

POLISH LAW ON TOLL MOTORWAYS

Act on toll motorways

of October 27, 1994

Warning

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Warning...

Particular care should be taken in the use of these clauses: the specificities of each PPP project may render these examples inappropriate or irrelevant in a particular situation.

Coherence with other documents of the legal framework should also be carefully checked.

ACT ON TOLL MOTORWAYS

of October 27, 1994
General Provisions

Art. 1

1. This Act defines the conditions for the preparations for the construction of toll motorways, the terms for awarding concessions and for the conclusion of contracts for the construction and operation of toll motorways, referred to hereinafter as "motorways", and designates the responsible bodies.
2. The Council of Ministers shall designate by Order the motorways or sections thereof which are to be built and operated on a fee basis.
3. In justified cases the Council of Ministers may by Order extend the provisions of the Act to cover, in full or in part, specified express roads.
4. The motorways and express roads, referred to in points 2 and 3 above, may be designated in the regulations if it will be possible to make use of an alternative generally accessible public road.

Art. 2

1. The Minister for Transportation and Shipping is the supreme state administrative body for issues relating to the preparations for the construction and operation of motorways. This article does not affect the rights of the Minister of Physical Planning and Construction as defined by the provisions of the Construction Law.
2. The Minister of Transportation and Shipping is responsible for issuing, by Order, the regulations relating to the technical construction of motorways.

Art. 3

1. A toll shall be collected for the use of the motorway.
2. Tolls for the use of motorways shall be set and collected by the company which holds a concession granted on the terms defined in the Act, referred to hereinafter as the "concessionaire".
3. Vehicles taking part in operations to save life or rescue persons or property and police patrol cars shall be exempt from tolls.
4. The Minister of Transportation and Shipping shall define by Order the specific terms and conditions for establishing and collecting the tolls for the use of the motorway, and the method of advertising the level of those tolls.

Art. 4

The regulations of chapters 4 and 5 shall also apply mutatis mutandis to the construction of non-toll motorways.

Chapter 2

The Agency for the Construction and Operation of Motorways

Art. 5

1. An Agency for the Construction and Operation of Motorways is hereby created, hereinafter referred to as the "Agency". The Agency is a state legal entity.
2. The seat of the Agency is the capital city of Warsaw.

Art. 6

The Minister for Transportation and Shipping is responsible for supervising the Agency.

Art. 7

1. The agency prepares and co-ordinates the construction and operation of motorways within the scope of the Act.
2. The duties of the Agency include:
 - 1) conducting studies relating to motorways, including the effect they have on the natural environment,
 - 2) co-operation with relevant bodies in matters relating to land development, national defence, land-surveying, land management, registration of land and buildings, integration and exchange of land, land drainage improvement, protection of forestry and arable land, environmental protection and protection of historical monuments,
 - 3) acquisition, for the Treasury, of the land on which the motorways are to be built,
 - 4) preparation of the criteria by which offers in tender proceedings will be evaluated,

- 5) conducting tenders, preparation of concession projects and negotiation of concession agreements,
- 6) adjustment of the construction project for the motorway or a section thereof so that it complies with the technical rules on construction referred to in Art.2, point 2,
- 7) control over the construction and operation of motorways to monitor compliance with the concession awarded and the terms and conditions of the concession agreement,
- 8) conducting other activities relating to motorways, as defined by the Minister for Transport and Shipping.

Art. 8

1. The Agency Chairman is the executive head of the Agency.
2. The Agency Chairman is responsible for managing the Agency and for the external representation of the Agency.
3. The Agency Chairman is authorized himself to take legal action in the name of the Agency.

Art. 9

1. The Agency Chairman is appointed and removed by the Chairman of the Council of Ministers upon the request of the Minister for Transportation and Shipping.
2. The Agency Chairman shall submit an annual report on the activities of the Agency as well as information to the relevant Parliamentary Commission within 6 months of the end of the calendar year.

Art. 10

1. The terms of remuneration for the employees of the Agency, except for the Agency Chairman, shall be set by the internal system of remuneration.
2. The remuneration of the Agency Chairman shall be set by the Council of Ministers.

Art. 11

1. The Agency is responsible for undertaking the duties defined in Art. 7, within the limits established by its annual budget and proportionately to the funds accumulated.
2. The Agency Chairman establishes the Agency's annual budget subject to the approval of the Minister of Transport and Shipping and the Minister of Finance.

Art. 12

1. The Agency conducts its own financial management.
2. The Agency derives its income from:
 - 1) its activities,
 - 2) payments made for the awarding of concessions,
 - 3) other sources.
3. The Agency receives a subsidy, set annually in the budget, for the following activities arising out of the construction of motorways: studies and documentary work, purchase of real estate, compensation payments, sums due and annual payments for protection of arable and forested land, integration and exchange of land, reconstruction of infrastructure utilities, conducting emergency archeological examinations and ecological tests and the publication of the results.

Art. 13

The Agency may take out long term loans, subject to the consent of the Minister of Finance, on normal commercial terms.

Art. 14

1. Assets purchased to enable the Agency to function constitute the Agency's statutory fund.
2. The Agency shall establish a statutory fund and it may establish other funds after obtaining the consent of the Finance Minister.
3. The Agency's statutory fund consists of the net value of its fixed assets including, intangible assets as well as funds collected from the Agency's income.
4. The Agency's property is subject to depreciation on normal terms.
5. The accounting rules for the Agency are set out in separate regulations.

Art. 15

1. The Agency's income is exempt from income tax for legal entities.
2. The Agency is exempt from stamp duty charges as well as property tax until the date of delivery of the motorway or a section thereof for operation by the concessionaire.

Art. 16

1. Upon the request of the Minister of Transport and Shipping the Chairman of the Council of Ministers shall issue, by Order, the statute of the Agency.
2. The statute of the Agency specifically defines the way it is organized, the conditions for granting powers of attorney, the specific financial management principles of the Agency and the creation of local branches.

Chapter 3

The Motorway Committee

Art. 17

1. The body responsible for submitting opinions to the Minister of Transport and Shipping is the Motorway Committee, hereinafter referred to as the "Committee".
2. Members of the Committee are appointed and removed by the Minister of Transport and Shipping.
3. The Chairman of the Committee is appointed and removed by its members.
4. The regulations governing the Committee are, upon its own request, established by the Minister of Transport and Shipping.

Art. 18

The scope of activity of the Committee includes in particular the issuing of opinions on:

- 1) the draft applications for an indication of the location and determination of location,
- 2) the criteria for evaluating the initial documentation and initial offers during the tender period,
- 3) the results of the initial qualification stage,
- 4) the draft concessions,
- 5) the terms and conditions for establishing charges for use of the motorways,
- 6) plans for rescue operations and plans relating to the infrastructure for road safety,
- 7) other matters relating to motorways, upon the request of the Minister of Transport and Shipping.

Chapter 4

Location of the Motorways

Art. 19

The Minister - Head of the Central Planning Agency shall indicate the location of the motorways or sections thereof in co-operation with the Minister of Physical Planning and Construction as well as with the following Ministers: the Minister for Culture and the Arts, the Minister for Environmental Protection, Natural Resources and Forestry, the Minister of Agriculture and Food, the Minister for Transport and Shipping as well as the Head Sanitary Inspector.

Art. 20

1. An application for an indication of the location of motorways should in particular include the following:
 - 1) the general route of the motorway and an analysis of the links with other public roads,
 - 2) the characteristics of basic structures (buildings),
 - 3) an evaluation of the effect of the motorway on the environment, prepared by experts in the field, appointed by the Minister for Environmental Protection, Natural Resources and Forestry,
 - 4) an evaluation of the motorway's effect on agricultural land and forests, prepared by the local Voivodes,
 - 5) an evaluation of the motorway's effect on cultural monuments protected by separate regulations, prepared by an expert appointed from the list of experts held by the Minister for Culture and the Arts.
2. The Agency Chairman makes the application (as mentioned in point 1), after obtaining the opinion of the Committee, the territorially relevant Voivodes, the interested Council of Communes and local legislative bodies.
3. If there has been no opinion, as described in point 1, after 30 days from the date of the request made by the Agency Chairman for an expression of an opinion, it shall be deemed that no objections have been raised.
4. The Minister for Protection of the Environment, Natural Resources and Forestry, in co-operation with the Minister of Agriculture and Food, the Minister for Transport and Shipping as well as the

Minister for Culture and the Arts shall define, by Order, which are the requirements relating to motorways to which the evaluations listed in point 1, items 3-5 should comply.

Art. 21

1. A decision establishing the location of the motorway shall be issued by the Voivode.
2. The application for the issue of a decision on location should contain:
 - 1) a map on the scale of 1:5000 indicating existing infrastructure, the proposed route of the motorway and indicating the land on which construction is to be undertaken and on which protected zones are to be established,
 - 2) the permits and opinions of the relevant bodies required by separate regulations.
3. The Voivode shall give notice of the commencement of the procedure for the issue of a decision on the determination of the location by displaying such information in the Commune Offices and by publishing it in the local press.

Art. 22

1. A decision determining the location of the motorway, issued in accordance with the location instructions, should in particular contain:
 - 1) the requirements relating to links with other public roads,
 - 2) the border lines of the area,
 - 3) technical terms of the construction,
 - 4) the terms and conditions resulting from the requirements of environmental protection and protection of cultural monuments,
 - 5) requirements relating to the protection of third persons.
2. The Voivode shall deliver the decision determining the location of the applicant's motorway and notify its issue by publishing it in the local press and displaying it in the Provincial Offices.

Art. 23

1. Where justified, upon the application of the Agency Chairman, the Voivode may issue a decision determining the location of the motorway with immediate effect.
2. An appeal against the decision determining location should be heard within 14 days, and a further appeal to the administration court should be made within two months.

Art. 24

The Party has the right to appeal against the decision listed in point 1, Art. 21 to the Minister for Physical Planning and Construction.

Art. 25

1. The regulations concerning land development are not applicable to the issues dealt with in this chapter.
2. The Voivode issues permits for the construction of motorways under the terms of the Construction law subject to point 3.
3. Whenever a decision on the conditions of construction on and development of the land is mentioned in the provisions of the Construction law it should be understood to include the decision to determine the location of the motorway.

Chapter 5

Acquisition of property on which the motorways are to be built

Art. 26

The Agency shall acquire, on the basis of contracts, property for the State Treasury for the purpose of building motorways, subject to Art. 27.

Art. 27

1. Properties on which the motorway is to be built, currently belonging to a Commune, shall be transferred to the State Treasury as of the date on which the decision determining the location of the motorway on these properties becomes final.
2. For the properties mentioned above in point 1 the Commune has the right to compensation, the level of which is set according to the binding rules for expropriation of property.
3. The Voivode, by way of a decision, confirms the acquisition of the property by the State Treasury and sets the level of compensation.
4. Compensation is paid from the Agency's funds.

Art. 28

If the properties appropriated for the motorway and belonging to the State Treasury were delivered for perpetual use the Agency, acting in the name of the State Treasury terminates the agreement for perpetual use concluded with the user.

Art. 29

Expropriation proceedings in respect of the properties appropriated for the motorway shall commence upon the application of the Agency Chairman after the expiry of the deadline for the conclusion of an agreement submitted in writing to the owner or the perpetual user of the property, as defined in arts. 26 and 28. This deadline cannot be shorter than 2 months from the date of receipt of the Agency's written offer to conclude an agreement.

Art. 30

The Voivode is responsible for instituting the expropriation proceedings and taking decisions during such proceedings.

Art. 31

1. After initiation of the expropriation proceedings the Voivode upon the application of the Agency Chairman grants, in justified cases, through a decision, permits for the immediate occupation of the property appropriated for the motorway.
2. The decision mentioned in point 1, may be immediately enforced, taking into consideration the state of readiness of the investment as well as the possibility of collecting crops.

Art. 32

1. Compensation for expropriated property should be appropriate to its market value on the day of the issue of the decision establishing the location of the motorway.
2. The value of the property is defined by experts or other persons listed in point 1, Art. 38 of the Act on Land Management and Expropriation dated 29 April 1994 (Journal of Law from 1991, No.30, pos. 127, No.103, pos. 446 and No. 107, pos. 464, from 1993 No.47, pos.212, and No. 131, pos.629, and from 1994, No.27, pos.96, No.31, pos.118, No.84, pos.384, No. 85, pos.388 and No. 89, pos.415).
3. The compensation, as defined in point 1, is subject to adjustment to the date of payment according to the rules applicable in the case of a return of expropriated property.
4. Compensation for expropriated property is paid from the funds transferred to the Voivode by the Agency.

Art. 33

1. The decision determining the location of the motorway constitutes the basis for the issue of a decision on the expiry of the rights of administration of property belonging to the State Treasury which is to be appropriated for motorways. The regulation of article 31 shall be applied *mutatis mutandis*.
2. If property belonging to the State Treasury and appropriated for motorways is leased or rented, the decision determining the location of the motorway constitutes the basis for immediate termination of the lease or rental agreement. The Agency shall pay compensation for damage incurred as a result of the agreement being terminated.
3. For the purpose of cancelling the use established by way of a decision or by an agreement, the regulations of points 1 and 2 shall be applied *mutatis mutandis*.

Art. 34

1. On the day that the State Treasury acquires the right of ownership to the property, the Agency acquires the right of usufruct.
2. With regard to the property mentioned in arts. 28 and 33, the right of usufruct for the benefit of the Agency is established *mutatis mutandis* by virtue of law on the day of termination of the perpetual use, the expiry of the administration rights or the termination of contracts for lease, rent or use.
3. Establishment of the right mentioned in points 1 and 2 above is confirmed by the Voivode in the form of a decision.

Art. 35

The Agency is exempt from charges for the use of the property appropriated for motorways.

Art. 36

1. The regulations concerning the protection of farm and forested land are not applicable to farm and forested land covered by the decision on the establishment of the location of the motorway. The

charges and annual payments defined in these regulations relating to forests and woodland, and the single compensation payments for premature felling (clearing) are to be paid to:

- 1) the Fund for the Protection of Farm Land for the purpose of constructing and modernizing Commune roads, local town roads or internal roads (providing access to fields) - as a result of the land no longer being appropriated for farming or forestation, subject to the provisions of point 2,
 - 2) the Forestry Fund of the General Administration of State Forests - as a result of the change in the land appropriation in respect of land administered by the State Forestry Administration (the State Forests).
2. The Minister for Transport and Shipping in co-operation with: the Minister of Finance, the Minister for the Protection of the Environment, Natural Resources and Forestry as well as the Minister of Agriculture and Food shall define, by Ordinance, the method and deadline by which the Agency must transfer the sums mentioned in point 1.

Art. 37

For matters not regulated in this chapter the regulations of the Act listed in Art. 32, point 2 shall be applicable.

Chapter 6
Financing the Construction of Motorways

Art. 38

The construction of Motorways shall be financed:

- 1) from the funds of the concessionaires and from bank loans taken out by them,
- 2) from the funds of the State Budget, set annually in the Budget Act for the purposes defined in Art. 12, point 3,
- 3) from other sources.

Art. 39

A concessionaire may obtain a guarantee for repayment of a bank loan or credit from the funds of the State Treasury, on normal commercial terms up to an amount not exceeding 50% of the value of the investment planned for construction within the scope of the concession.

Chapter 7
Tender Proceedings

Art. 40

A concession must be obtained for the construction and operation of motorways.

Art. 41

A concessionaire is chosen by a two stage tender process conducted by the Agency:

- 1) initial qualification,
- 2) tender limited to those qualified to submit offers, hereinafter referred to as the "tender".

Art. 42

1. The Agency issues invitations to participate in the initial qualification process through advertisements in the national press.
2. The advertisements mentioned in point 1 above should contain in particular:
 - 1) an indication of the motorway in question;
 - 2) a definition of the time and place at which the details of the initial qualification terms and the charge for these details will be available;
 - 3) information on the time and place:
 - a) for submission of documents for initial qualification,
 - b) of publication of the results of the initial qualification,
 - 4) information on how the results of the initial qualification process are to be announced;
3. The details of the terms for the initial qualification process consist in particular of :
 - 1) basic technical information relating to the motorway,
 - 2) information on the basic requirements of the initial qualification process.

Art. 43

Limited liability and joint stock companies which have their seats in Poland and have a share capital with a minimum value of the equivalent of 10 million ECU may participate in the tender process.

Art. 44

1. During preparation of the documents for the initial qualification, the participant may request the Agency to explain the elements of the details of the terms of the qualification process.
2. The Agency shall send the reply to this request simultaneously to all participants in the initial qualification process.

Art. 45

Members of the Tender Committee are appointed and removed by the Minister for Transport and Shipping.

Art. 46

1. Participants in the initial qualification process may be obliged to provide additional information to the Tender Committee.
2. The Agency may extend the deadline for submission of the documents for initial qualification in the manner defined in art. 42, point 1.

Art. 47

1. Evaluation of the documents for initial qualification is conducted by the Tender Committee according to the criteria defined by the Minister for Transport and Shipping, as mentioned in Art. 53.
2. The evaluation of documents submitted for initial qualification constitutes the basis for choosing the participants in the tender, hereinafter referred to as the "tenderers".
3. The Tender Committee chooses the tenderers.
4. A protocol shall be kept of the actions constituting the opening and evaluation of the documents for initial qualification, the choice of tenderers and the publication of the results of this choice.
5. The protocol mentioned in point 4 above, shall be made available on demand to participants in the initial qualification process.

Art. 48

1. The tenderers shall receive a written invitation to participate in the tender, with an indication of the time and place for the submission of offers.
2. The tenderers shall be informed of the terms of the tender after paying the fees to the Agency for the information received and after submission of a written declaration stating their agreement not to pass on to third parties information acquired during the tender process.
3. The information on the terms of the tender includes in particular:
 - 1) the basic technical documentation, making it possible to formulate an offer,
 - 2) requirements as regards the contents and scope of the offer,
 - 3) information on the anticipated basic terms of the concession and concession agreement,
 - 4) information on the size and the deadline for payment of the deposit, confirmed upon the application of the Agency Chairman by the Minister for Transport and Shipping.
4. The Agency Chairman shall set the amount of the fee, as mentioned in point 2 above, and the payment method.

Art.49

The Tender Committee shall in particular evaluate:

- 1) the financial and economic status, including the creditworthiness of the tenderer,
- 2) organizational and technical preparations of the tenderer or its contractors for the proper construction of the motorway,
- 3) financial plan and the program for construction and operation of the motorway,
- 4) the tenderers' ability to finance the construction without the need for guarantees, as mentioned in art. 39,
- 5) the scope of employment of Polish contractors proposed by the tenderer as well as the use of domestic (Polish) products and materials.

Art. 50

The provisions of arts. 44 - 46 shall be applicable to the tender and offers.

Art. 51

1. Withdrawal of an offer during the tender process shall result in the loss of the deposit.
2. The deposit paid by a tenderer whose offer is rejected shall be refunded within 14 days after the Tender Committee has made its choice of offers.

3. The deposit paid by a tenderer whose offer is accepted shall be returned within 14 days after the conclusion of a concession agreement. The deposit shall not be refunded where the tenderer fails to conclude a concession agreement without a significant reason for doing so.

Art. 52

The Tender Committee shall submit the protocol from the tender proceedings to the Minister for Transport and Shipping and shall notify the tenderers of the results of the proceedings.

Art. 53

The Minister for Transport and Shipping shall define, by Ordinance, the detailed terms of the tender proceedings as well as the work to be conducted by the Tender Committee.

Chapter 8

Concessions for the construction and operation of motorways

Art. 54

A concession shall be granted by the Tender Committee to the Company whose offer is deemed to be the most advantageous.

Art. 55

1. The proper body responsible for granting and revoking concessions is the Minister for Transport and Shipping.
2. Concessions shall be granted and revoked by way of a decision.
3. A fee shall be charged for the awarding of a concession.
4. A concession may be granted for either the construction and operation or for the operation only of a motorway or a section thereof.
5. The Minister for Transport and Shipping together with the Finance Minister shall set, by Ordinance, the level and method of payment for the fee mentioned in point 3 above.

Art. 56

The concession shall in particular define:

- 1) the name of the Company and the location of its seat,
- 2) the object of activity covered by the concession,
- 3) the date on which activity is to begin,
- 4) the obligations of the concessionaire, as defined in Art. 57,
- 5) the period for which it is issued.

Art. 57

The concessionaire is under an obligation to:

- 1) obtain funds for the construction and operation of the motorway,
- 2) prepare the technical documentation required for the construction of the motorway, obtain a construction permit and any permits required by other legislation,
- 3) abide by the technical construction and operation regulations relating to motorways as well as the regulations concerning protection of the environment and the protection of historical monuments,
- 4) conclude the investment project on schedule,
- 5) maintain the state of the motorway in accordance with the standards defined by law and in the contract,
- 6) enable the Agency to take over, at any time, control of the construction and operation of the motorway and to submit data and documents relating to the above.

Art. 58

1. The concession may be revoked in the case of:
 - 1) a failure to conclude a concession agreement within 6 months from the date on which the concession was awarded,
 - 2) a violation of the obligations mentioned in Art. 57 or the terms of the concession agreement,
 - 3) the existence of a threat to national economic interests, defence or State security, or a threat to human safety.
2. The concession shall expire on termination of the concession agreement.

Art. 59

1. If the concession is revoked due to the reason defined in Art. 58, point 1, item 1, the Tender Committee, upon the demand of the Minister for Transport and Shipping, shall once again choose the most advantageous offer from among those already submitted.

2. If a choice, as mentioned in point 1 above, is not made, the Agency shall announce a new tender process.

Art. 60

1. The Agency is authorized to control the construction and operation of the motorway within the scope of:

- 1) the concession awarded,
- 2) compliance with the terms of the concession agreement,
- 3) conformity of the toll for use of the motorway to the specific terms defined in the regulations, as defined in art. 3, point 4.

2. Persons authorized by the Agency Chairman to conduct controls are authorized in particular to:

- 1) enter the property on which the construction or operation of the motorway is being conducted,
- 2) demand written or oral explanations, the submission of documents or other information as well as access to data relating to the construction or operation of the motorway.

Chapter 9

Concession Agreement

Art. 61

The Minister for Transport and Shipping shall conclude a concession agreement with the concessionaire.

Art. 62

1. The concession agreement should in particular define:

- 1) the date on which construction is due to begin and the date of completion,
- 2) the period of operation of the motorway and the level of the tolls to be charged once operation begins,
- 3) the deadline by which documentation relating to the location of the motorway must be submitted,
- 4) the method and deadlines by which the Agency is to grant access to the land on which the motorway is to be constructed, and the terms of administration of buildings, construction sites, machinery, woodland and other cultivated land,
- 5) the scope and terms of protection of archeological objects discovered during construction,
- 6) the right of the concessionaire to the use of the land and the buildings, construction sites and machinery contributed by him,
- 7) the obligations of the concessionaire to:
 - a) construct and operate the motorway in accordance with the binding regulations,
 - b) assure continuous access to the motorway and passage along it,
 - c) assure the safety of users,
 - d) establish, together with the Ministry of Defence, the limit of exemptions from tolls for use of motorways for vehicles of the Armed Forces,
- 8) the terms of the co-operation between the concessionaire and the road authorities, the police, ambulance service and the fire department,
- 9) the terms for the administration for service stations, taking competition into consideration,
- 10) the method and deadline for the delivery of the motorway and the documentation relating to it to the Agency on the expiry of the period of operation,
- 11) the terms and conditions of the parties' responsibilities,
- 12) the method to be used for settling disputes arising as a result of the realization of the agreement,
- 13) the conditions for termination of the agreement,
- 14) the terms of mutual settlement in the case of the agreement being terminated.

2. The agreement is subject to termination by virtue of law on the date that the decision on cancellation of the concession becomes effective.

Art. 63

Where a concession is awarded for the operation only of a motorway, the regulations of this chapter shall be applied mutatis mutandis.

Chapter 10

Amendments to the binding, temporary and final regulations

Art. 64

Amendment of the law on the merging and exchange of land, dated 26 March, 1982. (not translated)

Art. 65

Amendment of the law on public roads, dated 21 March, 1985. (not translated)

Art. 66

Amendment of the law on commercial activity, dated 23 December, 1988. (not translated)

Art. 67

Amendment of the law concerning forests, dated 28 September, 1991. (not translated)

Art. 68

Amendment of the law on administration of farmland belonging to the State Treasury, and amendment of certain laws, dated 19 October, 1991. (not translated)

Art. 69

Amendment of the law on income tax for legal persons, dated 15 February 1992. (not translated)

Art. 70

The Minister for Transport and Shipping, in co-operation with the Minister of Finance, shall ensure that the Agency, has from the Ministry's budget the funds required to begin operations, no later than by 31 December 1996.

Art. 71

This Act becomes effective after the expiry of 30 days from the date of its publication.