

## PPP & concessions - draft laws published in September 2017

**The draft law for amending and supplementing the Law no. 100/2016 on works and service concessions** was registered with the Senate for debate under no. B403 on September 5, 2017.

The draft concerns the prohibition of the award of the concession of works or services to economic operators issuing bearer shares or other equity whose value is less than the value threshold provided by Law 100/2016 at art. 11 par. (1).

The draft starts from the idea that the current form of Law no. 100/2016 does not contain any provision to ensure transparency in terms of knowing the identity of the natural or legal persons holding the shares of the companies involved in the award procedures, which is why a number of companies with unknown shareholders have repeatedly won contracts with the State in the amount of tens of hundreds of millions of euros, money that contracting authorities pay from public funds without any possibility of finding out who the real beneficiaries of these amounts are.

It is emphasized that another important element for the proper conduct of award procedures is avoidance of conflict of interest. However, in the case of bearer shares, it is not possible to certify the veracity of these statements of lack of conflict of interest due to the anonymity of the equity.

For this reason, it is proposed to forbid the access of bearer shares companies in the concession award procedure governed by Law 100/2016 so as to restrict access to public money for entities with secret shareholding.

The consequence of adopting this draft will be that, in order to meet the new eligibility conditions, the holders of the companies concerned will have to convert bearer shares to into nominative shares, according to the provisions of Law no. 31/1990, thus revealing their identity.