

IV. Duration, extension and termination of the ~~concession contract~~ PPP contract

1. Duration and extension of the ~~concession contract~~ PPP contract

Model provision 4843. Duration and extension of the ~~concession contract~~ PPP contract (see the *Legislative Guide*, recommendation 62 and chap. V, paras. 2-8)

The PPP contract shall set forth its duration, which shall take into account the following factors:

(a) the nature and amount of investment required to be made by the private partner;

(b) the normal amortization period for the particular facilities and installations to be built, expanded, refurbished or renovated under the contract;

(c) the contracting authority's needs and requirements in relation to the facilities or services concerned;

(d) any relevant policies concerning the competition and market structure for the infrastructure or service sector concerns, as laid down in applicable laws and regulations.

Model Provision 49. Extension of the PPP contract

The contracting authority may not agree to extend ~~its~~ the duration of the PPP contract except as a result of the following circumstances:

(a) Delay in completion or interruption of operation due to circumstances beyond the reasonable control of either party;

(b) Project suspension brought about by acts of the contracting authority or other public authorities;

(c) Increase in costs arising from requirements of the contracting authority not originally foreseen in the ~~concession contract~~ PPP contract, if the ~~concessionaire~~ private partner would not be able to recover such costs without such extension; or

(d) [*Other circumstances, as specified by the enacting State*].⁴⁵

2. Termination of the ~~concession contract~~ PPP contract

Model provision 5044. Termination of the ~~concession contract~~ PPP contract by the contracting authority (see the *Legislative Guide*, recommendation 63 and chap. V, paras. 14-27)

The contracting authority may terminate the ~~concession contract~~ PPP contract:

(a) In the event that it can no longer be reasonably expected that the ~~concessionaire~~ private partner will be able or willing to perform its obligations, owing to insolvency, serious breach or otherwise;

⁴⁵The enacting State may wish to consider the possibility of having the law authorize a consensual extension of the ~~concession contract~~ PPP contract pursuant to its terms, for reasons of public interest, as justified in the record to be kept by the contracting authority pursuant to model provision 26.

(b) For compelling⁴⁶ reasons of public interest, subject to payment of compensation to the ~~concessionaire~~private partner, the terms of the compensation to be as agreed in the ~~concession contract~~PPP contract;

(c) [*Other circumstances that the enacting State might wish to add*].

Model provision 5145. Termination of the ~~concession contract~~PPP contract by the ~~concessionaire~~private partner (see the *Legislative Guide*, recommendation 64 and chap. V, paras. 28–33)

The ~~concessionaire~~private partner may not terminate the ~~concession contract~~PPP contract except under the following circumstances:

(a) In the event of serious breach by the contracting authority or other public authority of its obligations in connection with the ~~concession contract~~PPP contract;

(b) If the conditions for a revision of the ~~concession contract~~PPP contract under model provision 40, paragraph 1, are met, but the parties have failed to agree on a revision of the ~~concession contract~~PPP contract; or

(c) If the cost of the ~~concessionaire~~private partner's performance of the ~~concession contract~~PPP contract has substantially increased or the value that the ~~concessionaire~~private partner receives for such performance has substantially diminished as a result of acts or omissions of the contracting authority or other public authorities, for instance, pursuant to model provision 28, subparagraphs (h) and (i), and the parties have failed to agree on a revision of the ~~concession contract~~PPP contract.

Model provision 5246. Termination of the ~~concession contract~~PPP contract by either party (see the *Legislative Guide*, recommendation 65 and chap. V, paras. 34 and 35)

Either party shall have the right to terminate the ~~concession contract~~PPP contract in the event that the performance of its obligations is rendered impossible by circumstances beyond either party's reasonable control. The parties shall also have the right to terminate the ~~concession contract~~PPP contract by mutual consent.

3. Arrangements upon termination or expiry of the ~~concession contract~~PPP contract

Model provision 5347. Compensation upon termination of the ~~concession contract~~PPP contract (see the *Legislative Guide*, recommendation 67 and chap. V, paras. 43–49)

The ~~concession contract~~PPP contract shall stipulate how compensation due to either party is calculated in the event of termination of the ~~concession contract~~PPP contract, providing, where appropriate, for compensation for the fair value of works performed under the ~~concession contract~~PPP contract, costs incurred or losses sustained by either party, including, as appropriate, lost profits.

⁴⁶Possible situations constituting a compelling reason of public interest are discussed in the *Legislative Guide*, chap. V, "Duration, extension and termination of the project agreement", para. 27.

Model provision 5448. Wind-up and transfer measures (see the *Legislative Guide, recommendation 66 and chap. V, paras. 37-42 (for subpara. (a)) and recommendation 68 and chap. V, paras. 50-62 (for subparas. (b)-(d))*)

The ~~concession contract~~PPP contract shall provide, as appropriate, for:

- (a) Mechanisms and procedures for the transfer of assets to the contracting authority;
- (b) The compensation to which the ~~concessionaire~~private partner may be entitled in respect of assets transferred to the contracting authority or to a new ~~concessionaire~~private partner or purchased by the contracting authority;
- (c) The transfer of technology required for the operation of the facility;
- (d) The training of the contracting authority's personnel or of a successor ~~concessionaire~~private partner in the operation and maintenance of the facility;
- (e) The provision, by the ~~concessionaire~~private partner, of continuing support services and resources, including the supply of spare parts, if required, for a reasonable period after the transfer of the facility to the contracting authority or to a successor ~~concessionaire~~private partner.