



## LAW OF MONGOLIA ON CONCESSIONS

### CHAPTER ONE. GENERAL PROVISIONS

#### **Article 1. Purpose of the law**

1.1. The purpose of this law is to regulate relations concerning the organization of tenders for granting to investors the rights of possession, operation, creation and renovation of state and local own properties under concession agreements, conclusion, modification and termination of concession agreements and settlement of disputes.

#### **Article 2. Concession legislation**

2.1. Legislation on concession shall consist of the Constitution of Mongolia, Civil Code, Law on Government, Law on Foreign Investment, Law on State and Local Property, this law and other legislative acts enacted in conformity therewith.

2.2. If any international treaty to which Mongolia is a party is inconsistent with this law, the provisions of the international treaty shall prevail.

2.3. This law shall not apply to relations concerning transferring for possession, operation, new creation and renovation under a concession agreement of state and local public property respectively specified in 4.2 and 74.2 of the Law on State and Local Property.

2.4. Relations pertaining to the registration and inclusion into the state registry of properties newly created in accordance with the procedure stated in this law and properties possession, operation and ownership rights of which have been transferred as state and local property shall be regulated by the Law on State and Local Property and the Law on State Registration of Property Ownership Rights and Related Property Entitlements.

2.5. If the concession includes land as an integral part, such land shall be granted for possession and use according to procedures set forth in the Law on Land, Law on Subsoil and Law on Land Fees.

#### **Article 3. Definitions of the law**

3.1. The terms used in this law shall have the following meanings:

3.1.1. "Concession" shall mean a special right to transfer into possession and operation, new creation and improvement of state and local own property assets for the purpose of rendering basic social and infrastructure services to the public on the basis of an agreement according to conditions and regulations specified in this law;

3.1.2. "Concession item" shall mean items of the list stated in 10.1 and 10.2 of this law;

3.1.3. "Concession agreement" shall mean an agreement made in a written form for the implementation of a concession between the authorized entity and a concessionaire;

3.1.4. "Concessionaire" shall mean a Mongolian or foreign legal entity or their consortium that has obtained a concession according to the procedures set forth in this law;

3.1.5. "Concession financier" shall mean an entity which renders financial services for the activities the concessionaire such as giving loans or issuing guarantees;

3.1.6. "Regulatory authority" shall mean a state authority with functions to grant permission and licenses required for the implementation of a concession, determine prices and tariffs and adopt and enforce rules and regulations pertaining to the concession item or to rendering relevant services by it;

3.1.7. "authorized entity" shall mean the state administrative authority in charge of state property matters in case of the state property as a concession item or the governor of the province or the capital in case of local property as a concession item.

#### **Article 4. Concession types**

4.1. Concessions may be of the following types:

4.1.1. "Build-Operate-Transfer" contract – the concessionaire shall build the concession item by using own or raised funds, commission it, operate within the period specified in the agreement and transfer after the completion of the agreement period to the state or local ownership in compliance with conditions stated in the agreement;

- 4.1.2. "Build-Transfer" contract – the concessionaire shall build the concession item by using own or raised funds, commission it and transfer to the state or local ownership in accordance with the conditions stipulated in the agreement;
- 4.1.3. "Build-Own-Operate" contract – the concessionaire shall build the concession item by using own or raised funds, commission it, own and operate in compliance with conditions and obligations stated in the agreement;
- 4.1.4. "Build-Own-Operate-Transfer" – the concessionaire shall build the concession item by using own or raised funds, commission it, operate and own within the period specified in the agreement and transfer after the completion of the agreement period to the state or local ownership in compliance with conditions stated in the agreement;
- 4.1.5. "Build-Lease-Transfer" – the concessionaire shall build the concession item by using own or raised funds, commission it, give it for possession to the authorized entity under financial lease as specified in the agreement and transfer to the state or local ownership once the lease duration is complete;
- 4.1.6. "Design-Build-Finance-Operate" – the concessionaire shall produce the design of the concession item, build by using own or raised funds, operate within the period specified in the agreement and transfer after the completion of the period to the state or local ownership in accordance with the conditions stipulated in the agreement;
- 4.1.7. "Renovate-Operate-Transfer" – the concessionaire shall renovate the concession item by using own or raised funds, operate within the period specified in the agreement and transfer the concession item with the renovated item to the state or local ownership in accordance with the conditions stipulated in the agreement.
- 4.2. Types other than those stipulated in 4.1 of this law may be adopted considering the specific concession item and the nature of the rendered works and services.

#### **Article 5. Ownership rights related to concession items**

- 5.1. The concession agreement shall specify the ownership issues of the concession item and its parts and equipment, which may be entered in the agreement according to the following classification:
- 5.1.1. property to be transferred to the state and local ownership or to other entities according to the concession agreement;
- 5.1.2. property which may be purchased into the ownership from the concessionaire by the state or local administration;
- 5.1.3. property which the concessionaire may keep to itself and expend after the completion of the concession agreement.
- 5.2. Unless the concession agreement provides otherwise, the concession item renovated under the concession agreement shall be the ownership of the state.
- 5.3. Unless otherwise provided in the concession agreement, the tangible property and intellectual values created during the use of the concession item shall be the state and local property.
- 5.4. Unless otherwise provided in the concession agreement, the profits earned during the possession and operation of the concession item and future profit other than those specified in 5.3 of this law shall pertain to the property of the concessionaire.
- 5.5. Unless the concession agreement provides otherwise, in cases other than those when the concession item, land and other property transferred for use to the concessionaire are no longer available or required for the purpose specified in the agreement, the authorized entity and other state institutions and officials shall be prohibited to issue a decision to return or expend them before the completion of the concession agreement.

## **CHAPTER TWO. POWERS OF THE STATE AND LOCAL SELF-GOVERNANCE AND ADMINISTRATIVE AUTHORITIES ON CONCESSION**

#### **Article 6. Powers of the state institutions**

- 6.1. The government shall exercise the following powers:
- 6.1.1. approving and amending the list of state property concession items;
- 6.1.2. issuing the decision on granting the concession and authorizing the institution specified in 6.2 of this law with the right to enter into an agreement of concession;
- 6.1.3. reporting annually to the economic standing committee of the Grand State Assembly on implementation of the concession legislation.
- 6.1.4. other powers stipulated in the legislation.
- 6.2. The state administrative authority in charge of state property matters shall exercise the following powers:

- 6.2.1. submitting to the government a proposed list of concession items;
  - 6.2.2. researching and devising proposals on concession items;
  - 6.2.3. announcing publicly the list of concession items;
  - 6.2.4. providing methodological and professional assistance to other relevant authorities in granting and implementing concessions;
  - 6.2.5. evaluating and overseeing the implementation of the concession agreement and implementing the concession legislation;
  - 6.2.6. maintaining a nationwide consolidated registry and establishing a database on concessions;
  - 6.2.7. adopting publicly binding acts when receiving specific powers by legislation;
  - 6.2.8. devising the documents of the tender specified in Article 11 of this law jointly with the relevant state administrative institution, announcing the tender, organizing and evaluating it;
  - 6.2.9. entering with the concessionaire and other entities into a concession agreement and other contracts relevant to it, such as contracts of the concessionaire to seek financing;
  - 6.2.10. other powers specified in the legislation.
- 6.3. The state administrative authority in charge of state property matters shall provide professional and methodological assistance to relevant local authorities regarding concession.

#### **Article 7. Powers of the local administrative and self-governance institutions**

- 7.1. The Citizens' Representatives Assemblies of provinces and the capital city shall implement the powers stipulated in 6.2.2-6.2.6 and 6.2.10 of this law regarding local property concession items.
- 7.2. The governors of provinces and the capital city shall regarding local property concession items exercise the power to submit lists of concession items to the Citizens' Representatives Assemblies and powers specified in 6.1.1, 6.1.2 and 6.1.4 of this law.

#### **Article 8. Prohibited activities of organizations and officials**

- 8.1. State and local administrations, self-governance institutions and officials shall be prohibited from the following in their activities:
- 8.1.1. decisions to award by concession the items of state or local property not included in the list of concession items;
  - 8.1.2. decisions on privatizing the concession item during the concession agreement;
  - 8.1.3. interference with corporate activities of the concessionaire in cases other than those stipulated in the legislation and the agreement.
  - 8.1.4. unless the law provides otherwise, disclosure of the classified information pertaining to commercial and corporate activities of the tender participant specified in Article 11 of this law and the concessionaire.
- 8.2. State institutions, local administrative and self-governance authorities and factories under state or local ownership shall not bear the obligation or right to operate, repair or renovate the concession item transferred to the concessionaire and shall be prohibited from entering into loan or loan collateral contracts related to the concession item without the consent of the concessionaire.

### **CHAPTER THREE. LIST OF CONCESSION ITEMS**

#### **Article 9. Elaboration of proposed concession items**

- 9.1. The state central administrative authority in charge of the respective matter and state administrative authority in charge of investments shall submit to the authorized entity the proposal on concession items produced according to 10.3 of this law together with the cost and benefit estimation.
- 9.2. Central state administrative authorities may jointly issue the proposal specified in 9.1 of this law.
- 9.3. The state administrative authority in charge of state property matters shall deliver to the government the finalized proposal list of concession items based on opinion of the state central administrative authority in charge of financial matters.
- 9.4. The governors of provinces and the capital city shall deliver the proposal produced according to 10.3 of this law on concession items to be included in the list specified in 10.2 of this law to the Citizens' Representatives Assemblies of the province or the capital city together with the cost and benefit estimation.

9.5. The governors of provinces and the capital city shall before submitting the proposal stipulated in 9.4 of this law to the Citizens' Representatives Assembly obtain the opinion of the central state administrative authority in charge of the relevant matter and the state administrative authorities in charge of the state property and of investments.

9.6. The state administrative authority in charge of state property matters shall adopt a (the) methodology to conduct the cost and benefit estimation.

#### **Article 10. Adoption of the list of the concession items**

10.1. The government shall adopt the list of state property concession items.

10.2. The Citizens' Representatives Assemblies of provinces and the capital city shall adopt the list of local property concession items.

10.3. The following items shall be included in the list of concession items:

10.3.1. Title and description of the concession item, concession type, works and services rendered;

10.3.2. Whether financial assistance from budget funds shall be provided and guarantees issued;

10.3.3. Whether a tender is to be organized as specified in Article 11 of this law or an agreement will be concluded directly.

### **CHAPTER FOUR. GRANTING A CONCESSION RIGHT**

#### **Article 11. Organizing a tender**

11.1. In cases other than those specified in Article 17 of this law, the concession shall be granted through a tender of selecting the project (hereinafter referred to as "tender").

11.2. The authorized entity shall organize and evaluate the tender and shall implement the following functions:

11.2.1. approving the tender documents, stages of the tender and its evaluation;

11.2.2. announcing the date of the tender;

11.2.3. receiving and evaluating tender bids, negotiating with participants and evaluating the tender;

11.2.4. submit the conclusion for resolution to the government or Citizens' Representatives Assembly of the province or the capital city.

11.3. The tender shall be organized in the following stages:

11.3.1. announcing the tender;

11.3.2. receiving the proposals of participating in the tender;

11.3.3. evaluating the submitted tender proposals and selecting the tender participants (hereinafter referred to as "participants");

11.3.4. providing tender documents to participants;

11.3.5. organizing meetings with participants and the authorized entity, if necessary, viewing relevant information and documents;

11.3.6. submitting the project bids by participants;

11.3.7. receiving project bids of participants according to the proper procedure;

11.3.8. evaluating the project bids and making the list of qualified participants;

11.3.9. negotiating with participants of the list on terms of the agreement;

11.3.10. delivering the outcome of the tender to relevant institutions and obtaining a relevant decision.

11.4. The government shall adopt the detailed procedure, sample documents and bid evaluation regulations of the tender.

11.5. The organization of the tender shall establish conditions for equal treatment of all participants, deliver information to them on an equal level, demand the same requirements and adhere to the principle of transparency in tender activities.

11.6. Participants shall be obligated to provide any information required by the authorized entity.

11.7. It is prohibited to specifically pre-indicate the requirements and terms regarding trademark, name, form, type, origins, geographical location, industrial methods, producer and supplier in the tender documents.

#### **Article 12. Invitation to tender**

12.1. Advertisement to the tender shall contain the following information:

12.1.1. description on concession item;

12.1.2. general terms of the agreement;

12.1.3. general requirements for participants;

12.1.4. whether a consortium of legal entities may participate in the tender;

- 12.1.5. whether only a limited number of entities is allowed to tender;
- 12.1.6. whether the winner of the tender shall establish a legal entity to implement the concession;
- 12.1.7. stages and procedures of the tender;
- 12.1.8. address to submit the request to participate in the tender, type and timeline;
- 12.1.9. other information that the authorized entity deems necessary.
- 12.2. The advertisement for tenders shall be published through national daily newspapers and other means of media and, if deemed necessary, through media of that specific sector that uses a language commonly used in international trade.
- 12.3. An entity which has previously submitted its proposal to take part in the tender shall have the right to retrieve or re-submit the proposal before the deadline for receiving proposals.
- 12.4. The deadline for tender participants to submit the proposals shall not be less than two months since its announcement.
- 12.5. The authorized entity shall be obliged to provide information to the public by making presentations on the tender or convening meetings.

### **Article 13. Selection of participants**

- 13.1. Mongolian and foreign legal entities or their consortiums meeting the general requirements specified in 12.1.3 of this law shall for the purpose of participating in the tender have the right to submit to the authorized entity the sealed proposals filed in accordance with information set forth in 12.1 of this law.
- 13.2. The authorized entity shall register and receive the proposals stated in 13.1 of this law by the order of their delivery.
- 13.3. The proposals specified in 13.1 of this law shall be evaluated on the following criteria and participants shall be selected:
  - 13.3.1. financial capacity;
  - 13.3.2. administration, professional staff, technical and technological capacity, experience;
  - 13.3.3. satisfaction of conditions necessary to obtain the business license for the specific activity as required by the Law on Licensing of Economic Activities;
  - 13.3.4. whether requirements stipulated in 12.1.3 are met;
  - 13.3.5. other criteria deemed necessary by the authorized entity.
- 13.4. The evaluation of a consortium of legal entities which submitted the proposal to participate in the tender shall observe the following principles:
  - 13.4.1. the criteria specified in this law shall only apply to the consortium of legal entities as a whole;
  - 13.4.2. the member legal entity of the consortium shall be a member of one consortium of legal entities during one tender;
  - 13.4.3. unless the advertisement of the tender provides otherwise, where a legal entity participated in a tender as a member of a consortium of legal entities, it shall not participate separately in the specific tender.
- 13.5. The authorized entity may limit by a certain number the participants of the tender depending on the nature of the concession item, including inspecting at any stage of the tender whether participants satisfy the criteria stated in 13.3 and 13.4 of this law.
- 13.6. The list of participants authorized to submit project bids shall be made by the authorized entity including the eligible participants which ensured the criteria stated in 13.3 and 13.4 of this law. They shall be notified and award of the documents of the tender shall be organized.
- 13.7. The documents of the tender shall include the following:
  - 13.7.1. general information on the project;
  - 13.7.2. detailed indicators such as capacity and quantity of concession items to be created or improved;
  - 13.7.3. detailed indicators such as limitations to rights for possessing and operating the concession items, quantities, quality, capacity of works and services to be rendered;
  - 13.7.4. prices, tariffs and licenses related to owning and using the concession item and other relevant information;
  - 13.7.5. specific requirements of environment, health and labour safety standards;
  - 13.7.6. draft of the agreement with general conditions and non-compromising conditions with the agreement party and whether there shall be an additional agreement, if so, details of such agreement;
  - 13.7.7. whether payments are required for using the concession item, if so, the amount and form of payment;
  - 13.7.8. whether there shall be financial assistance from the state, if so, its amount and form;

13.7.9. criteria to receive, open and evaluate proposals;

13.7.10. an amount of collateral, account to place collateral, duration and conditions;

13.7.11. address, form and deadline of receiving the proposals.

13.8. The authorized entity may amend the documents of the tender and, where such amendments are made, may inform the participants within time possible for submitting the project bids or prolong the period of delivering the project bids.

13.9. The authorized entity may organize meetings for the purpose of providing all participants the information regarding the documents of the tender.

13.10. The authorized entity may appoint and employ a working group with representation of relevant organizations for approving the documents of the tender, evaluating the project bids and negotiating according to Article 15 of this law.

#### **Article 14. Submission of project bids and their evaluation**

14.1. The participants specified in 13.6 of this law shall submit their sealed proposals with the technical and economic assessment according to the documents of the tender.

14.2. The authorized entity shall receive the project bids registering their form and delivery date, open them according to the documents of the tender and organize the evaluation work.

14.3. The project bids shall be evaluated according to the following criteria:

14.3.1. technical qualifications, activity evaluation;

14.3.2. quality and access of rendered services;

14.3.3. evaluation of agreement terms;

14.3.4. total amount of payments and fees of rendered works and services within the concession agreement period in values of the current time;

14.3.5. cost of designs, schemes and construction work and amount and present value of flowing expenditures and total investments;

14.3.6. financial support from the state, its type and amount;

14.3.7. financing plan;

14.3.8. effect on the social and economic development of the country.

14.3.9. whether environmental requirements are satisfied;

14.3.10. other criteria deemed necessary by the authorized entity.

14.4. The authorized entity shall compare the project bids according to 14.3 of this law and rank them according to best conditions offered.

14.5. The procedure of submitting the project bids and of their evaluation shall be open to the public and may be published in the daily press.

#### **Article 15. Negotiations with the participant and evaluation of the tender**

15.1. The authorized entity shall negotiate with the participant regarding the terms of a concession agreement and other relevant contracts.

15.2. Negotiations shall adhere to the following procedure:

15.2.1. the authorized entity shall start negotiation with the participant which offered the best conditions but shall have the right to leave the negotiation without completing it and start with the next participant;

15.2.2. negotiations shall adhere to the order of the list specified in 13.6 of this law.

15.3. The authorized entity shall issue an opinion on entering into an agreement with one agreeing participant offering the best terms of the agreement as a result of negotiations and deliver it to the government or the Citizens' Representatives Assembly of the province or the capital city within five business days.

#### **Article 16. Organization of two stages in developing project bids**

16.1. Where the authorized entity considers that it is not possible specifically to reflect the technical and economic feasibility justification, financing conditions and criteria in the primary tender documents due to the peculiarity of the type and industry of the concession item, the project bids shall be organized by two stages.

16.2. When conducting the project bids by two stages, a request shall be sent to the participants to submit a separate proposal on issues specified in 13.7 of this law.

16.3. The authorized entity shall after processing the proposals submitted by the participants according to 16.2 of this law finalize the documents of the tender.

16.4. The authorized entity may organize a meeting with the participants in order to clarify and obtain additional information on the proposals specified in 16.3 of this law.

16.5. Participants shall submit to the authorized entity the project bids within the framework of documents specified in 16.3 of this law.

16.6. The authorized entity shall comply with the procedures stated in Articles 14 and 15 of this law when evaluating, negotiating and concluding the project bids.

#### **Article 17. Concluding a direct agreement**

17.1. A concession right shall be granted by concluding a direct agreement under the following cases:

17.1.1. it was deemed that conducting tender conflicts with national security;

17.1.2. rights relating to intellectual property exclusively necessary for implementing the concession are in the ownership of one or more entities with a common interest;

17.1.3. the authorized entity considered that no proposals were received in response to a tender invitation, or no qualifying proposals were received and it was deemed that there is little probability of proposals being received within the required period in case of a re-invitation;

17.1.4. the concession item has been transferred to other entities according to 28 of this law.

17.2. The authorized entity shall issue an opinion on concluding a direct agreement and submit it to the government or the Citizens' Representatives Assembly of the province or the capital city.

#### **Article 18. Submission of unsolicited proposals for a concession agreement**

18.1. Mongolian and foreign legal entities or their consortiums may submit to the authorized entity an unsolicited proposal to enter into a concession agreement along with the cost and benefit estimation.

18.2. In case of the state property concession item, the authorized entity shall regarding the proposal specified in 18.1 of this law obtain the opinions of the central state administrative authority in charge of the relevant matter and the state administrative authority in charge of investments and decide whether to support the proposal by including it in the list of concession items based upon the opinion of the state administrative authority in charge of financial matters.

18.3. In case of the local property concession item, the authorized entity shall need to obtain the opinion of institutions stated in 9.5 of this law when issuing the decision.

18.4. Where the authorized entity considers that the proposal specified in 18.1 of this law needs to be included in the list of concession items by the procedure stipulated in Article 9 of this law or be included in the list of concession items of the next year, it shall deliver a request to the government or the Citizens' Representatives Assembly of the province or the capital city.

18.5. Where the government or the Citizens' Representatives Assembly of the province or the capital city decides to include in the list of concession items, the authorized entity shall organize a tender according to the procedure set forth in this law.

18.6. Where not a single entity delivers its notice to participate in the tender specified in 18.5 of this law, the authorized entity shall consider the initiating entity as the participant who has offered the best proposal and a relevant conclusion shall be submitted to the government or the Citizens' Representatives Assembly of the province or the capital city.

18.7. Where several entities issue requests to participate in the tender, the initiating entity shall have an advantage during the evaluation of the project bids and the documents of the tender shall include such a provision.

#### **Article 19. Decision to enter into an agreement**

19.1. The government shall issue a permit to the authorized entity to enter into the agreement on the basis of a conclusion submitted according to 15.3, 17.2, 18.6 and 18.7 of this law.

19.2. Where the concession agreement provides to grant tax exemptions and discounts to the concessionaire, the government shall submit this matter to the Grand State Assembly for ratification.

19.3. The Citizens' Representatives Assembly of the province or the capital city shall grant permission to enter into an agreement to the governor of the province or the capital city based on the opinion stipulated in 19.1 of this law.

19.4. Where the government or the Citizens' Representatives Assembly of the province or the capital city has not supported entering into a concession agreement, a decision either to renegotiate or reorganize the tender shall be made.

19.5. The relevant procedures in this law shall apply in renegotiations or reorganization of the tender.

## CHAPTER FIVE. CONCESSION AGREEMENT

### Article 20. Parties of the agreement

20.1. The following entities shall be the parties of the concession agreement:

20.1.1. Regarding concession of the state property item, the state administrative authority in charge of state property matter; and regarding concession of the local property items, the governor of the province or the capital city;

20.1.2. a winner of a tender

20.1.3. if the method to conclude a direct agreement is employed, an entity fulfilling the requirements of concluding a direct agreement as specified in this law.

### Article 21. Conditions of an agreement

21.1 Unless the law and the agreement provide otherwise, the agreement shall be concluded and interpreted in accordance with the laws of Mongolia and include in itself the following conditions:

21.1.1. ownership of property transferred to the concessionaire, obligations and liabilities of the authorized entity and of the regulatory institutions required for the concession implementation;

21.1.2. terms, range and limitations of works and services rendered by the concessionaire and the scope of exclusive rights of the concessionaire;

21.1.3. the right of the concessionaire to receive payments for letting use the concession item and providing services by the concessionaire, methodology to determine and amend prices and tariffs and methods of its oversight;

21.1.4. conditions for transferring the control packet of shares of the concessionaire and for obtaining the authorized entity's permission to such transfer;

21.1.5. amount of payments by the authorized entity to the concessionaire for rendered works and services;

21.1.6. whether to obtain financing or creating the right of collateral by the concessionaire;

21.1.7. financial support for the implementation of the concession agreement from the state;

21.1.8. rights and obligations of the regulatory authority to provide support to the concessionaire in obtaining permissions, licenses, land or land use entitlements required to implement the concession;

21.1.9. rights and obligations of the parties regarding possession and use of land and its subsoil;

21.1.10. rights of the concessionaire to ensure continuity and quality requirements of rendered works and services and to change the rendered works and services conforming to the conditions of the agreement;

21.1.11. obligation of the concessionaire to provide to the same class of customers the service under equal conditions;

21.1.12. if a legal entity shall be established according to the laws of Mongolia for the purposes of exercising the concession, its minimum amount of equity and requirements for the legal entity;

21.1.13. the right of the concessionaire to receive compensation in case of increase of concessionaire's costs or decrease of revenue due to amendments to legislation related directly to implementation of the concession;

21.1.14. conditions to temporarily take the concession item by the authorized entity;

21.1.15. terms to change the concessionaire;

21.1.16. procedure to resolve debt, payments and receivables, obligations and liabilities of state and local administrative authorities or of the state or local property organizations related to the possession and use of the concession item and rendering works and services with it before the validity of the concession agreement;

21.1.17. obligation of the concessionaire to provide reports and information;

21.1.18. concluding high cost or conflict-of-interest transactions and procedure for the authorized state authority to monitor it;

21.1.19. rights and obligations of the concessionaire regarding the quality guarantees of the concession item after transferring it upon the completion of the concession agreement;

21.1.20. procedures for inspecting, testing, receiving and permitting the concession item, overseeing the activities of the concessionaire, transferring the technology and training the employees after receiving the concession item;

21.1.21. where necessary, continued service of the concessionaire related to maintenance of the concession item after its transfer;

21.1.22. the amount of payments where required in relation to transferring the concession item to the entity specified in the agreement or to a new concessionaire;

21.1.23. duration of the concession agreement, its prolongation, transfer of rights and obligations of the agreement, make



amendments, relationship of the concession agreement with other relevant contracts, force majeure, instances of non-performance of obligations, grounds of cancelation and termination of the agreement, actions for handing over and transferring the concession item and the dispute resolution procedure.

21.1.24. other items mutually agreed by the parties.

#### **Article 22. Duration and extension of the concession agreement**

22.1. The parties of the agreement shall mutually determine the duration of the concession agreement considering the specifics of the industry, period of implementing the investment plan, amount of investments, its recuperation time, profits and the period of the concession item usage.

22.2. The authorized entity shall prolong the duration of the concession agreement on the following grounds:

22.2.1. disruption or delay of activities stated in the concession agreement due to emergency situations related to force majeure;

22.2.2. disruption or delay of activities stated in the concession agreement due to a decision of state authorities;

22.2.3. requests and demands of the authorized entity not included in the concession agreement cause an increase of costs to the concessionaire and the concessionaire is unable to recuperate the costs without prolonging the concession agreement.

22.3 The authorized entity may prolong the concession agreement if a financial impact occurred for the concessionaire or unforeseen situation occurred causing to impose too high tariff or charges for the public

#### **Article 23. Amendments to the concession agreement**

23.1. The parties to the agreement may mutually agree on amendments to the concession agreement.

23.2. The concessionaire may issue a request to amend the agreement for receiving compensations on the following grounds:

23.2.1. change in the financial and economic situation;

23.2.2. change in the legislation on concession.

23.3. The request stipulated in 23.2 of this law shall be issued where the conditions specified in 23.2.1 and 23.2.2 of this law occurred after the conclusion of the agreement, there has not been any possibility to foresee the occurrence of these conditions and the concessionaire is unable to overcome these conditions by itself.

23.4. The concession agreement shall include the procedure of amending the terms of the agreement according to 23.2 and 23.3 of this law.

#### **Article 24. Cancellation and termination of the concession agreement**

24.1. The concession agreement shall be terminated in the following cases:

24.1.1. by mutual agreement of the parties;

24.1.2. term of the concession agreement is expired and has not been extended;

24.1.3. unless otherwise stated in law and the concession agreement, the concessionaire was bankrupted or liquidated;

24.1.4. concession agreement was terminated in accordance with this law or the concession agreement.

24.2. The concession agreement shall be cancelled by the authorized entity's initiative on the following grounds:

24.2.1. it is determined that the concessionaire breached the law or submitted false documentation during participation in the tender;

24.2.2. the concessionaire repeatedly or seriously breached the legislation of Mongolia as determined by the authorized institution;

24.2.3 the concessionaire's failure to fulfill or improper fulfillment of duties and liabilities assumed by the concession agreement provides grounds to cancel the agreement as specified in the concession agreement;

24.2.4. the government has resolved to cancel the concession agreement taking into consideration the national security, national defense or public interest issues;

24.2.5. the controlling shares of the concessionaire have been transferred to others without the permission of the authorized entity in cases other than those stipulated in the concession agreement;

24.2.6 Unless the concession agreement provides otherwise, the concessionaire was bankrupted or liquidated.

24.3. A concession agreement shall be cancelled upon the initiative of the concessionaire in the following cases:

24.3.1. the authorized entity or regulatory institution's failure to fulfill or improper fulfillment of obligations accepted by the concession agreement provides grounds to cancel the agreement as specified in the agreement;

24.3.2. the parties to the agreement failed to agree on introducing amendments to the concession agreement specified in article 23 of this law that provides grounds to cancel it;

24.3.3. other grounds stated in the law and the concession agreement.

24.4. The agreement shall specify the calculation of compensations to parties after the cancellation of the concession agreement and such calculation shall consider proper values of the work implemented according to the concession agreement, incurred expenses, damages to the relevant party and including potential profit that may have been obtained where required.

24.5. Unless otherwise stated in this law and the concession agreement, upon termination of a concession agreement, rights for possession, operation and administration of a concession item shall be transferred to a relevant authority in charge of state or local property.

#### **Article 25. Monitoring of the fulfillment of an agreement**

25.1 The following entities shall monitor the fulfillment of a concession agreement:

25.1.1 the state central administration authority in charge of a particular concession item;

25.1.2 the state central administration authority in charge of state property matters and an authority in charge of local property matters;

25.1.3 other authorities and officials authorized to monitor as specified in laws

### **CHAPTER SIX. POWERS OF THE CONCESSIONAIRE AND THE CONCESSION FINANCIER**

#### **Article 26. Rights and duties of a concessionaire**

26.1. The concessionaire shall have the following generic rights:

26.1.1. setting, amending and collecting in consultations with the authorized entity and the regulatory institution the amount of payment and fees charged for the works and services performed according to the agreement;

26.1.2. entering jointly into other contracts relevant to the concession agreement with regulatory authorities and the authorized entity, where necessary;

26.1.3. obtaining financing in the forms permitted by the agreement;

26.1.4. pledging into collateral any of own property including property and entitlements related to the concession item for the purpose of seeking financing to implement the concession, unless the concession agreement provides otherwise;

26.2. The properties and entitlements specified in 26.1.4 of this law may include the following:

26.2.1. all kinds of payments or future profits obtained for using or receiving the services of the concession item;

26.2.2. the concession item newly created or renovated by the concessionaire or personally purchased property.

26.3. A shareholder of the concessionaire may pledge into collateral their shares for the purpose of financing the activities of the concession.

26.4. The concessionaire shall have the following generic duties:

26.4.1. running activities in compliance with the legislation and concession agreement;

26.4.2. paying the concession fee as prescribed in the procedures provided in the concession agreement;

26.4.3. avoiding the degradation in the quality, quantity and volume of rendered works and services below the level specified in the agreement;

26.4.4. possessing, operating, repairing and maintaining the concession item in compliance with its designated purpose;

26.4.5. paying the legally imposed taxes and fees;

26.4.6. other duties specified in the law.

26.5. If the concession agreement states, the concessionaire shall have the obligation to insure a concession item from force majeure.

26.6. A sub-contractor may perform works and service pertaining to the implementation of a concession agreement and the concessionaire shall bear a responsibility of quality assurance and performance of such work and service performed.

#### **Article 27. Prohibitions for a concessionaire**

27.1. The following shall be prohibited for a concessionaire:

27.1.1. transferring its rights and duties to others in cases other than those specified in the law or the agreement;

27.1.2. transferring the concession item to others by presenting, trading or selling or pledging the concession item except

for the purpose of financing or other purposes specified in the concession agreement;

27.1.3. interrupting or stopping the works and services agreed by the concession agreement without the permission of the authorized entity unless the concession agreement provides otherwise;

27.1.4. transferring its controlling shares to others without the permission of the authorized entity by pledging and selling unless the concession agreement provides otherwise.

#### **Article 28. Rights of the concession financier**

28.1. The concession financier shall exercise the following rights:

28.1.1. monitoring the activities of the concessionaire;

28.1.2. accessing to the concession item, its facilities and building to exert the rights specified in this law;

28.1.3. transfer to itself the property and entitlements that the concessionaire has pledged;

28.1.4. proposing to the authorized entity to manage the concession property with a permit of the authorized entity and to transfer property to others, if the concessionaire failed to fulfill the agreement obligations or has fulfilled them (it) improperly, or if the concessionaire is bankrupt or liquidated.

28.1.5 other rights specified in the concession agreement and other agreements related to financing.

28.2. The authorized entity, the concessionaire and the concession financier may enter into an agreement upon mutual consent and the agreement shall include the following:

28.2.1. conditions and procedure to replace the concessionaire;

28.2.2. the grounds for the authorized entity to refuse the entity newly offered to possess the concession;

28.2.3. obligations of the concession financier to provide services according to terms and standards required by the concession agreement;

28.2.4. other items specified in the legislation on concession.

### **CHAPTER SEVEN. GUARANTEE FOR THE IMPLEMENTATION OF THE CONCESSION**

#### **Article 29. Granting a license and rights**

29.1. The concession tender participant's lack of a license required for works and services in the specific activity as specified by laws shall not serve as grounds for refusing his/her participation in the tender.

29.2. Where works and services rendered by the concessionaire require a license of business activities, the relevant licenses shall be granted immediately after the conclusion of an agreement with the concessionaire.

29.3. If the concession item is a facility or construction of land composition, the regulatory authority shall immediately resolve the issue of using the specific land according to the relevant procedure.

29.4. The authorized entity and the regulatory institution shall need to resolve the matter according to relevant laws before granting the concession where the implementation of concession will require transit through the land possessed, used or owned by a third party, or needed to perform work or maintain repair and service of any equipment, buildings and facilities pertained to the concession item located in such land.

#### **Article 30. The state financial support**

30.1. The state may provide the following financial support to the concessionaire:

30.1.1. issuing a loan guarantee;

30.1.2. providing a certain part of concession financing;

30.1.3. providing tax credit and exemption according to relevant laws

30.1.4. covering under insurance

30.1.5. issuing a guarantee for the minimum amount of the concessionaire's profit according to the concession agreement;

30.1.6. providing compensations where this law and the concession agreement specify;

30.1.7. others.

30.2. Guarantee, support amount, terms and requirements specified in 30.1 of this law shall be set up by an agreement.

30.3. If parties set the service payment and tariff rates for works and services under the concession agreements to be lower than the actual costs, the difference may be agreed to be reimbursed from the state or local budget.

30.4. In consideration for the nature of the specific sector and the concession item, the reimbursement specified in 30.3 of this law may be granted to the concessionaire until such time when the concessionaire can operate without incurring financial losses.

### **Article 31. Risk sharing**

31.1. A concessionaire shall bear full responsibilities for economic activities risks caused during the implementation of the concession unless the concession agreement provides otherwise.

31.2. The agreement shall regulate the responsibility for risks occurring due to emergency situations related to force majeure.

31.3. A concessionaire shall fully bear losses, damages to others and obligations to a (the) third party caused by its wrong doing during terms of possessing and operating the concession item.

### **Article 32. Concession rights, transfer of concession item to others**

32.1. The right and obligation of concessionaire shall be prohibited to be transferred to a third party without permission of the authorized entity unless the law and the concession agreement provides otherwise.

32.2 Provisions permitting the transfer of the rights and obligations of the concessionaire to others by the authorized entity, including provisions on receiving the right and obligation by a new concessionaire, (a) proven technical and financial capacity needed for rendering contractual service etc., shall be included in the concession agreement.

32.3 Where the concessionaire has seriously or repeatedly breached the concession agreement or has not implemented the demands to implement them in a proper time, the authorized entity shall take over temporarily the concession item according to the terms of the agreement for the purpose of unhindered provision of works and services by the concession item.

## **CHAPTER EIGHT. MISCELLANEOUS PROVISIONS**

### **Article 33. Transparency**

33.1. The list specified in article 10 of this law and its amendments shall be publicly announced through nationwide daily press and media outlets.

33.2. The incidences of each agreement made by means of a tender or direct negotiation as stated in Articles 11-15 of this law and information on the concessionaire, concession item and rendered works and services shall be publicly disclosed.

33.3. Details of the concession agreement shall be open to the public except the parts pertaining to the state secret or classified information (regarded as corporate confidential information) of the concessionaire regarding trade and technology.

33.4. The authorized entity shall consolidate any documents and materials related to organized tenders and store them in an established database.

### **Article 34. Settlement of disputes**

34.1. Complaints related to granting the right of concession shall be made to the authorized entity within 10 business days from commencement of such activity, and if the resolution is not accepted, a complaint may be taken to court.

34.2. Any disputes raised between the parties of the concession agreement shall be resolved in the way of mutual reconciliation.

34.3 Disputes raised between the concessionaire, its shareholder, financier or other partners in relation to its business activities shall be resolved by their mutual consent.

34.4. Disputes caused between the concessionaire and customer regarding the activities stated in the concession agreement shall be resolved at the court and by means specified in the law.

### **Article 35. Penalties imposed for violation of legislation**

35.1. If the parties of the concession agreement failed to fulfill the obligations determined by this law or agreement or fulfilled improperly, they shall take property responsibility as stated in the agreement or if the agreement does not provide, according to the Civil Code.

35.2. If a breach of the following legislation does not constitute a criminal offense, the court or state inspector shall impose the following administrative penalties:

35.2.1. imposing a penalty of MNT 200 000-250 000 on the government organization and official who violated the procedure on organizing a tender;

35.2.2. imposing a penalty of MNT 250 000-300 000 on the official who violated the procedure on evaluation of the tender

documents and paragraph 11.1 of this law;

35.2.3. imposing a penalty of MNT 250 000-300 000 on the government organization or official who violated Article 33 of this law.

35.3. Civil servants breaching the legislation on concession may be subject to disciplinary sanctions specified in the Law on Civil Service depending on the nature of the breach.

**Article 36. Effectiveness of the law**

36.1. This law shall become effective from the date of its adoption or as of March 1, 2010.

**SIGNATURE**

**THE LAW ON AMENDMENTS TO THE LAW ON STATE AND LOCAL PROPERTY**

Date: ... 2009 Ulaanbaatar

**Article 1.** Add the section 6 to the article 6 of the Law on State and Local Property that states:

“6/ Property created newly under the concession agreement;”

**Article 2.** Add “, 6” after “1-4” in 75.1 of the Law on State and Local Property.

**Article 3.** Amend the section 2 of the article 27 of the Law on State and Local Property as follows:

“2. Possession, operation, renovation and new creation of the state ownership land and its subsoil, state and local own properties on the basis of the concession agreement shall be specially regulated by a law”.

**Article 3.** This law shall be effective from the date of effectiveness of the Law on Concession.

**SIGNATURE**

Last Updated on Tuesday, 27 March 2012 15:12