment Development Agency:

- a) a complete business plan that specifies also the respective obligations proposed to be fulfilled by the strategic investor and the state, and the respective costs;
- b) a feasibility study, which makes a detailed analysis and technical, economic and commercial assessment of the project, and submits evidence that the project is suitable, necessary and feasible;
- c) a report on the reasons for applying for state involvement, the method of state participation or direct support in the investment, and the reason why the state participation is considered necessary by the investor for the successful implementation of the project;
- d) a detailed description of the form and level of requested state participation, together with specific information on the state participation aspects;
- e) identification of the movable or immovable public asset and of the body responsible for its management, where the application is for making available a state-owned public asset;
- f) the full design of the development of the internal infrastructure and how it will be connected to the external infrastructure, in the case of an application for providing support with support infrastructure;
- g) the special rights offered to the State by the investor in the framework of state participation in the investment, including, but not limited to:
 - (i) Decision-making with veto or qualified majority rights in the company or partnership that is proposed to be established,
 - (ii) Special rights, beyond what is already provided for in the legislation in force, to appoint the members of the management bodies, to appoint the auditors, or to receive information on the progress of the investment,
 - (iii) the special rights in the distribution of dividends, realised income or any other direct or indirect benefits to the State,

(iv) an option for the State to opt out of the investment under conditions that are specified beforehand or that are easily verifiable for a period of time from the proposed date of state participation in the strategic investment,

(v) the restrictions applicable to the transfer of shares or participation of third parties in the investment;

(vi) the proposal how to resolve decision-making gridlocks and disputes.

10. The Agency, through its operational group, shall verify all the assumptions, solutions, indicators, analyses and results listed in the documents that the private investor has submitted, in order to verify whether the information is accurate, applicable and appropriate for the execution of the investment.

11. In order to verify the accuracy of information and analyses and in the cases when the proposal of investor requires special knowledge that exceed the knowledge of the Agency and the members of the operational group, the Agency may ask the proposing investor to cover the costs incurred by the Agency for hiring external independent experts. The procedure for the selection of external experts shall be carried out by the Agency itself which shall select and hire the relevant experts based on an open and transparent procedure after the proposing investor has given its written consent for covering the relevant cost.

12. The Agency shall negotiate with the proposing investor a draft of the documents that shall be signed by the parties in the case of approval of the state participation in the investment which, depending on the case and form of participation, shall involve but not be limited to:

(i) the memorandum of association and articles of association of the company in which the Government will participate as a member/shareholder, which shall have to specify all the conditions, rights and obligations for each party of the company in which the state participates;

(ii) the cooperation agreement between the parties, where the Government participates in an investment through other forms than participation in a company. In each of such documents, the contents need to reflect clearly and in detail the rights and obligations of every participating party in investment, in compliance with the legal provisions in force and the proposals of the investor.

13. In every case that the Agency has to review a proposal for state participation in a strategic investment, the Agency shall have to request in writing the preliminary opinion of the Ministry of Finance and the line ministry covering the sector of strategic investment.

14. The process of preliminary appraisal by the Agency of a proposal and its documentation may not last longer than 30 days from the date of receipt of documentation completed by the proposing investor. Upon the conclusion of the appraisal process, the

Agency shall send to the Committee on Strategic Investments (KIS) the submitted proposal, the relevant documentation, the opinions of other state organs involved, and its own evaluation of the proposal.

15. Within 30 days from sending the request by the Agency, the Strategic Investment Committee may decide on acceptance of the submitted proposal, on conditional acceptance, or on its refusal. In any case, the Strategic Investment Committee decision shall be notified to the proposing investor within 5 (five) days from the date of decision by the Strategic Investment Committee.

16. The State's refusal to participate in an investment does not prejudice the granting of the status of strategic investment—special/assisted procedure in those cases where the investor wishes to go ahead with the investment itself, despite the nonparticipation by the state.

17. The Strategic Investment Committee may decide that the acceptance of the proposal be made subject to submission of additional information or data, assurances of investment execution and changes to cooperation conditions, such as: the amount and type of contribution, form of participation, or the key rights and obligations of the parties in the joint company or in the proposed investment agreement. In these cases, the Strategic Investment Committee shall return the documentation to the Agency, which communicates with the proposing investor in relation to the requirements put forward by the Strategic Investment Committee. If, within a timeframe of 30 days from the notification date, the proposing investor agrees with the conditions imposed by the Strategic Investment Committee, the Agency shall again submit the amended documentation to the Strategic Investment Committee for decision, which shall reflect the suggestions made by the Strategic Investment Committee.

18. Where the Strategic Investment Committee decides to accept the proposal, it shall send it for approval to the Council of Ministers.

19. The proposal from the Strategic Investment Committee covers the form, level and methods of state participation in a strategic investment, together with an attached detailed report which describes;

- a) the public interest and the reasons why state participation in the investment is considered necessary;
- b) the economic analysis of the strategic investment and of state participation;
- c) a risk-benefit analysis of the state participation in the strategic investment;
- d) the level of state participation as a portion of the total investment amount;

- e) the degree of operational risk sharing between the Government and the strategic investor;
- f) the impact of the state participation in the investment on the free market and competition;
- g) a draft agreement to be signed between the investor and the Albanian Government as represented by the Agency, including the conditions, rights and obligations of the parties in relation to the state participation in the strategic investment.

20. The Council of Ministers, based on the proposal of the Strategic Investment Committee as per above, shall specify in a decree the form, level and methods of state participation in a strategic investment, and the government body that shall be authorised to execute the contract with the strategic investor and to implement and monitor it.

II – ESTABLISHMENT, OPERATION AND MANAGEMENT OF THE STRATEGIC INVESTMENT IMMOVABLE PROPERTY FUND

1. The Strategic Investment Immovable Property Fund (FPPMIS), shall be set up with the immovable state owned properties such as buildings/facilities, development land, agricultural land, forests, grassland and pastures in the ownership of central institutions or local governing units.

2. The FPPMIS shall be established, inventoried and managed by the Ministry responsible for the economy.

3. The procedures and rules for the transfer and inclusion of property in the Strategic Investment Immovable Property Fund shall be determined on a case-by-case basis with a Council of Ministers' Decree, based on a proposal from the Minister responsible for the economy.

4. The proposal for inclusion of an immovable state owned property in the Strategic Investment Immovable Property Fund may be submitted by the responsible central or local organs and by the proposing investors, through the Albanian Investment Development Fund.

5. The minister responsible for the economy shall consult and ask for an preliminary opinion the central and local governing organs, which administer the immovable state owned properties proposed to be included in the Strategic Investment Immovable Property Fund. For this purpose, he shall ask the central and local governing organs to provide him with information about the proposed immovable properties, and their current or planned use, and to express their evaluating opinion in relation to their inclusion or not in the Strategic Investment Immovable Property Fund. In the cases when such organs express a negative opinion about the proposed properties, due to their use for essential functions or services for

the publik, they may propose alternative properties administered by them for the conduct of strategic investments.

6. In any case, the central and local governing bodies, which manage the state owned properties proposed to be included in the Strategic Investment Immovable Property Fund shall send to the relevant minister for the economy, within 15 days from receipt of the application, the full file which comprises the entire cadastral documentation on properties, certified by the local office for the registration of immovable properties.

7. The responsible minister for the economy shall review the relevant documentation of the file on immovable properties and verify whether these properties:

- a) Are subject to administrative procedures on the restitution or compensation of properties;
- b) Are subject to legal proceedings for property titles;
- c) Are subject to legalization administrative procedures.

For these purposes, the responsible minister for the economy shall cooperate and ask for certifying information from the relevant state bodies, including but not limited to, the Agency for the Restitution and Compensation of Properties, the Agency for Legalization, Urbanization and Integration of Informal Zones/Constructions, the offices for the registration of immovable properties and the competent courts.

8. The state owned immovable properties may be made available after verifying the compliance of strategic investments with the documents of territorial planning and with the plans, policies, and the state sector strategy. In the cases when the strategic investment does not comply with such plans, the Strategic Investment Committee, through the Agency shall propose their adjustment in order to implement the strategic investment.

9. The Minister responsible for the economy may identify and propose alternative properties for the execution of the strategic investments. Where this is not possible and where the public interest in strategic investment execution prevails over the interest in the current use of such property, the Minister responsible for the economy shall propose to the Council of Ministers to include it in the Strategic Investment Immovable Property Fund.

In the cases where the proposed properties are subject to the procedures set out in point 7 of Chapter II of this decree, or are used for essential public functions or services, the responsible minister for the economy shall consider the possibility to identify and propose alternative properties for the conduct of strategic investments.

Where the public interest in strategic investment execution prevails over the interest in the current use of such property, the Minister responsible for economy shall propose to the Council of Ministers to include it in the Strategic Investment Immovable Property Fund.

10. The Council of Ministers shall by a decision approve the transfer and administration of the state-owned immovable property to be included in the Strategic Investment Immovable Property Fund, in conformity with the legislation on immovable state owned properties, and shall lay down the rules on the coverage of expenses for the establishment, maintenance and management of the immovable property included in the Strategic Investment Immovable Property Fund.

11. The ministry responsible for the economy shall be responsible, within three months from entry into force of this decree, to identify the immovable state owned properties that shall be included provisionally in the Strategic Investment Immovable Property Fund and to prepare the relevant proposals for the Council of Ministers.

12. The ministry responsible for the economy shall inventory and publish such properties in order to provide information, support and encouragement for the execution of strategic investments.

III –TRANSITIONAL PROVISIONS

The Albanian Investment Development Agency shall be responsible for the implementation of this decision.

This decree shall take immediate effect following its publication in the “Official Gazette”.

PRIME MINISTER

EDI RAMA

**MINISTER FOR ECONOMIC DEVELOPMENT, TOURISM, TRADE AND
ENTREPRENEURSHIP**

ARBEN AHMETAJ

