

**LAW  
on Concessions**

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*Note: The phrase "The Ministry of Privatization and State Property Administration" in the text of the law is replaced by the phrase "The Department of Privatization and State Property Administration by the Ministry of Economy and Reforms" by Law No.358-XIV as of 15.04.99*

The Parliament is adopting the law hereby.

## **Chapter I GENERAL PROVISIONS**

### **Article 1. The Concession and Concessional Enterprise**

(1) Concession is a contract by which the state or the administrative – territory units assign (transmit) an investor (physical person or legal entity, including a foreign one), in exchange for benefits, the right to organize an activity of prospecting, exploration, capitalization or restoration of natural resources on the territory of the Republic of Moldova, of providing public services, exploiting the movable and immovable goods state public property or of the administrative-territory units, which according to the related law are withdrawn either partially or entirely from the civil circuit, as well as the right to develop certain types of activities, including state monopoly, overtaking the concession object management, the presumptive risk, and the patrimony liability.

(2) The concessional enterprise is a form of collaboration based on a concession contract signed by the state or the territory – administrative unit, in the person assigned by the state or by the territory – administrative unit (contracting authority), with a physical person or legal entity (concessionaire). The concessional enterprise may be organized as a commercial or civil society.

*[Art.1 amended by Law No.181 as of 05.15, 2010, in force since 03.09.2010]*

### **Article 2. Juridical Regulation**

(1) The concession relationships and other related juridical relationships are regulated by the law hereby and other normative acts.

(2) If the international agreements which the Republic of Moldova is part of stipulates otherwise rather than in the law hereby, the provisions of the international agreement are applied.

### **Article 3. The Concession Field and Object**

(1) The concession is admitted in all the economy branches and covers all the types of activity, unless it acts against legislation.

(2) Concession objects may be:

- a) lands and other natural resources, their prospecting, exploration and capitalization;
- b) public or private movable and immovable goods of the state or territory – administrative units;
- c) works and services of national or local public interest.

(3) Simultaneous concession of more objects is admitted with the purpose of their exploitation as a whole.

(4) The basic characteristics (juridical, ecological, technical and urban - architectural) of the concession objects are made known to the concessionaires.

*[Art.3 amended by Law No.181 as of July 15, 2010, in force since 03.09.2010]*

*[Art.3 amended by Law No.509-XIV as of July 15, 1999]*

#### **Article 4. The Contracting Authority**

A Contracting Authority may be:

a) the Government, when lands or other natural resources are given for concession. In this case the contract of concession is signed between the concessionaire and the central specialized body of the public administration authorized by the Government;

b) central specialized bodies and local public administration authorities, within limits of their competence, when state (municipal) enterprise goods are given for concession, or other economic objects.

*[Art.4 amended by Law No. 910-XV as of March 14, 2002]*

#### **Article 5. The Concessionaire**

Concessionaires may be physical persons or legal entities from the Republic of Moldova and other states.

#### **Article 6. Right to Ownership**

(1) The contracting authority assigns the concessionaire, based on a concession contract, his right of possession and use on the object of concession, reserving himself the exclusive right over its disposal.

(2) The products and benefit (income) obtained by the concessionaire as a result of exploiting the concession object is his property, unless otherwise provided by the concession contract.

(3) The concessionaire's own and other-nature materials purchased on own means are considered his property, as well as the improvements brought by him to the concession object, if they can be separated by the object under discussion without damaging it.

(4) The inseparable improvements brought object by the concessionaire to the concession are public property of the state or the territory – administrative units. On the expiry of the concession contract, or in case of its cancellation, the concessionaire has the right to cost recovery of the improvements brought to the concession object with the permission of the contracting authority, unless otherwise provided in the concession contract.

*[Art.6 amended by Law No.181 as of July 15, 2010, in force since 03.09.2010]*

#### **Article 7. Competence of the Public Authorities**

(1) The Government is to:

a) approve the list of state public property goods and the list of the works and services of national public interest proposed for concession;

b) approve the concession objectives of national interest and the general requirements for selecting the concessionaire, as well as the concession conditions;

c) approve the policy documents on the concession development;

d) adopt necessary normative acts for the execution of the law hereby, approval of the standard set of documents (samples of requests, offers, informative press releases, etc.), as well as the standard procedures in order to insure the functionality of the concession;

e) appoint the specialized body of the central public administration with positions of contracting authority for signing contracts with private partners, in case of the public – private partnerships initiated by the Government or by the central public administration authorities, and for monitoring the execution of contracts.

(2) The Ministry of Economy is to:

- a) elaborate policy documents on concession;
- b) elaborate modification and completion proposals of the legislative and normative acts on concession;
- c) elaborate and present for approval to the Government the drafts of the normative acts necessary for the execution of the law hereby.

(3) The Public Property Agency by the Ministry of Economy, hereinafter called the Agency, is to:

- a) coordinate the start of the concession at national level;
- b) approve the feasibility studies;
- c) assist the central public administration authorities in identifying the concession objectives of national interest, of the general requirements for selecting the concessionaire and concession conditions based on the feasibility studies, their presentation for approval to the Government;
- d) elaborate and put into force the standard documentation for the selection procedures of the concessionaires (samples of applications, offers, informative press releases, etc.), disseminate the best practices and recommendations in the field of concession activities;
- e) publish, on the web page of the Agency, informative press releases and documents related to concession of the state public-property goods, of the works and services of national interest;
- f) keep record of the public patrimony transmitted for concession;
- g) realize and monitor the concession in case of concession contracts signed by the Agency.

(4) the specialty body of the central public administration assigned with the position of contracting authority:

- a) identification of the state public property goods, works and services liable for concession and presentation of proposals by the Agency regarding their inclusion in the list of state public property goods proposed for concession, supported by feasibility studies and the conditions of concessions;
- b) start, realize and monitor the concession;
- c) sign contracts within conditions of the law hereby.

(5) if applicable, the local or rayonal council is to:

- a) approve the list of the public and private goods of the territory – administrative units, the list of works and services of local public interest proposed for concession
- b) approve the objectives and conditions of concessions based on feasibility studies, as well as the requirements regarding the selection of the concessionaries;
- c) appoint the commissions members for selecting the concessionaires;
- d) approve the project of the concession contract in the negotiated form.

(6) if applicable, the mayor or the head of the rayon is to:

- a) sign concession contracts and send a copy on the address of the Agency for record;
- b) insure the monitoring and control on the realization of contracts of concession where the local public administration authority is acting as contracting authority;
- c) issue certificates of urbanism for the objects supposed for concession, in cases stipulated by law;
- d) insure the elaboration of the feasibility studies.

(7) Provisions of par.(5) and (6) are applied, accordingly, to the public administration authorities, from the autonomous territory unit of special juridical statute.

*[Art.7 in the wording of Law No.181 as of July 15, 2010, in force since 03.09.2010]*

*[Art.7 completed by Law No.509-XIV as of July 15, 1999]*

**Article 8.** Relationships between supreme public authorities and local public administration authorities

*[Art.8 repealed by Law No.181 as of July 15, 2010, in force since 03.09.2010]*

## **Chapter II**

### **AWARD OF CONCESSIONS**

#### **Article 9.** Preparation of the Concession Proposals

(1) Preparation of the concession proposals includes the conclusion of the list of objects for concession, elaboration of the feasibility study, concession opportunity, as well as concession conditions.

(2) The specialized central bodies prepare concession proposals and present them for examination to the Agency. The executive authorities of the local public administration prepare concession proposals and present them for examination to the representative authorities of the local public administration, which, in 20 days, since the receipt of proposals, take the decision regarding their opportunity. In case the concession proposals do not follow the requirements, they are returned to be finalized.

*[Art.9 amended by Law No.181 as of July 15, 2010, in force since 03.09.2010]*

*[Art.9 amended by Law No.910-XV as of March 14, 2002]*

#### **Article 10.** Publication of the List of Objects. The Applicant's Right for Concession

(1) The contracting authority insures the publication of the informative press releases in the Official Gazette of the Republic of Moldova. The time for submitting the applications by the applicants for concessions will be indicated in the informative press-release and it will not be shorter than 60 days since its publication. The contents of the documents and information referring to the concessionaire - selection procedure are published on other web pages and, if applicable, in the local or central press, as the contracting authority decides.

(2) The concession applicants have the right to:

a) take notice, since the day of publication in the Official Gazette of the Republic of Moldova, of the concession objects, the necessary documents and propose the respective offers within time limit settled in the informative press release;

b) require from the contracting authority the concession of objects not included in the published list. In case when the contracting authority considers as appropriate the concession of the related objects, their list and the mandatory clauses of the contract of concession is approved within conditions of the law hereby;

c) require the conclusion of more contracts of concession.

*[Art.10 amended by Law No.181 as of July 15, 2010, in force since 03.09.2010]*

#### **Article 11.** Concession of land and other natural resources

(1) the following can be given for concession: land of all categories and other natural resources in the conditions of the law hereby and other normative acts.

(2) the land meant for nature protection, lands of archeological patrimony, the lands of historic – cultural value, and the forest fund lands can be given for concession within limits of the law hereby by following the provisions of the special laws regulating the juridical regime of these lands.

(3) the control over the exploitation activity of the lands and other natural resources mentioned in par.(1) and (2) is exercised by the contracting authority, by the concessionaire and the state supervision and control body in the field of environment protection.

*[Art.11 in the wording of Law No.181 as of July 15, 2010, in force since 03.09.2010]*

#### **Article 12.** The concessionaire-selection contest

(1) The concession is awarded based upon the results of the concessionaire-selection contest, by ultimately signing the concession contract.

(2) In case the object of the concession is required by a single applicant, the offer which follows the conditions settled by the contracting authority, the concession contract is signed with the latter.

(3) The concessionaire-selection contest is organized by the contracting authority as settled by the Government.

*[Art.12 amended by Law No.181 as of July 15, 2010, in force since 03.09.2010]*

### **Chapter III**

#### **THE CONCESSION CONTRACT. BENEFITS.**

**Article 13.** The concession contract

(1) The concession contract covers:

- a) the contracting parties;
- b) the concession object and purpose;
- c) forms, conditions and the way of settling concession payments;
- d) the obligations of the contracting authorities on objects concession and his rights of control on their exploitation;
- e) the concessionaire's obligations in maintaining the concession objects in functioning state and return them in the respective state after the contract effects termination, as well as the obligations to insure the ecological security of the established production unit and environment protection;
- f) conditions of the concession object insurance;
- g) the amount and terms for attracting investments for organizing the activity of the concessionaire;
- h) the clause on presenting the environment-protection body review as settled by law and the review of the sanitary-epidemiological service on the security of the technologies applied;
- i) the right of the state to purchase with priority the finite product of the concessionaire;
- j) the clause on maintaining or modifying the number of work places;

*[Let.k), l) repealed by Law No.181 as of July 15,2010, in force since 03.09.2010]*

- m) forms of control of the concession realization;
- n) conditions, shares, way and terms of preparation of the local personnel for the concession fulfillment;

*[Let.o) repealed by Law No.181 as of July 15, 2010, in force since 03.09.2010]*

- p) the list of the juridical facts the appearance of which may lead to amending the clauses of the concession contract or its cancellation at the request of one of the sides;
- q) the way of distributing the goods between the concessionaire and contracting authority at the termination of the concession contract effects;
- r) the responsibilities of the parties and the way of solving mitigations;
- s) the procedure of liquidating the concession enterprise;
- t) the duration of the contract;
- u) the financial guarantees of the sides;
- v) the headquarters and identification elements of the sides' banks;
- w) other clauses agreed by the parties.

(2) The concession contract has as attachment documents confirming the state's right of ownership or that of the territory – administrative unit on the object of concession, the cadastral plans of the lands, the location plans of the buildings, if applicable, and the list of the goods property of the contracting authority with their value according to data from the evaluation report.

(3) The concession contract of lands and other natural resources are also to include:

- a) the characteristics of the environment, soil and other natural resources, as well as the amount of their exploitation;
- b) the technological norms of their exploitation;
- c) conditions of land re-cultivation;
- d) compensation payments for withdrawing from circulation the lands and other natural resources;
- e) conditions of protection of the accompanying natural resources;
- f) the amount and way of storing the production wastes;
- g) the maximal admissible norms of the impact on the environment;
- h) the way of distributing the expenses for the prospecting, exploration and capitalization of natural resources, as well as the risks and incomes related to these activities.

(4) the contract of concession is signed for a period not exceeding 50 years.

(5) After signing the contract, the contracting authority is giving assistance to the concessionaire in the process of obtaining, within reasonable time, permits, authorizations and other documents related to the concession realization, stipulated by the legislative acts or by the contract, if the issue of these permits and authorizations falls under the contracting authority's competence.

*[Art.13 amended by Law No.181 as of July 15, 2010, in force since 03.09.2010]*

#### **Article 14.** Prolongation, Amendment and Cancellation of the Concession Contract

(1) At the expiry of the contract of concession, if its clauses have been followed, the concessionaire benefits from the preferential right, to extend the contract. In case of the contract extension, its clauses can be modified according to the parties' agreement.

(2) The unilateral modification of the concession contract is hit by absolute nullity.

(3) the contracting authority has the right to require the cancellation prior to the expiry of the contract of concession in case when:

- a) events appear or facts are found allowing to cancel the contract;
- b) the concessionaire breaks the contract clauses;
- c) the concessionaire is liquidated - legal entity or the concessionaire has died – physical person that signed the contract;
- d) bankruptcy of the concessional enterprise;
- e) pronouncement by the competent court of the decision regarding the nullity of the constitution documents of the concession enterprise.

(4) reorganization of the contracting authority does not imply the amendment of the concession contract clauses or its cancellation. In this case, the Government (the central body of the public administration specialty or the authority of the local public administration) takes responsibility to follow the contract.

(5) The effect of the concession contract end at the expiry of the settled period, in case of its cancellation prior to the end date, the liquidation of the concession enterprise, damaging the object of concession or in the situation when it becomes unusable until the contract expiry.

*[Art.14 amended by Law No.181 as of 15.07.2010, in force since 03.09.2010]*

*[Art.14 amended by Law No.240-XV as of 13.06.03, in force since 08.07.03]*

*[Art.14 amended by Law No.1009-XIII as of 22.10.96]*

#### **Article 15.** Benefits

(1) The concession benefits are settled by in-kind, cash or both, as one-time payments (bonus), rent (lease), payment for the extraction of the natural resources or for the production of the products (royalty). In case when the mentioned payments are realized by a foreign investor, they can be realized in national and/or foreign currency.

(2) One-time payments, in the meaning of the law hereby, mean fixed sums, equal to the estimated value of the concession object. These are the first payments realized after the state registration of the concession enterprise, which anticipates the beginning of the investment

activity of the concessionaire and it is not reimbursed, if the concession contract does not stipulate otherwise.

(3) The amount of the rent is stipulated in the concession contract. The contracting authority may settle the rent in progressive shares. In order to stimulate the most urgent start of the functionality of the concession enterprise, the rent can be settled for a limited period of time, for example until the extraction of the natural resources or the export of products start.

(4) The payments for the extraction of the natural resources or production of products represent periodical payments for the right of exploitation of the natural resources. The latter are paid since the moment when the natural resources start being extracted, or the products are produced, until the expiry of the concession contract, in form of breakdowns from the production cost (in percent from the amount from the sales volume (income, benefit), or as taxes per unit of product. The royalty does not fall under the incidence of the fiscal facilities.

(5) The amount and forms of the mentioned payments, as well as the way and terms of their payment are settled in the contract of concession.

(6) The benefits may be settled for the exploitation of all the concession objects as a whole or for each separate object.

*[Art.15 amended by Law No.33 as of 03.06.2012, in force since 05.25.2012]*

*[Art.15 amended by Law No.181 as of 07.15.2010, in force since 09.03.2010]*

#### **Chapter IV**

### **THE RIGHTS AND OBLIGATIONS OF THE PARTIES.**

#### **THE CONCESSION ADMINISTRATION**

**Article 16.** The rights and obligations of the concessionaire

(1) The concessionaire has the right to:

a) settle the main directions and perspectives of development of the concession enterprise, as well as plan its activity;

b) settle the structure of the management bodies, the list of positions, hire workers, including foreign citizens and stateless persons;

c) appoint the head of the concession enterprise, his deputies, the managers of the structural subdivisions, if not provided otherwise;

d) organize extra concession activities in line with the legislation and the contract of concession or the contracting authority's agreement;

e) sue in competent administrative court the actions of the specialized central bodies of the public administration (of the local public administration authorities) within regulation of the concession relations.

(2) the concessionaire is to:

a) follow the clauses of the contract of concession;

b) organize entrepreneurial activity, organize bookkeeping and statistics, in line with the legislation;

c) present, at the cancellation of the concession contract, documents proving that the concession objects are free from any tasks;

d) return to the contracting authority, at the expiry of the concession contract or in case of its cancellation, the goods in the same state as he overtook them, taking into account their natural depreciation;

e) liquidate the concessional enterprise in line with the legislation and concession contract, within 6 months from the contract expiry or in case of its cancellation before the expiry.

*[Art.16 amended by Law No.240-XV as of 13.06.03, in force since 08.07.03]*

*[Art.16 amended by Law No.1009-XIII as of 22.10.96]*

**Articolul 17.** Restrictions to the Concessionaire's Rights

Full or partial transmission of the concession object to a third party by the concessionaire is forbidden.



**Articolul 18.** The rights and obligations of the Contracting Authority

1) The Contracting Authority has the right to:

- a) be part of the management and control body of the concessional enterprise;
- b) receive or purchase on a priority basis a part of the production made by the concessionaire, unless otherwise provided by the concession contract;
- c) exercise control over the concessionaire to follow the Moldovan legislation and the concession contract;
- d) purchase as priority the goods of the concessionaire after the contract effects termination;
- e) require in case of the concession contract expiry or its cancellation, to be transmitted for free the improvements that cannot be separated from the concession contract without damaging it, brought by the concessionaire to this object, as well as the constructions executed on the concession land without the consent of the contracting authority;
- f) realize control over the economic-financial activity of the concessionaire using an independent audit service.

(2) The contracting authority is to:

- a) grant the concessionaire, timely and in full amount, the rights over the concession object, stipulated by the concession contract;
- b) hand in the concession objects to the concessionaire in the state and terms stipulated by the concession contract;
- c) keep the commercial secret of the concessionaire, in line with the Law on the commercial secret;
- d) not to intervene in the economic and operative activity of the concessionaire.

**Article 19.** Labour Relations

The labour relations within the concessional enterprise are regulated by the labour legislation.

**Article 20.** Social Insurance

The social insurance of the local personnel of the concessional enterprise is regulated by the legislation of the Republic of Moldova, and that of the foreign workers – by contracts (agreements), the payments being transferred in the respective funds of the countries where the latter reside.

**Article 21.** The Benefit (income) of the Concessionaire

The benefit (income) left after the payment of other mandatory payments is used by the concessionaire. The concessionaire independently uses the net benefit, unless otherwise provided by the concession contract.

**Article 22.** Imposition of Tax

*[Art.22 excluded bylaw No.268-XVI as of 28.07.2006, in force since 08.09.2006]*

*[Art.22 in the wording of Law No.1592-XIII as of 27.02.98]*

**Capitolul V**

**GUARANTEES AND RESPONSIBILITIES OF THE PARTIES**

**Article 23.** The Gurantees and Defence of the Concessionaire's Rights

(1) The contracting authority insures the concessionaire:

- a) protection of investments;
- b) non-interference of the central specialized bodies of the public administration (local public administration authorities) in the concessionaire's entrepreneurial activity, except cases when this activity violates the legislation, and it is a real danger to the life and health of the population, or serious consequences are likely to arise;

c) compensation in the benefit of the concessionaire, after the liquidation of the concessional enterprise, of the non-amortized part of expenses realized in the concessional period, unless otherwise provided by the contract.

(2) the concessionaire – foreign physical person or legal entity benefits from the warranties and rights stipulated by the related legislation on foreign investments.

(3) the defence of the concessionaires rights is realized by the competent court, as well as, according to the agreement between parties, by arbitrary judgment.

*[Art.23 amended by Law No.181 as of 15.07.2010, in force since 03.09.2010]*

*[Par.(3) in the wording of Law No.1009-XIII as of 22.10.96]*

#### **Article 24. Cancellation of the Acts Violating the Concessionaire's Rights**

The acts of the supreme public authorities (local public administration authorities) that stipulate otherwise than the law hereby or through the effect of which the concessionaire's rights stipulated by the concession contract is violated, are cancelled by court, and the actions resulting from them are considered as illegal.

*[Art.24 amended by Law No.181 as of July 15, 2010, in force since September 03, 2010]*

#### **Article 25. The Responsibilities of the Parties**

The parties bear responsibility for the non-execution of the concession contract according to the related law and the provisions of the related contract.

### **Chapter VI FINAL PROVISIONS**

#### **Article 26**

The law hereby enters into force on the date of its publication.

#### **Article 27**

The Government:

Within one month:

- will present the Parliament proposals on putting the legislation into force in line with the law hereby;
- will adjust the normative acts in line with the law hereby;
- will approve the Regulations on the international tenders of concession in the Republic of Moldova;

Within 2 months, they will present for approval to the Parliament the list of objects proposed for concession in the years 1995-1996 and the mandatory clauses of the contract of concession for each object.

**PRESIDENT OF PARLIAMENT**

**Petru LUCINSCHI**

**Chisinau, July 13, 1995.**

**No.534-XIII.**