

Law No. 86-12 on public-private partnership contracts

Reference: Dahir No. 1-14-192 of 1 Rabii I 1436 (24 December 2014) promulgating Law No. 86-12 on public-private partnership contracts, as amended and supplemented by Law No. 46-18

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Practice areas: Administrative law, Business law

Law 86-12 creates the partnership contract under which a public entity entrusts a private partner, over a long period, with financing, building and operating a facility or service, with remuneration linked to performance targets. It requires a prior assessment and regulates award procedures.

Conditions for use

- A prior assessment must demonstrate the complexity of the project, its urgency or the advantage of a partnership compared with other structures.
- The contract allocates risks between the public entity and the private partner.
- The partner's remuneration is linked to the performance targets assigned to it.

Award and performance

- Contracts are awarded by call for tenders, by competitive dialogue or, exceptionally, by negotiated procedure.
- The principles of free access, equal treatment and transparency apply.
- The contract sets out the conditions for monitoring, amendment, termination and compensation.

Points to watch

- A missing or inadequate prior assessment weakens the contract and opens the way to a challenge.
- The risk matrix is the economic core of the contract: it must be negotiated before financial close.
- The termination and compensation clauses determine whether the project is bankable.

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