

№	Question	Answer
1.	<p><b><u>Shareholder liability post transfer:</u></b>  Section 5.1 of Appendix 11a to the Concession Agreement provides that “each Initial Shareholder shall bear explicit liability for the obligations of the Concessionaire under the Concession Agreement, the Shareholder Undertakings set forth in Section 2 (Shareholder Undertakings) hereof, for the representations and warranties as well as the undertakings set out in Sections 3 (Limited Warranties Undertaking) and 4 (Additional Undertakings) hereof, jointly and severally with the other Shareholders and the Third Party Providing the Financial Capabilities as well as with the Concessionaire, towards the Grantor under the Concession Agreement”. This raises the concern that an Initial Shareholder may remain liable under the undertaking after it has ceased to be a shareholder.</p> <p>The concern arises as a result of the drafting of Section 5.1 which explicitly refers to Initial Shareholders rather than just to Shareholders. The definition of Initial Shareholder references the initial shareholders of the Concessionaire named in the Offer. Unlike the definition of Shareholder it is not tied to the continued holding of shares. On the face of it, it appears that an Initial Shareholder would continue to be bound by the undertaking even if it had transferred its shares in the Concessionaire. We question whether this is intended or is perhaps just a drafting issue. Please confirm that it is not the intention that an Initial Shareholder will continue to be bound by the undertaking after it has ceased to be a shareholder.</p> <p>Similar language appears in section 5.1 of Appendix 11c to the Concession Agreement. Again, please confirm that it is not the intention that an Initial Shareholder will continue to be bound by the undertaking after it has ceased to be a shareholder.</p>	<p>The requirement to issue a Shareholder Undertaking in the form as Appendix 11a is set out in Clause 12 of the Concession Agreement and is strictly linked to the nature and capacity of the entity issuing the Shareholder Undertaking, i.e. being a Shareholder (whether Initial or not). Once an entity loses its nature and capacity of shareholder pursuant to the terms and conditions of the Concession Agreement, the Undertaking will automatically cease to be effective in relation to such now former Shareholder (whether Initial or not)</p> <p>As the undertaking under Appendix 11c will be issued by the Third Party providing financial capabilities (who is different from the Shareholders) the Initial Shareholders will not be bound by the terms and relevant liability provided under Appendix 11c</p>
2.	<p><b><u>Maximum aggregate liability for TPAO:</u></b>  We had understood that, regardless of bidder composition and structure, the maximum aggregate liability for Shareholders and Third Parties pursuant to the undertakings at Appendix 11a, 11b and 11c of the Concession Agreement would be capped at the Maximum Liability Amount (namely BGN 200 million). The revised draft Concession Agreement makes it clear at Clause 12.2 that this cap applies to Appendices 11a and 11c but reference to Appendix 11b has been deleted. Section 5 of the Appendix 11(b) undertaking limits the liability of the Airport Operator Third Party to "the amount corresponding to the equity which should have been provided under the Concession Agreement to the extent the Acceding Party would be Airport Operator Shareholder".</p> <p>Given the reference to Clause 12 of the Concession Agreement in Appendix 11b, we interpret this as meaning the amount of equity that the Airport Operator Shareholder</p>	<p>The reference to Clause 12 is related to the requirement therein for the Initial Shareholders and Shareholders to issue the Shareholder Undertaking "as set forth in Appendix 11a". Hence the Maximum Liability Amount provided under Clause 12.2 applies only to Shareholders (Appendix 11a) and Third Party Providing Financial Capabilities (Appendix 11c). The liability of the Third Party Airport Operator does not fall within the Maximum Liability Amount but it is separate and limited to the amount of equity which should have been provided under the Concession Agreement to the extent the Acceding Party would be Airport Operator Shareholder.</p>

<p>is required to provide pursuant to Clause 12 of the CA, namely that which is apportioned to it in the Financial Model (Clause 12.1.1). Please confirm that this assumption is correct.</p> <p>Assuming this is the case, we note the requirement under Clause 12.1.2 that the aggregate minimum equity capitalization shall amount to BGN 200 million. Depending on its shareholding, it follows that the Airport Operator Third Party will be exposed to liability under Appendix 11b at least to the extent of its proportion of the minimum capital of BGN 200 million and more if the overall equity capitalization is greater.</p> <p>If the above assumption is not correct then we assume the intention is to refer to the obligation on the Airport Operator Shareholder to retain at least 20% of the Share Capital/ voting capital at Clause 13.2.4 of the Concession Agreement. If that is the case then please explain how the relevant liability amount is to be quantified. Is it the nominal paid up amount of 20% of the Share Capital/ voting capital or something else?</p> <p>In any event, the above means that the aggregate liability of Shareholders and Third Parties will not be capped at BGN 200 million but instead BGN 200 million plus liability under Appendix 11b where a Third Party Airport Operator Undertaking is required. This appears to be a change in the position we had understood would apply and potentially to raise the risk of discrimination between bidders. Why should a bidder be exposed to greater liability overall and the attendant cost simply as a function of the means through which it delivers technical capabilities? This potentially gives an advantage to bidders that do not require a Third Party Airport Operator Undertaking.</p> <p>Please confirm that the understood position of an aggregate cap on liability of BGN 200 million will apply to the undertakings at Appendix 11a, 11b and 11c of the Concession Agreement.</p>	<p>In this respect, whatever is the equity commitment of the Airport Operator Shareholder during the life of the Concession pursuant to the terms of the Concession Agreement, the same amount would correspond to the maximum liability of the Third Party Airport Operator under Appendix 11b.</p> <p>Moreover, the recent amendments to the Concession Agreement have been introduced to remove the joint liability of the Third Party Airport Operator which was a matter of concern for the bidders.</p>
<p>3. We have approached prospective banks in relation to issuing the Participation Guarantee in the form appended to the Tender Documents at Schedule 3, Form D (we note the amendments made with the revised tender documents issued on 26th December 2018). The prospective banks have a few further comments – <b>please confirm that the following changes to the form of Participation Guarantee are non material and are acceptable to the Grantor and that the Concessionaire can include these changes to the Participation Guarantee to be submitted with its Tender and that the changes will not render the Tender (or any part of it) non compliant.</b> We have made this suggestion in accordance with the note in Form D which states "<i>Note: To consider non-material amendments by issuing banks</i>". A note of the changes are set out below and to assist please see the marked up changes</p>	<p>Some of these amendments can be considered acceptable, while others – not. It is unacceptable to specify a date, due to the procedural rules of the Concessions Act, as well as with respect to other provisions of the Draft Concession Agreement, and in particular – the provisions, related to the fulfillment of the conditions precedent, to be fulfilled as the concession's effective date. Also unacceptable is the following wording, regarding the Operation Guarantee and the Works and Mandatory Capital Expenditures Guarantee:</p>

at Appendix 1 to this Clarification Question and in Appendix 2 the Participation Guarantee as a clean version with the changes. The form at Appendix 2 is intended to be signed by the issuing banks and submitted with the Tender - **please confirm that this is acceptable.**

- Delete the final paragraph of the form of Participation Guarantee which incorporates defined terms set out in the "*Tender Documents as defined in the Concession Notice n. 2018/S 127-290417 published on 5 July 2018 in the Official Journal of the European Union*". Prospective issuing Banks have requested that defined terms are set out expressly in the guarantee as they are not party to the Tender Documents in which these terms are defined.
- Insert the validity date of 2th March 2020 being the date which is 360 days after the bid submission deadline of 5th February 2019 **plus** 30 days as required by Clause 6.3 (b) of the Tender Documents.
- Include the wording set out in the forms of the Operation Guarantee and the Works and Mandatory Capital Expenditures Guarantee as follows:

*"This Guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 revision, ICC Publication no. 758."*

Appendix 1

Amendments to the Form of Participation Guarantee

## **FORM D: PARTICIPATION GUARANTEE**

### **LETTER OF GUARANTEE**

Minister of Transport, Information Technology and Communication  
Sofia  
Republic of Bulgaria

Date: {2019}

~~{Note: To consider non-material amendments by issuing banks.}~~

WHEREAS, [name of Bidder/in case of a Consortium please indicate the names of all members and the Lead Member of the Consortium] (hereinafter called the "**Bidder**") has submitted/will submit on or about the date hereof its bid (hereinafter

*"This Guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 revision, ICC Publication no. 758."*

As far as the definitions are concerned, we would keep the requirement of inserting the reference to the TDs, alternatively Bidders could in the Participation Guarantee, the definitions as provided in the TDs (copy and paste the definition in the Participation Guarantee), to avoid any misunderstanding and potential unenforceability of the Guarantee.

called the "**Bid**") within the procedure for designation of concessionaire and award of a works concession for "Civil airport for public use Sofia" - public state property, in accordance with the provisions of the Tender Documents.

KNOW ALL PEOPLE by these present that we [name of Bank] of [name of country] having our registered office at [address] (hereinafter called the "**Bank**") hereby unconditionally and irrevocably undertake to pay the Ministry of Transport, Information Technology and Communications of the Republic of Bulgaria (the "**Grantor**") upon receipt of written demand the sum of [insert the amount of the Participation Guarantee] in [currency], in accordance with the following terms:

We shall pay the Grantor the due amount within fifteen (15) days from receipt of an official written request by the Grantor indicating the failure of the Bidder to fulfil its obligations under the Tender Documents and irrespective of any objection by the Bidder or any other party such amount or amounts as the Grantor may demand not exceeding in the aggregate the above mentioned amount, namely Euro 2,000,000 (two million), by transfer to one of the following Grantor's accounts: (i) **BGN account**: Bank: Bulgarian National Bank, IBAN: BG77BNBG96613300124801, BIC: BNBGBGSD; (ii) **account in Euro**: Bank: Bulgarian National Bank, IBAN: BG29BNBG96613600124840, S.W.I.F.T. code: BNBGBGSF, or in any other manner acceptable to the Grantor.

All payments made based on the Grantor's demand shall be free and clear of, and without any present or future deduction for payment of, any taxes, levies, duties, charges, fees, deductions or withholdings of any nature whatsoever and by whomsoever imposed.

The undertakings contained in this guarantee constitute direct and fundamental obligations of the Bank and are unconditional and irrevocable. We shall not be excused from any or all of these obligations for any reason or reasons of whatever nature or source or any omission, act or proceeding by the Grantor or by a third party which would excuse or discharge us from the obligations and liabilities stated in this guarantee.

This guarantee will remain in full force up to and including 2 March 2020 ~~insert the calendar date which shall be 360 days after the Applications and Offers Submission Deadline + additional 30 days as required by Clause 6.3(b).~~

This guarantee shall be governed by and construed in accordance with the laws, regulations, decisions, rules and instructions of the Republic of Bulgaria and any dispute with respect to this guarantee shall be resolved exclusively by the competent authorities in the Republic of Bulgaria and according to Bulgarian Law.

~~In this guarantee, unless the context otherwise requires, capitalized terms shall have the meaning ascribed thereto in the Tender Documents as defined in the Concession Notice n. 2018/S 127 290417 published on 5 July 2018 in the Official Journal of the European Union.~~

[THIS GUARANTEE IS SUBJECT TO THE UNIFORM RULES FOR DEMAND GUARANTEES \(URDG\) 2010 REVISION, ICC PUBLICATION NO. 758.](#)

The Bank

Authorized signatories

[plus notarization and, if issued outside Bulgaria, legalization/Apostille and official translation in Bulgarian language]

Appendix 2

Amendments to the Form of Participation Guarantee (clean version)

## **FORM D: PARTICIPATION GUARANTEE**

### **LETTER OF GUARANTEE**

Minister of Transport, Information Technology and Communication  
Sofia  
Republic of Bulgaria

Date:  
2019

WHEREAS, [name of Bidder/in case of a Consortium please indicate the names of all members and the Lead Member of the Consortium] (hereinafter called the "**Bidder**") has submitted/will submit on or about the date hereof its bid (hereinafter called the "**Bid**") within the procedure for designation of concessionaire and award of a works concession for "Civil airport for public use Sofia" - public state property, in accordance with the provisions of the Tender Documents.

KNOW ALL PEOPLE by these present that we [name of Bank] of [name of country] having our registered office at [address] (hereinafter called the "**Bank**") hereby unconditionally and irrevocably undertake to pay the Ministry of Transport, Information Technology and Communications of the Republic of Bulgaria (the "**Grantor**") upon receipt of written demand the sum of [insert the amount of the Participation Guarantee] in [currency], in accordance with the following terms:

We shall pay the Grantor the due amount within fifteen (15) days from receipt of an official written request by the Grantor indicating the failure of the Bidder to fulfil its obligations under the Tender Documents and irrespective of any objection by the Bidder or any other party such amount or amounts as the Grantor may demand not exceeding in the aggregate the above mentioned amount, namely Euro 2,000,000 (two million), by transfer to one of the following Grantor's accounts: (i) **BGN account**: Bank: Bulgarian National Bank, IBAN: BG77BNBG96613300124801, BIC: BNBGBGSD; (ii) **account in Euro**: Bank: Bulgarian National Bank, IBAN: BG29BNBG96613600124840, S.W.I.F.T. code: BNBGBGSF, or in any other manner acceptable to the Grantor.

All payments made based on the Grantor's demand shall be free and clear of, and without any present or future deduction for payment of, any taxes, levies, duties, charges, fees, deductions or withholdings of any nature whatsoever and by whomsoever imposed.

The undertakings contained in this guarantee constitute direct and fundamental obligations of the Bank and are unconditional and irrevocable. We shall not be excused from any or all of these obligations for any reason or reasons of whatever nature or source or any omission, act or proceeding by the Grantor or by a third party which would excuse or discharge us from the obligations and liabilities stated in this guarantee.

This guarantee will remain in full force up to and including 2 March 2020.

	<p>This guarantee shall be governed by and construed in accordance with the laws, regulations, decisions, rules and instructions of the Republic of Bulgaria and any dispute with respect to this guarantee shall be resolved exclusively by the competent authorities in the Republic of Bulgaria and according to Bulgarian Law.</p> <p>THIS GUARANTEE IS SUBJECT TO THE UNIFORM RULES FOR DEMAND GUARANTEES (URDG) 2010 REVISION, ICC PUBLICATION NO. 758.</p> <p>The Bank</p> <p>Authorized signatories</p> <p>[plus notarization and, if issued outside Bulgaria, legalization/Apostille and official translation in Bulgarian language]</p>	
4.	<p>Please definitively confirm if refinanced debt used to pay a shareholder dividend would be covered under the definition of Termination Date Debt (and thus receive compensation on termination for concessionaire and grantor default). Previous answers on this point (eg Q1 answered on 30 October) have been ambiguous on this and the drafting in the new CA remains in our view ambiguous (one could argue that the debt facility was still “used to pay the upfront fee” – the facility has just been upsized).</p> <p>Refinancing to pay shareholder dividends is market practice across the project finance world, and appears to be envisaged in the CA (under the 50% refi gain sharing requirement outlined in clause 15).</p> <p>We need to know urgently if we should envisage such dividend refinancings in our bid model and bid document (thus enabling a higher committed annual fee) or not, and we believe it is important all bidders make the same assumptions on this point.</p>	<p>In the example provided, the amounts outstanding under the Senior Debt which were used for the payment of dividends - and thus NOT used for the payment of the Concession Upfront Fee and the performance of investments on the Concession Site - will NOT be covered under the definition of “Termination Date Debt.”</p>
5.	<p>Regarding the answer in Question number 3157, please can you confirm which departments the ground handling personnel have been reassigned (and how many per departmental change) to upon termination of the Wizz Air ground handling contract?</p>	<p><b>At the “SLOT Coordination“ Department – 1.</b></p> <p><b>At the Airport Flight Services Directorate:</b></p> <p>Terminals Department– 4</p> <p>Operating Centre Department – 10</p> <p>Individual Passenger Assistants Department – 10</p> <p>Airport Technologies Department – 8</p> <p><b>At the Security Directorate:</b></p> <p>Access Control Department – 3</p> <p>Checked Baggage Inspection Department – 2</p>

		<p>Passenger and Carry-on Baggage Inspection Department – 12</p> <p><b>At the Marketing, Procurement and Logistics Directorate</b> Procurement, Marketing and TIP /Technological Information Processing/ Department – 3</p> <p><b>At the Retail Directorate:</b> VIP-B and Guest Lounges Department – 8 Retail Shops Department – 9</p> <p><b>At the Maintenance and Construction Investments Directorate:</b> Airfield and Airport-Adjacent Areas Department – 6 Structures Department – 1</p> <p><b>At the Human Resources, Administration and Social Activities Directorate:</b> Aviation Training Centre Department – 1</p>
6.	Please confirm whether the agreement with Kita Bulgaria will be included in the Transferring Contracts?	The agreement with Kita Bulgaria has not been approved by the Management Board of the Sofia Airport EAD and is not binding for the company.
7.	In case the agreement with shall be transferred, please confirm that the Concessionaire will be given the opportunity to unilaterally terminate the contract upon a one-month notice (or shorter notice period) upon entry into force of the Concession Agreement.	The agreement with Kita Bulgaria has not been approved by the Management Board of the Sofia Airport EAD and is not binding for the company.
8.	<p>Please confirm whether the following contracts have been fulfilled in full; or respectively the term of which has been extended; and whether there are any claims of any party thereof:</p> <ul style="list-style-type: none"> <li>- Assignment letter dated 6 June 2018 to Lomini;</li> <li>- Contract 100-Д-281 /08.12.2017 with Enigma Gard EOOD;</li> <li>- Contract 100 – Д – 174/16.04.2018 with Europlast International GmbH;</li> <li>- Contract 100 – Д – 187/30.04.2018 with Stemo OOD;</li> <li>- Contract 100-Д-255 /27.06.2018 with Voestalpine VAE Sofia OOD;</li> <li>- Contract 100 – Д- 33/23.01.2018 with Bulgarkontrola AD;</li> <li>- Contract 100-Д-154/ 31.08.2015 with Express Lift Service OOD</li> <li>- Contract 100 – Д – 280/08.12.2017 with Express Lift Service OOD;</li> <li>- Contract 100-Д-196/01.09.2017 with Bulgarian Posts EAD;</li> <li>- Agreement with Kori’s Bulgaria OOD from 15 June 2015;</li> </ul> <p>In case of extension of the above listed contracts (or replacement by a new contract) – please provide the respective documents.</p>	<ul style="list-style-type: none"> <li>- Assignment letter, dated 02.02.2018 Sonita, with respect to a software product for sharing (eDoc.bg) – Fulfilled.</li> <li>As at the date of preparation of this answer, there is no new assignment letter;</li> <li>- Contract 100-Д-281/08.12.2017 with Enigma Gard EOOD - Fulfilled;</li> <li>As at the date of preparation of this answer, there is no new assignment contract;</li> <li>- Contract 100-Д-174/16.04.2018 with Europlast International GmbH - Fulfilled;</li> <li>As at the date of preparation of this answer, there is no new assignment contract;</li> <li>- Contract 100-Д-187/30.04.2018 with Stemo OOD - Fulfilled;</li> <li>- Contract 100-Д-255/27.06.2018 with Voestalpine VAE Sofia OOD - Fulfilled;</li> </ul>

		<p>- Contract 100-Д-33/23.01.2018 with Bulgarkontrola AD – Fulfilled.</p> <p>As at the date of preparation of this answer, there is no new assignment contract;</p> <p>- Contract 100-Д-154/31.08.2015 with Express Lift Services OOD – Fulfilled.</p> <p>New contract signed - 100-Д-306/08.08.2018 г. with "T&amp;P ENGINEERING" EOOD – available in the Physical Data Room – <b>Appendix 3.101.</b> of 13.12.2018.</p> <p>-----</p> <p>- Contract 100-Д-280/08.12.2017 with Express Lift Services OOD - Fulfilled;</p> <p>New contract signed - 100-Д-405/10.12.2018 with Express Lift Services OOD – available in the Physical Data Room – <b>Appendix 3.101.</b> of 13.12.2018</p> <p>-----</p> <p>- Contract 100-Д-196/01.09.2017 with Bulgarian Posts – Fulfilled</p> <p>New contract signed - 100-Д-344/05.10.2018 with Bulgarian Posts EAD - available in the Physical Data Room – <b>Appendix 3.101.</b> of 13.12.2018 г.</p> <p>-----</p> <p>- Contract with Kori’s Bulgaria OOD. of 15.06.2015 – Sofia Airport EAD is not aware of such a contract.</p>
9.	<p>Please provide copy of the GHSAs (and the applicable versions of the basic IATA contract and Annex A) with:</p> <ul style="list-style-type: none"> <li>- EAT DHL</li> <li>- Corendon Europe</li> <li>- Ryanair</li> <li>- Tayran Jet</li> <li>- UAB Jrinta</li> </ul>	<p>The Agreements are available in the Physical Data Room – <b>Appendix 3.119.</b></p>
10.	<p>According to the information published on 24 December 2018 on the website www.novinite.com the Minister of Transport, Information Technology and Communications ordered an audit at Sofia Airport to check the contracts for the supply of goods at the retail outlets and to analyze the receivables worth over 10,000 levs as well as the actions taken for their collection.</p> <p>Would you please clarify whether the findings of the audit report may impact the financial results of Sofia Airport EAD for the past and future years and if the response is to affirmative – to what extent and in which way?</p>	<p>The audit refers to the operations of the current operator of the Sofia Airport and is not related in any way to the concession site and subject matter.</p>