

**EUROPEAN
UNION**



**GOVERNMENT
OF ROMANIA**

GUIDE

on the regionalization of drinking water and wastewater services

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1. INTRODUCTION

‘Regionalization’ is a major aspect of the Romanian drinking water and wastewater sector policy. This policy aims at improving sector performance through improved management and professionalism as well as benefiting from economies of scale. Also the eligibility criteria for European investment funding for the sector require that the beneficiary local councils have established a regional operator. For the drinking water and wastewater operators, regionalization means merging two or more local - usually municipal - operators into one regionally working operator. The respective local councils will therefore not longer have each an operator working solely for their community, but will participate in a regional operating company (ROC) that will serve a number of participating towns and communities. The institutional framework for regionalization consists of three key elements:

- The Regional Operating Company
- Establishment of an Intercommunal Development Association (IDA, Romania equivalent ADI)
- Delegation contract that manages the relation between the ROC and the respective local councils.

During the last two years, in an increasing number of counties local councils have established a regional operator and have regionalized their operations or are still in the process of regionalization. In some of these counties not all the local councils are already part of the regionalization and may wish to join. Other counties still have to start with regionalization. Hence, there is an apparent need for ample information and guidelines on regionalization.

This Guide is particularly meant for decision makers, officials and experts in the regionalization process at local council, county and national levels. It aims to give full clarity about the purpose of regionalization, the legal framework and the steps to be taken to arrive at a regional operator and a regionally organized water sector. That clarity for all relevant parties is essential in the process of preparing and shaping the institutional structure for a regional water company.

For convenience of the reader, this Guide is structured as follows:

- Chapter 2 gives a brief background on the Romanian drinking water and wastewater sector, as well as main environmental and regionalization policy issues and regionalization approach.
- The needs, advantages and key elements of a regionally organized water sector are described in Chapter 3.
- The steps needed for establishing a regional institutional framework are described in detail in Chapter 4.
- Chapter 5 describes the legal aspects with regard to regionalization.
- Details on the legal requirements are provided in Annex 1.

Finally, a disclaimer should be put here. While compiling this Guide the applicable regulatory framework was duly considered. However, this Guide is not meant to substitute the existing regulatory framework; also no legal right can be derived from this guide.

2. SECTOR STATUS, ENVIRONMENTAL POLICY AND REGIONALIZATION APPROACH

2.1 The Romanian drinking water and wastewater sector

After more than 4 decades of central management, Romania decided to reinstate the principle of autonomy through localization and to assign its major and material responsibility to local public administrations. This principle is contemplated by the National Constitution.

In Romania, only 52% of the population is connected both to water and wastewater services and more than 71% of the waste water is untreated or insufficiently treated. Until recently, water and waste water services were mostly operated by (often small) municipal utilities resulting in inefficient operations carried out at a sub-optimal scale, without access to financial resources and limited technical and managerial capability to further develop the level of services. The status and performance of many water infrastructures is relatively poor. Major issues include:

- Inappropriate maintenance and operating services;
- High volume of unpaid water caused by network leakages (non-revenue water) and low level of payment collection (collection efficiency) from the consumers;
- Lack of investments for rehabilitation / extension of water / wastewater infrastructure;
- Lack of experienced staff for promoting, management and implementation of large-scale investments;
- Inefficient management of the operating, maintenance and personnel costs;
- Unclear role and responsibilities of institutions / authorities involved in management of public utilities;
- Inappropriate institutional framework.

Because Romania has become an EU member state, it must comply with the EU Directive 98/83/EC on drinking water quality by 2015 and the Directive 91/271/EC on waste water treatment by the end of 2018. For this reason, Romania intends for the period 2010-2015 to make the necessary investments to comply with the European quality indicators such as turbidity, ammonia, aluminium, pesticides, and nitrates and for the waste water collection, treatment and discharge. Also by 2015, waste water collection and treatment is planned to be realized for a number of 263 towns of more than 10.000 population equivalents and by 2018 in 2.346 towns / communes of 2.000 to 10.000 population equivalents.

2.2 Policy background

The development of the sector is governed by the Sectoral Operational Programme Environment (SOP ENV). The overall objective of SOP is to protect and improve the environment and living standards in Romania, focusing in particular on meeting the environmental acquis. The aim is to reduce the environment infrastructure gap that exists between the European Union and Romania both in terms of quantity and quality. This should result in more effective and efficient services, while taking fully into account sustainable development and the polluter pays principle.

One of the specific objectives for SOP Environment is the improvement of quality and access to water and wastewater infrastructure, by providing water supply and wastewater services in line with EU practices and policies, in most urban areas by 2015 and by developing efficient regionalized water and wastewater management structures.

The **Priority Axis 1 “Extension and modernization of water and wastewater systems” of SOP Environment** sets as objectives the following elements:

- Provide adequate water and sewerage services, at accessible tariffs
- Provide adequate drinking water quality in all urban agglomerations
- Improve the quality of watercourses
- Improve the level of sludge management for wastewater treatment plants
- Create innovative and efficient water management structures

Therefore the overall objective of the current development process is to create a solid and sustainable institutional and legal framework that provides for:

- A long term implementation structure for planned investments under SOP;
- Adequate management capability for operation of existing and future facilities.

One of the responsibilities explicitly set forth in the Law no. 215/2001 (republished) on local public administrations, addresses the obligation of local administrations to efficiently and effectively organize utility supply operations. According to the law, local public administrations have the right to associate in order to develop efficient utility services at the regional / communal level.

According to Romania’s policy reflected in the SOP Environment the achievement of such objectives is realized through a process of **regionalization**, meaning the implementation of an institutional framework within the Project area, suitable to combine the water supply and wastewater services related to the development areas in that region, within a common operating process. The regionalization is a key element in improving the quality and cost efficiency of local water infrastructure and services in order to fulfil environmental targets, but also to assure sustainability of investments, of operations, of a long term water sector development strategy and of regional balanced growth.

2.3 Regionalization approach

There is a continuing need to ensure that all towns can invest to maintain and upgrade their infrastructure in order to have good services, able to meet EU standards. This requires adoption and implementation of adequately designed development policies, focused on meeting the real needs of the population, as to ensure that services are to be affordable to everybody.

In line with this background, since 2001, Romanian authorities have designed programmes meant to support local authorities in order to:

- Access international financing in small and medium agglomerations with the purpose of rehabilitating and modernizing local water infrastructure and,
- Promote self sustainable regional utilities by introducing principles of cost recovery and efficiency into their operations.

However, only a minor part of the 319 towns and municipalities in Romania participated to such programs. Accordingly, 270 small and medium towns approximately have not been able to obtain funds from international financial institutions or private investors. Due to the lack of finance, these towns made little investment in the past 18 years for the maintenance and improvement of water and waste water infrastructure.

The approach is aimed at regionalization of currently dispersed and fragmented services. The regionalisation process consists of the concentration of the operation of the services provided to a group of municipalities within a geographical area defined with respect to a river basin

and/or to administrative boundaries (municipalities, county). The Regionalization of Services aims to provide that 2,600 localities of more than 2,000 inhabitants meet 2018-performance targets established by the SOP Environment (see section 1.3), by concentrating the management of water and wastewater services in around 50 stronger operators, set up and developed by merging the existing local utilities into so called Regional Operating Companies (ROC). Regionalisation of the water services is planned to overcome excessive sector fragmentation and to achieve economies of scale.

3. REGIONALIZATION OF DRINKING WATER AND WASTEWATER SERVICES

3.1 The concept of drinking water and wastewater service regionalization

A regional public water supply and wastewater system represents the entire technological, operational and managerial system resulted from the combination of two or more local drinking water supply and wastewater systems. The main objective in creating a regional drinking water supply and wastewater system and operator is to optimize the performance of the operations and quality of supplied services by using joint resources and facilities. It is recommended as a strategic guideline that the regional operation of water supply and wastewater services be performed in an area covering at least 100,000 population equivalents and as much urban agglomerations in a county or hydrographical basin as possible.

Therefore, the process of regionalization consists in concentrating and integrating the services rendered by a group of administrative-territorial units. The new regional unit covers a certain geographical area delineated by a hydrographical basin and/or administrative boundaries.

The regionalization of drinking water supply and wastewater systems and operators in general means consolidation and integration of notably:

- Technical and physical infrastructure
- Financial and accounting systems and procedures
- Commercial systems and procedures (customer relations, billing and revenue collection)
- Human resources
- Management arrangements, systems and procedures

3.2 The need for regionalization

According to the EU Adhesion Treaty, Romania has obligations involving major investment in water supply and wastewater services in order to comply with EU environmental regulations.

The creation of Regional Operating Companies (ROCs) and impliedly the delegation to ROCs of the drinking water and wastewater service management is an essential process to ensure within set terms the compliance with the “acquis communautaire” and also the development of the capacity to absorb funds and implement future investment projects.

As a direct consequence, the development of water and wastewater systems will play an important role in achieving proposed objectives and in ensuring a 100% level of service cover of proper quality, in compliance with the Water Directive and Waste Water Directive.

Major investments are required, significantly exceeding the financial capability of most local authorities. Furthermore, a lack of specialized personnel and of expertise in preparing and implementing projects is felt at the level of small and medium communities that may slow the process of available investment fund absorption.

The association of several administrative-territorial units in order to jointly delegate the management of their drinking water and wastewater services will also respond to the need of balancing the level of development of the administrative-territorial units and is the application of the principle of solidarity as one of EU's fundamental values with positive effects on all consumers.

As a consequence, the solution proposed to settle these issues is the organization and operation of services at the regional level in order to ensure sustainable development and

economies of scale. In order to cover a part of the measures required for EU standard compliance, Romania benefits from EU financing, i.e. from the Cohesion Funds. This financing is granted under the aforementioned SOP ENV programme.

3.3 Main advantages of regionalization

In this context, the main advantages in operating water and wastewater services at the regional level are indicated below:

- The regional supply of utilities by integrated systems and more professional management is expected to result in time in the reduction of water loss, in the promotion of resource preservation, in minimum investment and in the protection of water sources;
- The strengthening of the capacity to prepare and implement investment projects as well as of the capacity to negotiate financing.
- Improvement of service quality, of customer relations and their perception on utility operators;
- Achievement of scale economies affecting the efficient operation of some cost categories: central invoicing and financial management, PIU at the central level, central management of laboratories, etc.
- Operation management by means of modern and efficient management instruments and the reduction of political involvement in the course of business.

3.4 Key institutional elements of regionalization

The purpose of the process of regionalization of water services, initiated by Romanian authorities and supported largely by pre-accession programmes (PHARE, ISPA), is to assist the local authorities in the creation of efficient regionalised water and wastewater service operators and in strengthening the capacity of local authorities to control effectively their activities.

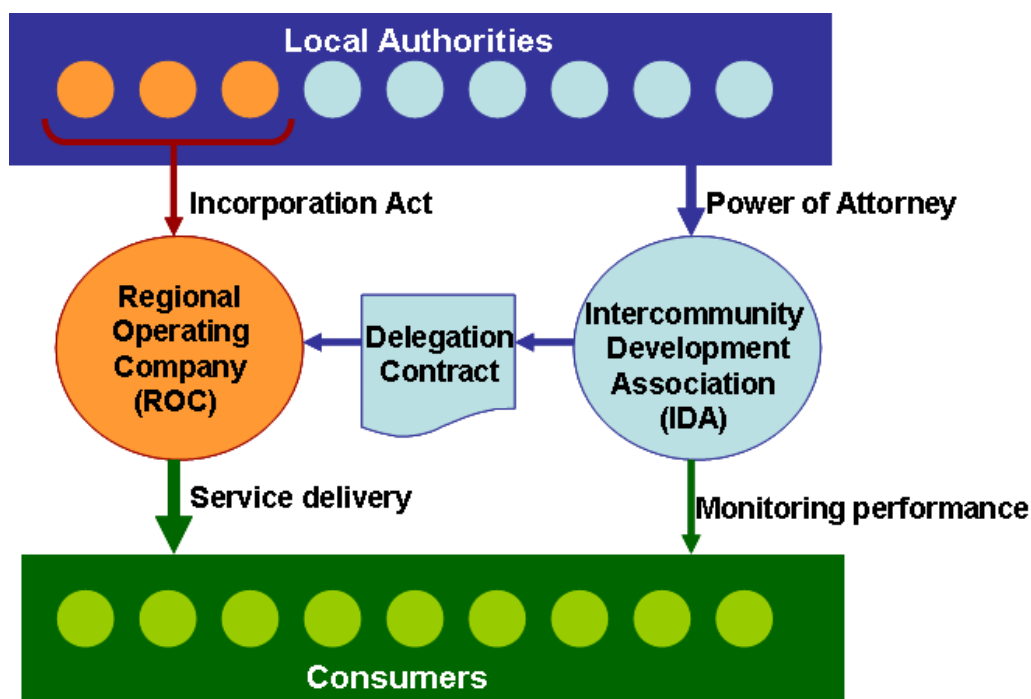
Regionalization is achieved by three institutional elements (see Figure 1, next page):

- Intercommunity Development Association (IDA, Romanian equivalent is ADI), which receives a power of attorney from its members to exercise in their name and on their behalf the prerogatives and responsibilities related to their water and wastewater service, as well as the rights to control ROC ;
- Regional Operating Company (ROC), a public equity commercial company, set by all or a part of the members of IDA, which is directly granted with the management delegation contract in observance to the “*in-house*” rules;
- The Contract of Delegation of Services’ Management. The administrative-territorial units through their local public administration authorities (LA), which are all members of IDA, all or part shareholders of ROC, and also all of them delegate the management of their water and wastewater services to ROC by a single management delegation contract, via IDA.

The relationship between these institutions will be regulated in the Statute of IDA, the Deed of Incorporation of ROC and the Management Delegation Contract.

The function in the process of Local Authorities is reflected by the participation to the creation of ROC’s share capital, i.e. the approval of ROC’s Deed of Incorporation and IDA’s Constitutive Act / Statute whereby it is invested to exercise certain attributions, rights and obligations in the name and on the account of member administrative-territorial units.

Figure 1. Institutional framework for the regionalization of water supply and wastewater services



Thus, IDA will be the main interlocutor of ROC as discussion and coordination entity and will represent the shared interests of its member municipalities / towns in what concerns water supply and wastewater, and mainly regarding:

- Common development strategy;
- Signing of the delegation contract
- Tariff policy
- Control of ROC operations and performance.

The delegation of service management represents the base for operational and institutional organization of water and wastewater service management and is intended for:

- Ensuring a balanced relation between LA and ROC.
- Focussing the contract on the preparation, financing and execution of investment plans underlying the improvement of utility performance.
- Supervising key elements conducive to an efficient, dynamic and sustainable management in the water and wastewater sector, especially when it comes to:
 - Service delivery and service levels (LOS) to the participating communities
 - Management of fixed assets and of the financial system
 - Tariff adjustment system;
 - Reporting and control processes.

The Delegation Contract defines the specific obligations and rights of each stakeholder on the development of investment programmes and the achievement of performance levels of preset services. Therefore, ROC is responsible for the management, operation, maintenance, improvement, renewal and extension as the case may be of all fixed assets contemplated in the contract and the most significant risk assumed by the ROC is the non-payment of services rendered to customers as per the contractual provisions.

The ownership of public assets and the responsibility for the supply of adequate water and wastewater services at an affordable cost remain with the Local Authorities. The regionalization requires groups of Local Authorities located in a specific region to coordinate efforts with a view to implement integrated service development programmes aiming to meet performance objectives established by the SOP, and to proceed with the territorial reorganization of the services by delegating the implementation of the regional development plans and the management of services to a ROC.

Fixed assets remain in the public property and must be taken back by the public owner (administrative territorial unit) on termination of the contract. The delegation contract is a long-term commitment. The tariff policy is aimed at full cost recovery and set by the ROC in compliance with applicable regulations set by the National Authority for Regulation of Community Services (ANRSC), under control and acceptance of the administrative territorial unit. Financing and commercial risks are undertaken by the ROC.

It is preferred that the regionalization process be coordinated and mediated by the County Council considering its function and authority at the local level.

Furthermore, considering that the service regionalization process requires a relatively long period of time both for the creation of ROC and for its consolidation, the active support of national / local authorities is absolutely necessary in order to complete this process in due time. To this extent, the adoption of a communication strategy ensuring the proper data exchange and the flow of the decision-making process involving several partners is required.

4. STEPS AND ACTIVITIES TO ESTABLISH THE REGIONAL INSTITUTIONAL FRAMEWORK

4.1 Preparation phase, opportunity study

The creation, organization, functioning and management of water supply and wastewater services are based on specialized (opportunity) studies that will analyze the following elements:

- a) The needs of local communities;
- b) The socio-economic characteristics, level and pattern of development of agglomerations;
- c) The status of existing water supply and wastewater networks;
- d) Local possibilities to finance the operation and functioning of the service, namely of creating or developing the associated public infrastructure;
- e) The optimal cost/quality ratio for the service(s) supplied to consumers.

The optimal solution will be adopted after public debate of the study and consultation of end users. This opportunity study will be also the basis for the creation of ROC.

In the consideration of these aspects, the following preliminary actions need to be undertaken for the delegation of service management to the ROC:

Preliminary actions

1. The preparation by local authorities of an opportunity study on the set-up, organization, functioning and management of water supply and wastewater services¹, jointly via IDA; we also recommend (the legal frame has no provisions in this respect) that the performance indicators (levels of service) to be drafted at the same time;
2. Organization of a public debate on the set-up, organization, functioning and management of water supply and wastewater services, as well as on the proposed levels of service;
3. Adoption of local and county council decisions on the approval of
 - a) the opportunity study related to the set-up, organization, functioning and management of water supply and wastewater services, jointly via IDA
 - b) the performance indicators (levels of service)
4. Adoption of local and county council decisions on the selection of the approach to water supply and wastewater service management (based on the aforementioned study);
5. Public information in relation to decisions taken by local public administrative authorities.

4.2 Creation of the Intercommunity Development Association (IDA)

According to art.10 par.(3) of Law 51/2006 as amended by OUG 13/2008, “the intercommunity development associations having for scope of activity local public services are set up, function and are incorporated as legal entities according to Government’s Ordinance

¹ The opportunity study will point out the opportunity of directly granting the services’ management delegation contract to a ROC to be created.

no. 26/2000 regarding the associations and foundations, approved with amendments by Law no. 246/2005.”

IDA is authorized to exercise specific powers, rights and obligations in the name and on the account of member administrative-territorial units to the sole purpose of water supply and wastewater services.

Therefore, considering the relevant provisions of OG 26/2000, of Law no. 51/2006 and the practice, the following steps must be performed to create an IDA:

Creating of IDA

1. The definition of administrative-territorial units that participate to the creation of IDA and of ROC respectively
2. The negotiation of final forms of the IDA’s Constitutive Act and Statute;
In this respect, the futures associates need to decide upon the following significant issues:
 - How an associate can acquire or lose membership
 - Rights and obligations of associates
 - Contribution to patrimony of each associate
 - Structure of the management bodies
 - Nominal composition of management bodies
 - The decision-making process within the association
3. The proof of IDA’s name availability issued by the Ministry of Justice.
4. The approval of the association, and the final form of IDA’s Constitutive Act and Statute by decisions of deliberative bodies of the member administrative-territorial units.
5. The signing of the IDA’s Constitutive Act and Statute by the presidents of county councils and/or mayors of the associated administrative-territorial units before a public notary or attorney-at-law.
6. The payment of each LA’s contribution to the patrimony of the association and the availability of IDA’s headquarters.
7. The incorporation of the Association through registration in the Register of Associations and Foundations in the possession of the Record Office of the Court of territorial jurisdiction.

Any of the associate members may file based on a proxy a written application to register the association in the Register of Associations and Foundations held by the Record Office of the Court of jurisdiction.

The registration application will be accompanied by the following written pieces:

- a) The Constitutive Act, certified by a notary public or an attorney-at-law;
- b) The Statute, certified by a notary public or an attorney-at-law;
- c) Supporting documents attesting the registered office and initial patrimony;
- d) The proof of name availability issued by the Ministry of justice or the motivated grounds of the refusal to issue such a proof, as the case may stand.

Within 3 days from the submission of the registration application and of documents mentioned above, the judge designated by the president of the court will check the legal value of documents and will order by a written settlement the registration of IDA in the Register of Associations and Foundations.

IDA becomes a legal person from the moment it is registered in the Register of Associations and Foundations.

IDA must be also registered to the relevant tax authority for fiscal reasons.

4.3 Creation of Regional Operator (ROC)

The starting point in creating the ROC is the decisions adopted by local and county councils on the approval of the opportunity study regarding the set-up, organization, operation and management of water supply and wastewater services.

ROC may be created from existing operators in each region in one of the following ways:

- Through administrative reorganization of former autonomous regia (in practice the main existing regia in the county) of local or regional interest into a commercial company, followed by a capital increase through the contribution of all or a part of IDA's members;
- Through increase of an existing commercial company's capital (already held by one administrative-territorial unit - in practice the main existing company in the county) through the contribution of all or a part of IDA's members that become shareholders of ROC;
- Through the creation of a new company, with entirely public equity, having as shareholders solely local public authorities within the region of intended service supply, which are also IDA's members.

The following actions will be considered for the creation of the ROC:

Creating the ROC

1. The creation of a negotiation committee to establish the contribution of each LA to the capital of the ROC materialized in a negotiation report. This activity is optional, yet creates the conditions of a detailed analysis before the creation of ROC;
2. The joint decision on the form of the Deed of Incorporation of the newly-created/reorganized company;

The following main issues will be considered when getting the ROC's Deed of Incorporation in its final form:

- The ROC's object of business, with the indication of the field and main activity;
 - Clauses on the management, administration, functioning and control over the ROC's property by statutory bodies, its control by shareholders, via IDA, as well as documents to which shareholders should have access to be informed and exercise control;
 - The distribution of benefits and loss, in compliance with the provisions of MRD Norm and Delegation Contract ;
 - The dissolution and liquidation of the company;
3. Adoption of decisions by the deliberative bodies of IDA's member administrative-territorial units that are future ROC's shareholders on the participation to the capital of the ROC, on the approval of the ROC's Deed of Incorporation, on the

designation of a representative to sign this Deed as well as on the designation of a person to represent the LA's interests in the ROC's general assembly;

4. The signing of the ROC's Deed of Incorporation;
5. The registration of the ROC as per the law.
6. ROC creation follow-up actions:
After the ROC is created, the following should be considered:
 - To ensure the transfer / employment of personnel in the newly created company;
 - Procurement of authorizations / permits / licences for functioning (also by transfer from former operators if possible);
 - Definition of the organizational chart of the new ROC, with the mandatory endorsement of IDA, for compliance with the "in-house" similar control criterion;
 - Completion and approval of the Internal Organization and functioning Regulation of the ROC, with the mandatory endorsement of IDA, for compliance with the "in-house" similar control criterion;
 - Elaboration of an action plan to strengthen the newly-created operator.

4.4 Delegation of water supply and wastewater service management

The following activities should be considered when delegating service management to ROC:

Delegation contract

1. Conduct by local public authorities, or water and wastewater IDAs if such study was not made together with the opportunity study, of a specialized study to establish the performance indicators of the service supplied / rendered to end users;
2. Organization of a public debate to establish the performance indicators for delegated services if such study was not made together with the opportunity study;
3. Elaboration by IDA of the Regulation and Terms of reference for water and wastewater services;
4. Adoption of decisions by local public authorities on the approval of Regulation and Terms of reference for water and wastewater services, including the performance indicators of the service supplied / rendered to end users;
5. Adoption of decisions by local public authorities on the approval of the management delegation contract, as well as on the direct granting of the management delegation contract to the ROC;
6. Public information on the decisions adopted by LAs;
7. The signing of the delegation contract by the president of IDA in the name and on behalf of member administrative-territorial units, based on the power of attorney they had granted.

It is recommended in the process that negotiation be uniform and a single management delegation contract be signed by IDA authorized to this extent by involved administrative-territorial units' authorities, which contract will include special clauses and/or appendices for each administrative and territorial unit separately.

5. LEGAL ASPECTS

5.1 Current legal framework

The Romanian legislation regulating the organization and implementation of water and wastewater utility services consists mainly of:

Laws

- Law no. 215/2001 of the local public administrations, republished, with subsequent amendments and completions;
- Law no. 213/1998 on the public property and its legal status, with subsequent amendments and completions;
- Law no. 273/2006 on local public finance, with subsequent amendments and completions;
- Law no. 51/2006 of local public services, with subsequent amendments and completions by OUG 13/2008 – general law;
- Law no. 241/2006 on water and wastewater utilities, with subsequent amendments and completions by OUG 13/2008 – special law;
- Law no. 31/1990 republished, with subsequent amendments and completions, regarding the commercial companies that is incident for the organisation and functioning of the Regional Operator (ROC);
- Government's Ordinance no. 26/2000 regarding the associations and foundations, approved with amendments by Law no. 246/2005
- Government's Ordinance no. 198/2005 regarding the creation, supplying and using of MRD Fund for the local services' infrastructure development projects that benefit from international non-reimbursing financial assistance from EU, and approving the Norms for the creation, supply and use of MRD Funds.

By-laws

- Government's Decision no. 671/2007 regarding the approval of the Internal Regulations of ANRSC;
- Government's Decision no. 745/2007 for the approval of the Regulations regarding the granting of permits in the field of the local public services;
- ANRSC Order no. 65/2007 on the approval of the Methodology for the establishment, adjustment and modification of prices / tariffs to water supply and wastewater utility services
- ANRSC Order no. 88/2007 on the approval of the Framework Regulation of the water supply and wastewater utilities;
- ANRSC Order no.89/2007 for the approval of the Framework Specifications of the water supply and wastewater utilities
- ANRSC Order no. 90/2007 for the approval of the Framework Water Supply and Wastewater Service Contract;
- ANRSC Order no. 102/2007 for the approval of the Regulations regarding the ascertainment, notification and punishment for the inobservance of the regulations issued in the field of competency of A.N.R.S.C.

5.2 Definition and purpose of utility services

The Law no. 51/2006 defines the community utility services as the total of regulated actions and activities to ensure the satisfaction of utility needs and general public interest of local communities, including the water supply services, i.e. sewage and treatment of waste water.

Community utility services are / will be created, organized and supplied at the level of communes, towns, municipalities, counties, the Municipality of Bucharest and eventually, according to law, at the level of administrative and territorial sub-divisions of municipalities, under the subordination, coordination, supervision and responsibility of local public administration authorities.

The Water and Wastewater Utility Service, as defined by Law 241/2006, refers to the aggregate utility and general economic and social interest operations performed for the collection, treatment, transportation, storage and distribution of drinking or industrial water to all consumers within a locality and for the collection, transportation, treatment and disposal of waste water, rain water and surface water collected in its area respectively.

The water supply and wastewater public services, as local public services, are operated through a combination of buildings and lands, technical installations, functional equipment and specific facilities that form an integral part of the urban infrastructure of the localities, collectively called the public water supply and wastewater systems.

The water supply system is usually made of: collection elements, transmission lines, treatment plants, pumping stations, storage tanks, transport and distribution networks and connection up to the delineation point.

The water utility has the following main features:

- Abstraction of raw water from the surface or underground sources;
- Treatment of raw water;
- Transportation of drinking and/or industrial water;
- Storage of water;
- Distribution of drinking and/or industrial water;

The public wastewater system usually includes the following parts: wastewater connections from the delineation and collection point, sewage pipes, pumping stations, treatment plants, sewers for discharge towards the emissary, inlets for discharge into the emissary and dried sludge storage basins.

The wastewater utility addresses mainly:

- The collection, transport and discharge of waste water from consumers to treatment plants;
- The treatment of wastewater and its discharge in the emissary;
- The proper collection, discharge and treatment of waste from the rain water inlets and ensuring its functionality;
- Discharge, treatment and storage of sludge and similar waste derived from the activities mentioned above;
- Drainage and discharge of storm water and surface water from urban area.

5.3 Competent authorities

With regard to the regionalization and the operations of the water operator, local authorities, IDA and A.N.R.S.C have main powers and responsibilities. Hereunder, the competences of these are described.

Local authorities

The competent authorities of the administrative-territorial units have the exclusive power that may also be exercised by Intercommunal Development Association (IDA) for water and wastewater under Law 51/2006 as recently amended, in the name and on behalf of associated administrative-territorial units, based on their power of attorney, in all aspects related to:

- The approval of local strategies on the set-up, organization, management and functioning of the water and wastewater utility companies;
- The approval of investment plans on the set-up, development, modernization and rehabilitation of the public service infrastructure;
- The approval of regulations and specifications of the service;
- Adoption of the approach to management and approval of documentation related to the organization and performance of management delegation procedures;
- Approval of service performance indicators.

In some cases, it is the counties and not the municipalities / towns or communes that hold exclusive power and responsibility on the water supply and wastewater services, in which case the county is the owner of the corresponding infrastructure. This situation results from the enforcement of Ordinance no. 69/1994, republished, on measures to reorganize autonomous regia on local interest.

A.N.R.S.C.

The local authorities are responsible for the organisation and functioning of local public services, but there is a national relevant body at national level, which is A.N.R.S.C. (the National Regulating Authority for Local Public Services). A.N.R.S.C. has a set of prerogatives related to the services, namely in respect of:

- Granting of functioning permits to the operators, which are indispensable for them to be able to function, to be granted with management delegation contracts and to supply the service;
- Endorsement of the tariffs proposed by the operators, prior to their approval by the local authorities or IDA;
- Issuing of frame-regulations and specifications that are mandatory as a minima for the local authorities and IDA when they draw up and approve the local regulations and specifications of the service;
- Monitoring of the fulfilment of performance indicators (levels of services), the rules regarding the permits, the tariffs regulations.

It is important to notice that A.N.R.S.C., beside its regulatory role, has the prerogative to inflict penalties (including the withdrawal of the permit to the operator that leads to the termination of the delegation contract granted to such operator) to those operators that do not comply with the legal provisions and regulations monitored by A.N.R.S.C., and as well to the local public authorities for granting the management delegation contract without observance of the relevant legal provisions.

Further, it should be noted that apart from the above competent authorities, a number of other authorities directly or through their territorial authorities play to different extent a role in monitoring and supervision in the drinking water supply and wastewater sector. These are notably:

- Apele Romane (e.g. water abstraction and discharge permits and monitoring);

- Ministry of Environment and Sustainable Development (e.g. environmental permits);
- Ministry of Labour, Family and Equal Opportunities (e.g. labour protection)
- Ministry of Public Health;
- Ministry of Economy and Finance (e.g. audits).

5.4 Public ownership

According to Law no 213/1998, the infrastructure related to the water and wastewater services (water supply and wastewater networks, treatment and ancillary plants, with the corresponding installations, buildings and land) belongs to the public domain. Both the existing infrastructure as at the date of the signing of the Delegation Contract and the assets afferent to the infrastructure, which result from the investments carried out during the performance of the Delegation Contract, are public assets belonging to the public ownership of the administrative-territorial units, to be taken over by their owner upon the termination of the Delegation Contract.

By the recent amendments to Law no. 51/2006, introduced by OUG no. 13/2008, it was provided that “the public services systems or their parts, created jointly by new investments programmes, performed within the intercommunity development association (IDA) having for scope of activity the local public services, belong to the public ownership of the member administrative-territorial units and are registered in their patrimony according to Law 213/1998 on the public ownership and its legal status with the subsequent amendments, on the grounds of the following criteria: (...) letter b) – the assets located in several administrative-territorial units and/or serving several administrative-territorial units shall belong to the public ownership of the county, if all the involved administrative-territorial units are in the same county and the county is member of the association” (article 10 paragraph (6) of Law no 51/2006 of the local public services, as amended by OUG no 13/208). Therefore all the assets created within EU financed programmes are public assets, and if they are located or serve several administrative-territorial units they are owned by the County, when this is member of IDA. In case when the county is not a member of IDA or the administrative-territorial units are situated in different counties, the letter c) of the same law article provides that the owner has to set by an express clause of the Delegation Contract.

5.5 Legal basis for delegated service management

The management of utility services addresses the organization, functioning and control for the supply / rendering of utility services under the conditions set by local public administration authorities.

The management of water and wastewater utilities may be organized in two ways at the discretion of local public authorities:

- Direct management by utilities (created or not as legal entities) organised under public law.
- Delegated management defined as an approach to management whereby local public authorities or IDA eventually assign to one or several operators the effective management of the service, i.e. the management and operation of water supply and wastewater networks based on a management delegation contract.

The approach to managing utility services is established by decision of deliberative authorities of the administrative-territorial units depending on the nature and status of the service, of the need to ensure the best price/quality ratio, of current and future interests of the administrative-territorial units as well as of the size and complexity of utility service infrastructure.

Further to recent amendments of Laws 51/2006 and 241/2006, through OUG no. 13/2008, an explicit legal basis was set for the institutional scheme proposed by SOP Environment, with regard to the delegated management. The new legal provisions of Law 51/2006 define the delegation of the management of a local public service as the action by which an administrative-territorial unit grants to one or several certified operators the management of a service or service's component activity whose responsibility belongs to such unit, as well as the concession of the related infrastructure; the delegation of the management of a local public service involves the right and the obligation for the operator to manage and operate the infrastructure related to the delegated service/activity. The delegation of the management may be done also by the IDAs having for scope of activity the local public services, in the name and on behalf of the member administrative-territorial units, on the grounds of a power of attorney granted by these.

Direct granting

The delegated management is performed by the means of a management delegation contract entered into between one or several administrative-territorial units (themselves or via IDA on the grounds of a power-of-attorney), as granting authority, and an operator, as grantee. The principle for granting such management delegation is the public tendering, with the observance of the relevant procedures. By exception, within the regionalisation process it was agreed with European Commission with the occasion of the negotiations for SOP Environment approval, and afterwards enacted by OUG 13/2008, that the management delegation contracts shall be directly granted to ROC by the administrative-territorial units, via IDA. For this direct granting to be allowed, in the respect of the principles of competition and transparency stated by the European and domestic legal frame, a set of rules has to be observed. According to the European Court of Justice (ECJ – *Teckal* and *Coname* case laws), European tendering regulations may not be applied when the following conditions, called the “*in-house*” rules, are simultaneously observed:

- the public authority being the contracting authority, controls the concerned separate entity (operator) in the same way that it controls its own departments ("similar control" criterion) - this criterion was extended with the supplementary condition that the said entity keeps an integral public equity for all the period that the delegation contract is in force,
- the said entity (operator) carries out the essential part of its activities together with the controlling public authority or public authorities ("exclusive activity" criterion). ²

Direct granting: conditions

The new provisions of Laws 51/2006 and 241/2006, introduced by OUG 13/2008, are similar and form the legal basis in the Romanian legislation for the direct granting of the management delegation contract, as an exception to the competitive procedures, in the cases expressly provided by these articles and under the conditions stated by them, as a application of the “*in-house*” rules. According to these new legal provisions, by exception to the

² In the *Teckal* law case a number of local authorities created a consortium (AGAC) to manage the heating systems of and supply fuel to a number of municipal buildings, without inviting tenders. Each contracting authority then awarded AGAC their individual contracts to manage the heating etc, which will be similar to what will happen in our case, as each local authority will in fact be allocating their portion of services required to the distinct entity. Also, in *Coname* law case, the ECJ appeared to accept that the arrangement in this case between multiple municipalities was capable of attracting the *Teckal* type exemption. However the case law representing the grounds of the “in house” rules (*Teckal* and especially *Coname*) did not definitively stated that the “in house” exemption applies to situations where authorities come together to form a subsidiary to carry out a service, involving a joint control between such authorities. By way of interpretation, the conclusion must be that the *Teckal* conditions can be met by joint control. This conclusion is coherent with the policy of the conditions, which is to identify cases in which the supply arrangement is one within the administration rather than the market, and if it is allowed to public entities to keep services in-house without tendering, it is logical to allow them less, meaning to collaborate with other parts of the administration without a tender.

competitive procedures, the management delegation contract may be directly granted to the regional operators (ROCs) set up by the administrative-territorial units that are members of an IDA having as scope of activity local public services, with the cumulative compliance of the following conditions:

- a) the administrative-territorial units members of an IDA for local public services, as shareholders of the regional operator, exercise via IDA a direct control and a dominant influence on the strategic decisions of regional operator related to the supplied service (the water and wastewater service in this case), similar to the control they exercise on their own structures in the situation of direct management;
- b) the regional operator, as grantee, performs exclusively activities in the field of supply of the local public services (in this case the water and wastewater service, according to Law 241/2006), meant for satisfying the general public interest needs of the users on the competency area of the administrative-territorial units members of the association;
- c) the registered capital of the regional operator is held in all by the administrative-territorial units members of the association; the participation of the private capital to the regional operator's equity is prohibited.

The compliance of the presented institutional scheme with these *in-house* rules shall be elaborated further herein, within the analysis of institutional issues of the regionalisation process. Through this institutional mechanism ROC is subject to the joint control of the Local Authorities that exercise such control by the unique body, IDA, to which they give power of attorney and special rights.

5.6 The “in-house rules”

The Delegation Contract shall be directly granted to ROC, and for this the following “in-house rules”, allowing derogation from the tendering procedures, have to be simultaneously observed, as adapted to our situation:

- a) the administrative-territorial units exercise, via IDA, a direct common control over the ROC, similar to the control exercised over an own department with a dominant influence on all the strategic and/or significant decisions of the ROC (the “similar control” criterion);
- b) ROC carries out, exclusively, activities in order to provide water and wastewater services for those administrative-territorial units that delegated the management of such service to the ROC (the “exclusive activity” criterion);
- c) the registered capital of the ROC is entirely owned by administrative-territorial units that are members of IDA, the participation of private capital being excluded.

The similar control criterion

The key lines of the direct management according to the requests of the similar control criterion are:

- it is carried on the grounds of terms of reference and services’ regulation;
- the appointment and repeal of the management of the operator;
- the approval of the Internal Organization and Functioning Regulations (ROF) of the operator;
- the approval of the annual budget of the operator.

The control over ROC is exercised jointly by several municipalities, via IDA, on the grounds of an institutional frame set by the ROC Deed of Incorporation (regarding the institutional control over ROC) and the Delegation Contract having as appendices the terms of reference and the service’s regulations (regarding the control over the performance of the contractual obligations related to the water and wastewater service management).

In respect of such control, IDA:

1. Receives by its Statute, a power of attorney from its member municipalities to exercise in their name and on their behalf, their competencies related to the water and wastewater service, provided in Laws 51/2006 and 241/2006. Such power of attorney shall be formalized especially in the signing of the Delegation Contract and the monitoring of its performance.

IDA's power of attorney, for exercising in the name and on behalf of its members, their prerogatives regarding the water and wastewater service, is detailed in the Statute of the Association.

2. Receives through the ROC's Deed of Incorporation certain specific rights, in order to allow IDA to control the ROC. Such specific rights are:
 - a) To propose the list of persons among whom the General Assembly is entitled to designate the members of the Board of Directors;
 - b) To propose the revocation of the members of the Board of Directors;
 - c) To propose the initiation of legal proceedings against the members of the Board of Directors for prejudices brought to the Company;
 - d) To endorse the Internal Organization and Functioning Regulation of the Company before its approval by the Board of Directors;
 - e) To endorse business plans and strategies proposed by the Board of Directors before their approval by the General Assembly; the annual budget of the ROC shall be established in accordance with the Business Plan agreed by IDA;
 - f) To endorse the proposals to set up branches under the conditions set forth in the Deed of Incorporation;
 - g) To endorse the creation of other funds besides the reserve funds stipulated by law and of funds mentioned in the Delegation Contract, as well as on the destination and amount thereof;
 - h) To endorse the proposals to modify the Deed of Incorporation;
 - i) To be informed by ROC regarding its activity so that IDA can perform its control attributes.

The "exclusive activity" criterion

This condition is included in the Deed of Incorporation of the ROC regarding the scope of activity of the company, on one hand, and in the Delegation Contract regarding the delegated services that constitute the exclusive activity of the Operator, on the other hand.

The Delegation Contract also stipulates the possibility for the ROC to sub-delegate a part of the management of the delegated services, if needed for economical efficiency reasons, to a third party, but solely by a tendering procedure.

The public capital of the ROC

The Deed of Incorporation of the ROC stipulates the obligation undertaken by the shareholder municipalities that the registered capital of ROC is entirely public capital and shall remain entirely public for all the duration of the Delegation Contract.

ANNEX 1 - LEGAL REQUIREMENTS

1. The Intercommunity Development Association (IDA)

The new legal provisions of Law 51/2006 define the Intercommunity Development Associations (IDA) having for scope of activity the local public service as being “the intercommunity development association defined according to the provisions of Law no. 215/2001, republished, having for scope of activity the setting-up, organisation, regulation, financing, exploitation, monitoring, and joint management of the local public services within the area of the member administrative-territorial units, as well as the joint performance of zone or regional interest public investments projects meant to the creation, modernisation, and/or development, as the case is, of the infrastructure related to such services” (art.2 letter a).

The general framework for the creation of IDAs is defined by Law no. 215/2001 of the local public administration, republished, stating that “Two or more administrative-territorial units have the right, within their deliberative and executive powers, to cooperate and associate, under the terms of law, into intercommunity development associations, legal entities of private law and with public utility status. IDAs have a public utility status by effect of the present law, derogating from the provisions of Governmental Ordinance no. 26/2000 on associations and foundations, approved with amendments and completions by Law 246/2005.”

Therefore, as the exception to OG 26/2000 refers only to the public interest status given by law to this type of association, IDA will be created according to the dispositions of OG 26/2000 on associations and foundations, with subsequent amendments and completions, and also considering the special provisions of Law no. 215/2001 of local public administration, republished, which is the general law, and of Law on local public services no.51/2006 amended and completed by OUG no. 13/2008, which is the specific law. Furthermore, the provisions of Law 273/2006 on local public finance will be taken into account in relation to the association of LAs.

IDA will be set up by administrative-territorial units (municipalities, towns, communes and/or counties) in order to develop together local or regional development projects or to jointly supply utility services. Such administrative-territorial units are the same to delegate the water and wastewater service management to ROC.

Law 51/2006, as recently amended by OUG 13/2008, provides that “two or several administrative-territorial units, within their deliberative and executive powers, may cooperate and associate, under the terms of law, with the purpose to set up intercommunity development associations having for scope of activity the joint supply of local public services and creation, modernisation and/or development of the related infrastructure” (art.10 paragraph 1). According to the same article, IDAs having for scope of activity the local public services are cooperation structures, set up as legal entities of private law, with public utility status by law, meant for the joint exercise and performance of the local public administration authorities’ prerogatives related to the supply of local public services.

IDAs undertake and exercise specific attributions, rights and obligations strictly related to the service(s) assigned to it, in the name and on the account of the associated administrative-territorial units. In this purpose the law provides (paragraphs 4 and 5 of article 10 of Law 51/2006 amended) that the member administrative-territorial units may grant to IDA a power of attorney, under the terms of IDA’s Statute and Constitutive Act, in order that IDA exercise in the name and on behalf of them their rights and obligations related to the services,

including the right to delegate the service's management and to grant the concession of the related infrastructure.

The organization and functioning of IDAs having as scope of activity the local public services is set in the Constitutive Act and Statute of the IDA based on the framework Constitutive Act and Statute.

The Constitutive Act includes under the sanction of absolute nullity:

- a) Identification data of associated members: name and registered office;
- b) The expressed agreement to associate with the indication of the proposed purpose;
- c) Name of the association;
- d) Registered office of the association;
- e) Term of the association – limited, with the indication of the term, or unlimited as the case is;
- f) Initial patrimony of the association; the capital assets of at least one minimum gross wage per economy on the creation date, consist of contributions in kind or in cash of the associates. For contributions in kind, the notary certified form of the Constitutive Act and of the Statute is mandatory;
- g) The nominal composition of the initial executive, management and control bodies of the association;
- h) The person or persons authorized to perform all formalities in order to incorporate the association;
- i) Signatures of member associates.

The Statute includes under the sanction of absolute nullity:

- a) Identification data of associated members: name and registered office;
- b) The expressed agreement to associate with the indication of the proposed purpose;
- c) Name of the association;
- d) Registered office of the association;
- e) Term of the association – limited, with the indication of the term, or unlimited as the case is;
- f) Initial patrimony of the association; the capital assets of at least one minimum gross wage per economy on the creation date, consist of contributions in kind or in cash of the associates. For contributions in kind, the notary certified form of the Constitutive Act and of the Statute is mandatory;
- g) Definition of the purpose and objectives of the association;
- h) The modality to acquire or lose membership;
- i) Rights and obligations of associates;
- j) Categories of patrimony resources of the association;
- k) Responsibilities of the executive, management and control bodies;
- l) Destination of assets on dissolution
- m) Signatures of member associates.

According to Law 51/2006 (special law in this field) as amended by OUG 13/2008, the statute of IDA must also include the power of attorney granted by its members in order that IDA exercise in the name and on behalf of such administrative-territorial units their prerogatives related to the water and wastewater service, as well as the control over ROC for compliance with the “*in-house*” rules.

The framework models of the Constitutive Act and Statute of IDA are prepared by the Ministry of Interior and administrative Reform and will be approved through a Governmental Decision.

The management, administration and control of the IDA will be ensured by: the General Assembly, the Direction Council and the Censors' Committee (according to art.10 paragraph 1 of Law 51/2006 amended).

2. The Regional Operator (ROC)

The regionalization process representing the grounds for the creation of the regional operating company (ROC) is a crucial element in the achievement of investment objectives for the renewal, extension, operation and maintenance of fixed assets in the water and wastewater national sector in order to abide by this sector –related goals set for 2015 and 2018.

According to Art.2 letter g¹ from Law no. 51/2006, introduced by OUG no. 13/2008, the regional operator is defined as “ a commercial company with the equity held in all by administrative-territorial units members of IDA having for scope of activity the local public services, set up on the grounds of their deliberative bodies' decisions; the regional operator ensures the management itself of the service/of the activities of public utility within the area of the associated administrative-territorial units, including the management, functioning and exploitation of the related infrastructure, as well as the implementation of zone or regional interest public investments programmes jointly performed within the association, having for objective the creation, modernisation and/or, as the case may be, the development of the technical and urban infrastructure related to such services/activities.”

The ROC will be created as a joint stock company based on the provision of Law no. 31/1990 on the commercial companies, republished, with subsequent amendments and completions, and taking into account the special provisions for the regional operating company of Law no. 51/2006 and Law no. 241/2006.

ROC will be incorporated as a company with 100% share capital from administrative-territorial units, members of an IDA, having as scope of business the supply of utility services and to which the management of water and wastewater service management will be delegated by Delegation Contract.

Defining the value of the share capital

A significant aspect in the dynamic process of creating the ROC, considering several LAs are involved, is to define the value of the share capital and interest of the local public authority.

The contribution to the share capital may be in kind or in cash based on a joint agreement. The level of the share capital should be reflected in the process of business plan preparation together with the establishment of short and medium – term strategies, namely of the budget for the first year of cooperation.

However, considering the creation of ROCs is an urgent matter, there may be not enough time to prepare the business plans before the completion of this process. In this case, we recommend a general assessment approach to the contribution at the share capital, taking into consideration the following two main issues:

- The estimated turnover of the ROC for the first three months of cooperation (component A). It will be calculated by adding the income obtained in the last three months before the regionalization process from water and waste water services that will be supplied by ROC.
- The initial capital for acquiring the necessary assets for business (buildings, land, maintenance and repair equipment, etc.) (Component B). This will be assessed considering the selected financing type:
 - Payment in cash: the amount must be discharged from the beginning

- Leasing: we recommend the availability of the amount to be paid for the first three months. In this case, the “debt service” should be considered on defining the tariff strategy.
- Loan: we recommend the availability of the amount to be reimbursed from the loan for the first three months. In this case, the “debt service” should be considered on defining the tariff strategy.

Following aggregate estimates, it is highly recommended that the initial value of the share capital be the equivalent of 1,000,000 Euro at least.

For an existing operator, the financial needs will be assessed separately in order to establish the contribution (in kind or in cash) of each LA to the increase of the existing operator’s share capital so as to ensure operating capital needs and investment needs during transition period

The following criteria will be observed on establishing the contribution of each LA:

- The total population of each administrative and territorial unit involved in the creation of ROC
- The total water-supplied population of each administrative and territorial unit involved in the creation of ROC
- The water volume supplied in the operating area of each administrative and territorial unit involved in the creation of ROC
- The value of the property available to ROC (public or private)
- Allotment of shares between administrative-territorial units based on the principle of equity, among the main categories of administrative-territorial units (large cities, medium and small towns, and the county council).
- The allotment of shares based on the availability of each LA to participate at the creation of ROC’s share capital (in cash or in kind)
- Direct negotiation between local public administrative authorities without considering any of the aforementioned criteria or a combination thereof.

In order to precisely set the contribution of each LA to the share capital of the new ROC, it is recommended to define first the patrimony of the largest existing water company to be integrated in the structure of the ROC and then the contribution of each local public administrative authority based on preset stakes.

3. The Management Delegation Contract

The delegated management, according to the Law 51/2006 amended, is the modality of management by which the local public administration authorities or, as the case is, the IDAs having for scope of activity the local public services, in the name and on behalf of their member administrative-territorial units, grant to one or several operators all or a part of their own prerogatives and responsibilities regarding the supply of the local public services, as well as the concession of the related infrastructure, respectively the right and obligation to manage and operate them, on the grounds of a management delegation contract. The law defines the management delegation contract as a written contract, by which one or several administrative-territorial units, individually or in association, as granting authority, grant(s) on a fixed period of time, to a certified operator, as grantee, which acts upon its own risk and responsibility, the right and the obligation to supply a local public service or, the case is, activities composing such service, including the right and obligation to manage and operate the related infrastructure to the supplied service/activities, having as counterpart the payment of a delegation fee as the case may be. It can be executed by IDA having for scope of activity local public services, in the name and on behalf of the member administrative-territorial units that

have together the quality of granting authority. The management delegation contract is assimilated to the administrative deeds.

Within the regionalisation process and the proposed institutional scheme, the Delegation Contract for the management of water supply and wastewater service is a contract executed by the ROC on one hand, and IDA in the name and on behalf of the member administrative-territorial units (these have the quality of granting authority) on the other hand. It is the sole contract concluded for the entire project area corresponding to the area of territorial jurisdiction of all administrative-territorial units delegating the water and wastewater service management to the concerned ROC.

The management delegation contract will include the following mandatory clauses on:

- a) Name of the contracting parties;
- b) Scope of the contract;
- c) Duration of the contract;
- d) rights and obligations of the contracting parties;
- e) schedule of investment works for modernization, rehabilitation, capacity strengthening, new objectives and maintenance, current repairs, planned repairs, arrangements, both materially and in monetary value;
- f) tasks and responsibilities of the parties in relation to the investment programmes, rehabilitation, repair and renovation plans, as well as in relation to the financing conditions thereof;
- g) performance indicators on the service quality and quantity, as defined in the service specification and regulation, and also the way to assess and weight such indicators, conditions and warranties;
- h) applied tariffs and calculation, modification or adjustment procedure;
- i) tariff policy and collection of the counter-value of supplied / rendered services;
- j) the level of delegation fees or of other obligations, as the case may be;
- k) contractual liability;
- l) force majeure;
- m) conditions to redefine the contractual clauses;
- n) conditions to return or distribute assets on the termination by any reason whatsoever of the delegation contract, including of investments made;
- o) maintaining the contractual balance;
- p) conditions to early terminate the management delegation contract;
- q) management of public and private property assumed;
- r) manpower structure and social security;
- s) other clauses stipulated by the parties, as the case may be.

The management delegation contract will be accompanied by the following mandatory appendices:

- a) the terms of reference (specifications) on the supply of service (i.e. the levels of service);
- b) the regulation of service;
- c) inventory of public or private movables and real estate, in public or private property of the administrative-territorial units, related to the service;
- d) the delivery-receipt protocol for the goods set forth at letter c).

The following aspects should be carefully examined and reasonably defined on elaborating the clauses of the delegation contract:

- the amount of delegation fees;
- Service tariffs (mechanism, form – unique tariffs or differentiated tariffs, etc)
- Terms and conditions to approve tariffs by local / county councils or IDAs
- Volume of investments to be made in the following period

IDA members should consider the following aspects when establishing short-term tariff strategies:

- a) The consolidation of tariffs should be seen as a tariff strategy goal. This is one of the recommendations also made by EC committee for the assessment of CF applications as an instance of solidarity principle.
- b) The term for tariff consolidation may be established considering one of the following options:
 - The consolidation of tariffs in 1-2 years (on short term) – recommended if no significant differences between tariffs applied in different operation areas exist and the level / standard of service are similar.
 - The consolidation of tariffs in 3-5 years (on medium term) - recommended if relatively significant differences exist between tariffs applied in different operation areas or between levels / standards of service. The consolidation period may be limited to the year when the investment in the CF financed project will be completed.
- c) Once established the term for tariff consolidation a schedule for the adjustment of each existing tariff needs to be drawn and included in attachment to the delegation contract.
- d) In the first months of operation (1-3 months), it is recommended to adjust tariffs applied in different areas of operation so as to ensure that these tariffs cover the operating costs at least as well as the margin for emergency repairs and maintenance activities.

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