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DECISION

No. 1030, dated 16.12.2015

**ON THE ORGANIZATION AND THE FORM OF THE STATE PARTICIPATION IN STRATEGIC INVESTMENTS
AND THE RULES ON THE ESTABLISHMENT, FUNCTIONING AND ADMINISTRATION OF THE FUND OF THE
IMMOVABLE PROPERTIES SUPPORTING STRATEGIC INVESTMENTS**

Pursuant to article 100 of the Constitution and articles 30 and 31 paragraph 2 of law no. 55/2015, "On strategic investments in the Republic of Albania", upon the proposal of the Minister of Economic Development, Tourism, Trade and Entrepreneurship, the Council of Ministers

DECIDED:

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

1. These rules provide for the producers, the documents and the steps that shall be followed by the strategic investors and the competent state bodies, regarding the possibility of the state to participate as coparticipant in the investment, along with the private subjects, that have won the status of strategic investors, for the realization of strategic investments.
2. The participation of the state in strategic investments may be realized in the following forms:
 - a) The state acts as the codeveloper of the strategic investment;
 - b) The state acts as the codeveloper of a certain territorial zone, where strategic investments are carried out;
 - c) The state acts as the coparticipant in the investment, in other forms, in compliance with the Albanian legislation into force.

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3. The state may act as the codeveloper of a strategic investment by participating as the partner/shareholder in the trade company which will carry out the strategic investment through the contribution in the capital in money and/or in kind. The participation of the state in the company shall be carried out according to the ways, forms and rules stipulated by the Albanian trade legislation.

4. The state may be the coparticipant for the realization of a strategic investment by acting in the role of the developer of a certain territorial zone, where strategic investments are carried out. In this case, the state may support the strategic investment by taking measures for the development of the zone, such as: the improvement and development of the existing objects and infrastructures, the construction of the new infrastructures or the decision-making on other supporting measures.

5. Apart from these forms, the state may act as the coparticipant in the investment in any other form provided for by the Albanian legislation into force. These co-participation forms may include, but without being limited, the provision of the immovable or movable properties, of assets, machineries, different rights or facilities, providing the right to use the coasts as well as their combination or other forms of support.

The co-participation of the state in the strategic investments shall be rewarded through the liquidation of the fees, products or profits realized from the strategic investment or through the other forms stipulated in the contract with the strategic investor.

The participation of the state in strategic investments and the respective profits in favour of the state shall be stipulated in the respective contracts which are signed by the state with the strategic investor, according to the ways, forms and rules stipulated by the sectorial legislation.

6. The participation of the state in strategic investments shall be carried out in compliance with the public interest in compliance with the principles of transparency, impartiality, equality and protection of competitiveness and free market.

The state participation, support and encouragement for a strategic investment shall not cause the hindrance, the limitation or the distortion of competitiveness in the market.

The state participation shall be in such levels which do not dismiss or significantly reduce the operational risk towards the strategic investor as well as at the right level of proportionality with the value and importance of investment.

For this purpose, before the state participation in a strategic investment is proposed, the Albanian Agency of Investment Development requires the preliminary opinion of the Authority of Competitiveness, of the Commission of State Assistance and of the other specialized bodies, transmitting them to the Committee of Strategic Investments (hereinafter referred to as CSI).

7. The co-participation in a strategic investment may be proposed by the state itself, in the case of a strategic project prepared by the state bodies for the support of the investors regarding the realization of a strategic investment. The state participation in the strategic investments, which need the conduction of

the competition procedures, shall be notified at the initial phase of the tenders or competitions that are held in these cases.

8. The co-participation of the state may be requested by the strategic investors themselves who propose the realization of a strategic investment for the increase of the level of support for the project, the decrease of the operational risk and the increase of the guarantees for its realization.

9. Every investor, who requires the state participation in a strategic investment, apart from the documentation for the inclusion on the administrative procedures of strategic investments and the one on the financial guarantees, shall submit at the Albanian Agency of Investment Development even the following documentation:

- a) The full business plan, reflecting the respective proposed obligations towards the strategic investor of the state as well as the respective costs;
- b) The full study of feasibility, which includes in a comprehensive way the analysis and the technical, economic and trade evaluation of the project and tries that the project is suitable, necessary and realizable;
- c) An explanatory report, providing the reasons of the request for the state involvement, the participation way or direct support of the state in the investment and a comprehensive explanation of the evaluation of the state participation as necessary for the investor for the success of the project;
- d) The detailed description of the form and level of the required state participation, accompanied with concrete information for the aspects of the state participation;
- e) The identification of the movable or immovable public asset and of the responsible administrative body, in the case when a public asset under the state ownership is required to be made available;
- f) The full developmental project of the internal infrastructure and the way of its connection with the external infrastructure, in the case when the support with a supporting infrastructure is required;
- g) Special rights that are offered to the state by the investor in the framework of the state participation in the investment, such as, but without being limited:
 - i) decision-making with the veto right or with the qualified majority in the company or the partnership that is proposed to be created;
 - ii) special rights beyond the ones provided for by the legislation into force to appoint the members of the steering bodies, auditors or to get information on the progress of the investment;
 - iii) special rights in the division of the dividend, of the incomes that have been realized or of any direct or indirect profit in favour of the state;
 - iv) the option of the withdrawal of the state from the investment with pre-determined conditions or with conditions which are easily evaluated after a period of time from the date of the participation of the state in the proposed strategic investment;

- v) the applicable limitations regarding the transfer of the participations or the participation of the third parties in the investment;
- vi) the proposal for the solution of the situations when the decision-making is blocked and the solution of the disputes.

10. The agency, through the operational group, verifies the proposal of the investor regarding the involvement of the state in the strategic investment as well as all the hypothesis, suggestions, indicators, analysis and the results specified in the submitted documents, in order for the agency to determine if the information is correct, applicable and appropriate for the realization of the investment.

11. Regarding the verification of the accuracy of the information and of the submitted analyses as well as in the cases when special knowledge is required for the investor's proposal, surpassing the knowledge and the expertise of the Agency and of the members of the operational group, the Agency may require from the proposing investor to cover the costs for the involvement of the external independent experts by the Agency. The procedure for the selection and the involvement of the external experts is carried out by the Agency itself, according to an open and transparent procedure, after the proposing investor gives the written consent on the coverage of the respective cost.

12. The Agency negotiates with the proposing investor a projection of the documents which will be signed by the parties in case the participation of the state in the investment is approved, which according to the case and form of participation, include, but without being limited:

- a) the establishment act and the status of the company, where the state will participate as the partner/shareholder, including all the conditions, rights and obligations of each party;
- b) the agreement of cooperation between the parties, in the cases when the state participates in the investment, through other forms rather than the one of participating in the company. In the content of each of the above-mentioned documents, the rights and the obligations of each party participating in the investment shall be reflected clearly and comprehensively, in compliance with the legal provisions into force, as well as the investor's proposal.

13. In any case of the review of a proposal on the participation of the state in a strategic investment, the Agency requires in writing the preliminary opinion of the Ministry of Finance and the opinion of the ministry of the line which covers the sector of strategic investment.

14. The evaluation process carried out by the Agency cannot last longer than 30 days from the date when the documentation completed by the proposing investor is received. At the end of the evaluation process, after the approval from the minister responsible for the economy, the Agency transmits to the CSI the submitted proposal, the respective documentation, the opinions of the other involved state bodies as well as its evaluation on the proposal.

15. Within 30 (thirty) days from the date of the transmission of the request by the Agency, the CSI decides on the proposal for the state participation in the strategic investment. The CSI may decide to accept the submitted proposal, to accept it based on conditions or to refuse it. In any case, the decision of the decision of the CSI shall be notified to the proposing investor within 5 (five) days from the date when it is received.

16. The refusal of the state participation in the investment does not impinge the receipt of the status “Strategic investment, a special/assisted procedure” in case the investor states that he wants to continue making the investment despite the state nonparticipation.

17. The CSI may decide that the admission of the proposal be conditioned with the completion of the information, data or guarantees of the investor for the realization of the investment, as well as with the request for the change of the proposed cooperation conditions, such as: the value or the type of the contribution, the form of participation or the main rights and obligations of the parties in the joint company or in the proposed agreement of investment. In these cases, the CSI returns the documentation to the Agency which communicates with the proposing investor regarding the requests presented by the CSI. Providing that the proposing investor accepts the conditions of the CSI within a period of 30 days from the notification date, the Agency submits for approval to the CSI, again, the amended documentation, reflecting the suggestions of the CSI.

18. In case the CSI decides to accept the proposal, it transmits it for adoption to the Council of Ministers.

19. The proposal of the CSI shall include the form, the level and the mode of state participation in the strategic investment and this proposal shall be accompanied with an explanatory report which treats comprehensively:

- a) the public interest and gives the reasons why the state participation is considered necessary in the investment;
- b) the economic analysis of the strategic investment and of the state participation;
- c) the evaluation of the advantages and risks of the state participation in the strategic investment;
- d) the level of state participation in relation to the total value of the investment;
- e) the level of separating the operational risk between the state and the strategic investor;
- f) the impacts on free market and competitiveness caused by the participation of the state in the investment;
- g) the draft of the agreement which will be signed between the investor and the Albanian state represented by the Agency regarding the conditions, the rights and the obligations of the parties in the realization of the state participation in the strategic investment.

20. The Council of Ministers, based on the proposal of the CSI, specifies through a decision, case after case, the form, the level and the modes of the state participation in a strategic investment. The decision

of the council of Ministers stipulates even the state body which is authorized to sign the contract with the strategic investor and to follow, enforce and monitor it.

II. ESTABLISHMENT, FUNCTIONING AND ADMINISTRATION OF THE FUND OF IMMOVABLE PROPERTIES FOR THE SUPPORT OF STRATEGIC INVESTMENTS

1. The Fund of Immovable Properties for the Support of Strategic Investments (FIPSSI) shall be established by the state immovable properties, objects, plot of land, agricultural land, forest, meadows and pastures under the ownership of the central institutions or of the local governance units.

2. The FIPSSI shall be established, inventory-checked and administered by the ministry responsible for the economy.

3. The procedures and the rules on the transfer and administration of the state properties, which are a part of the FIPSSI, shall be carried out in compliance with the legislation into force for the immovable properties of the state. The transfer and the inclusion of the properties at the FIPSSI shall be determined case after case with a decision of the Council of Ministers, based on the proposal of the minister responsible for the economy.

4. The proposal on the inclusion of a state immovable property, as a part of the FIPSSI may be submitted by the responsible central or local bodies as well as by the investors proposing a strategic investment, through the Albanian Agency of Investment Development.

5. The minister responsible for the economy consults with and requires the preliminary opinion of the central and local governance bodies, which administer the state immovable properties, being proposed to be included in the FIPSSI. Therefore, the minister requires from the central and local governance units to provide information regarding the proposed immovable properties, their current or planned use and to express their evaluating opinion regarding their inclusion or not in the FIPSSI. In the cases when these bodies express a negative opinion on the proposed properties, as a consequence of their use for essential functions or services for the public, they may propose alternative properties administered by them for the realization of strategic investments.

6. In any case, the central and local governance bodies, which administer the immovable state properties, which are proposed to be included at the FIPSSI, shall transmit to the minister responsible for the economy, within 15 (fifteen) days from the date of the receipt of the request, the full file, which included the entire cadastral documentation of the properties, certified by the local office of immovable property registration.

The minister responsible for the economy shall review the documentation of the file of the immovable properties and verifies if these properties are:

- a) the object of the administrative procedures of property restitution or compensation;
- b) the object of the judicial process on the property title;
- c) the object of the administrative legalization procedures.

Therefore, the minister responsible for the economy shall cooperate and require certifying information from the respective state bodies, including but without being limited, the Agency of Property Restitution and Compensation, the Agency of Legalization, Urbanization and Integration of Informal Zones/Constructions, the immovable property registration offices and the competent courts.

7. The provision of the immovable state properties shall be carried out upon the verification of the compatibility of the strategic investments with the territory planning documents as well as with the plans, policies and state sectorial strategies. In the cases when the strategic investments do not comply with these plans, the CSI, through the Agency, proposes, their adaptation for the realization of the strategic investment.

8. The minister responsible for the economy, after the verification of the files of the immovable properties and after the review of the evaluating opinion expressed by the state body which administers the immovable properties, carries out a final evaluation of the opportunity if these properties should be proposed to the Council of Ministers to be included at the FIPSSI.

In the cases when the proposed properties are the object of the procedures stipulated in paragraph 7 of chapter II of this decision or are used for essential functions or services for the public, the minister responsible for the economy evaluates the possibility of the identification and proposal of the alternative properties for the realization of strategic investments.

Only in the cases when the public interest for the realization of strategic investments prevails over the interest of the current use of these properties, the minister responsible for the economy proposes to the Council of Ministers their inclusion at the FIPSSI, in compliance with the respective legislation into force, which disciplines these cases.

9. The Council of Ministers, case after case, adopts upon a special decision the transfer and the administration of the immovable state properties, which are included at the FIPSSI, in compliance with the legislation on the immovable state properties, and stipulates the rules for the management of the expenditures for the establishment, maintenance and administration of the immovable properties, being a part of the FIPSSI.

10. The ministry responsible for the economy, within 3 (three) months from the entry into force of this decision, shall be responsible for the identification of the immovable state properties which will be included preliminarily at the FIPSSI as well as for the preparation of the respective proposals to be reviewed at the Council of Ministers.

11. The ministry responsible for the economy shall inventory-check the properties included at the FIPSSI, shall offer them to the strategic investors and shall publish them to inform, support and enhance the realization of strategic investments.

III. LAST PROVISIONS

1. The Ministry of Economic Development, Tourism, Trade and Entrepreneurship, the Albanian Agency of Investment development as well as the central and local governance bodies shall be responsible for the implementation of this decision.

This decision enters into force after the publication in the Official Journal.

PRIME MINISTER
Edi Rama