

# **LAW OF MONGOLIA ON CONCESSIONS**

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Ulaanbaatar

## **CHAPTER ONE. GENERAL PROVISIONS**

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

1.1. The purpose of this law is to regulate matters related to the organization of tenders for granting investors concessions over state and local own property, the conclusion, revision and termination of concession agreements, and the settlement of disputes.

### **Article 2. Legislation on concession**

2.1. Legislation on concession shall consist of the Constitution of Mongolia, the Civil Code, the Law on Budget, the Law on Debt Management, the Law on Government, the Law on State and Local Property, the Law on Foreign Investment, the Law on Information Transparency and Right to Information, 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 matters related to the possession, operation, creation and renovation under a concession agreement of state and local public property specified, respectively, in Articles 4.2 and 74.2 of the Law on State and Local Property.

2.4. Relations concerning the registration and inclusion into the state registry of property created or whose possession, operation and ownership rights have been transferred to the state and local authorities under the

procedures specified in this law shall be governed by the Law on State and Local Property, and the Law on Registration of Property Ownership Rights and Related Property Entitlements if not stated otherwise in the concession agreement.

2.5. If the concession item is an inseparable part of the land, then such land shall be given for possession and use in accordance with the procedures specified in the Law on Land, Law on Subsoil and Law on Land Fees.

2.6. In the interests of transparency in granting a concession communications shall abide by the Law on Information Transparency and Right to Information.

### **Article 3. Definitions of terms**

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

3.1.1. "concession" means an exclusive right to possess, operate, create and renovate state and local own property assets for the purposes of rendering basic social and infrastructure services to the public on the basis of an agreement on conditions and terms specified in this law;

3.1.2. "concession item" refers to the items approved by the Government, aimag, citizens of the capital and Citizens' Representative Assemblies as listed and covered in the concession contract.

3.1.3. "concession agreement" means a written agreement between the authorized entity and a concessionaire to implement the concession;

3.1.4. "concessionaire" means a Mongolian or foreign legal entity or their consortium that has obtained a concession under the procedures specified in this law;

3.1.5. "concession financier" means an entity which renders financial services to the concessionaire such as providing loans or issuing guarantees;

3.1.6. "regulatory authority" means a state authority with functions to grant permission and licenses required for the implementation of the concession, determine prices and ordered by it;

3.1.7. "authorized entity" means, in the case of a state-owned property that is a concession item, the state administrative authority in charge of state property, and, in the case of a local property that is a concession item, the governor of the aimag or the capital city.

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

4.1. Concessions may be of the following types:

4.1.1. "Build-Operate-Transfer" – a concessionaire builds the concession item by using its own funds or funds it has raised, operates it within the period specified in the agreement and transfers the concession item upon the expiration of the agreement to the state or local ownership in accordance with the conditions specified in the agreement;

4.1.2. "Build-Transfer" – a concessionaire builds the concession item by using its own funds or funds it has raised, and transfers the concession item to the state or local ownership in accordance with the conditions specified in the agreement;

4.1.3. "Build-Own-Operate" – a concessionaire builds the concession item by using its own funds or funds it has raised, and owns and operates the concession item in accordance with the conditions specified in the agreement;

4.1.4. "Build-Own-Operate-Transfer" – a concessionaire builds the concession item by using its own funds or funds it has raised, owns and operates it within the period specified in the agreement, and transfers it upon expiration of the agreement to the state or local ownership in accordance with the conditions specified in the agreement;

4.1.5. "Build-Lease-Transfer" – a concessionaire builds the concession item by using its own funds or funds it has raised, transfers the possession of the concession item to the authorized entity under a financial lease arrangement as specified in the agreement, and transfers it to the state or local ownership upon the expiration of the lease;

4.1.6. "Design-Build-Finance-Operate" – a concessionaire designs the concession item, builds it by using its own funds or funds it has raised, operates it within the period specified in the agreement, and transfers it to the state or local ownership upon the expiration of the agreement in accordance with the conditions specified in the agreement;

4.1.7. "Renovate-Operate-Transfer" – a concessionaire renovates the concession item by using its own funds or funds it has raised, operates it within the period specified in the agreement, and Official Translation Approved by the Ministry of Foreign Affairs of Mongolia on 24 February 2010 transfers the concession item together with the renovated item to the state or local ownership in accordance with the conditions specified in the agreement.

4.2. Concession types other than those specified in Article 4.1 of this law may be adopted depending on the nature of the specific concession item and the works and services to be rendered.

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

5.1. The concession agreement shall specify issues related to the ownership of the concession item and its parts and equipment, and they may be grouped in the agreement in the following manner:

5.1.1. property to be transferred to the state and local ownership or to other entities in accordance with the concession agreement;

5.1.2. property which the state or local authority may purchase for ownership from the concessionaire;

5.1.3. property which the concessionaire may keep or dispose of upon expiration of the concession agreement.

5.2. Unless the concession agreement provides otherwise, the state or local authority shall own the concession item renovated under the concession agreement.

5.3. Unless the concession agreement provides otherwise, the state or local authority shall own the tangible assets and intellectual property created in the process of operating the concession item.

5.4. Unless the concession agreement provides otherwise, the concessionaire shall own profits earned in the process of possessing and operating the concession item and future earnings other than those specified in Article 5.3 of this law.

5.5. Unless the concession agreement provides otherwise and unless the concession item, land and other property transferred for use to the concessionaire can no longer be used or required for the purposes specified in the agreement, the authorized entity and other state authorities and officials shall be prohibited to take a decision to repossess or dispose of the concession item before expiration 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 authorities**

6.1. The government shall have the following powers:

6.1.1. approve the list of concession items for state-owned property;

6.1.2. make a decision on granting a concession and grant the right to the authority referred in Article 6.2 to enter into a concession agreement;

6.1.3. to report annually to the Economic Standing Committee of the State Great Hural (Parliament) on the implementation of the legislation on concession.

6.1.4. other powers specified in the legislation.

6.2. The state administrative authority in charge of the concession shall have the following powers:

~~6.2.1. /This article was repealed by the law, of October 23, 2012/~~

~~6.2.2. /This article was repealed by the law, of October 23, 2012/~~

~~6.2.3. /This article was repealed by the law, of October 23, 2012/~~

6.2.4. prepare and submit a draft list of state-owned concession items to the government;

6.2.5. conduct a research and prepare proposals on the list of state-owned concession items;

6.2.6. inform the public about the list of concession items;

6.2.7. provide methodological and expert assistance to other relevant authorities on matters related to granting and implementing concessions;

6.2.8. evaluate and oversee the implementation of the concession agreement and implement the legislation on concession;

6.2.9. establish and maintain the national centralized registry and database on concessions;

6.2.10. adopt legally binding norms when specifically authorized to do so by legislation;

6.2.11. together with the relevant state administrative authority prepare tender documents specified in Article 11 of this law, and announce the tender, organize and evaluate it;

6.2.12. enter, with the concessionaire and other entities, into a concession and such other related agreements as contracts of the concessionaire to obtain financing;

6.2.13. in accordance with the relevant regulation, to obtain quarterly report on concession agreement operation and on project performance from concessionaire and consolidate the report and submit it to the State Administrative Authority in charge of the finance and budget;

6.2.14. others specified in the legislation.

6.3. The state administrative authority in charge of concession shall provide professional and methodological assistance to relevant local authorities on matters related to concessions.

## **Article 7. Powers of the local administrative and self-governing authorities**

7.1. The governors of the aimags and the capital city shall have the following powers with regard to the concession for state owned property:

7.1.1. prepare and submit projects regarding the concession for state owned property to The Citizens' Representatives Assemblies.

7.1.2. research matters and develop proposals related to concessions;

7.1.3. inform the public of concession items listed;

7.1.4. fully implement the law as stated in Articles 6.2.4.-6.2.6, 6.2.8-6.2.10

7.2. The Citizens' Representatives Assemblies of aimags and the capital city shall have the following powers with regard to locally-owned concession items:

7.2.1. approve and revise the list of locally owned concession items;

7.2.2. fully implement the law as stated in Articles 6.1.2, 6.1.4.

### **Article 8. Activities prohibited for state authorities and officials**

8.1. The following shall be prohibited for state, local administrative and self-governing authorities and officials:

8.1.1. grant concessions over state or local property not included in the lists of concession items;

8.1.2. take a decision to privatize the concession item during the term of the concession agreement;

8.1.3. interfere with the business activities of the concessionaire unless authorized by the legislation and the agreement;



8.1.4.unless the law provides otherwise, disclose confidential trade and business related information of the concessionaire or the tender participant specified in Article 11 of this law.

8.2. State, local administrative and self-governing authorities, and state and locally owned enterprises shall have no obligation or right to operate, repair or renovate a concession item transferred to the concessionaire, and shall be prohibited from entering into loan or pledge agreements related to the concession item without the consent of the concessionaire.

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

#### **Article 9. Preparation of the list of concession items**

9.1. Communications relating to projects with the regard to the list of concession items for state owned property shall be conducted in accordance with the About Budget law.

*9.2. / This article was repealed by the law, of December, 23, 2011/*

*9.3 / This article was repealed by the law, of December, 23, 2011/*

9.4. The state central administrative authority in charge of the relevant matter and the state central administrative authority in charge of investments shall jointly submit to the authorized entity a proposal for a concession item prepared in accordance with Article 10.1 of this law together with the cost and benefit analysis specified in Article 10.3 of this law.

9.5. The state administrative authority in charge of economic development policies shall submit to the government the final draft list of concession items for state-owned property based on the opinion of the state central administrative authority in charge of finances.

9.6 The governors of aimags and the capital city shall submit to the Citizens' Representatives Assemblies of the aimags and the capital city the draft list of concession items prepared in accordance with Article 10.3 of this

law together with the cost and benefit analysis for inclusion in the list specified in Article 10.2 of this law.

9.7. The governors of aimags and the capital city shall obtain the opinions of the central state administrative authority in charge of the relevant matter and the state central administrative authority in charge of the economic development policies and investments before submitting the draft specified in Article 9.4 of this law to the Citizens' Representatives Assembly.

9.8. The state administrative authority in charge of economic development policies shall adopt regulations on the methodology to prepare the cost-benefit analysis for a concession item.

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

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

10.2. The Citizens' Representatives Assemblies of aimags and the capital city shall adopt the list of concession items for locally-owned property.

10.3. The list of concession items shall include the following:

10.3.1. name and description of the concession item, the type of the concession, and the works and services to be rendered;

10.3.2. whether or not any financial assistance from the budget shall be provided and guarantees issued;

10.3.3. whether or not a tender specified in Article 11 of this law shall be organized or an agreement shall be concluded directly.

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

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

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

11.2. The authorized entity shall organize and prepare a conclusion on the results of the tender and shall have the following functions:

11.2.1. prepare and approve the tender documents, stages of the tender and criteria for its evaluation;

11.2.2. announce the date of a tender;

11.2.3. receive and evaluate project proposals, negotiate with tender participants and prepare a conclusion on the results of the tender;

11.2.4. submit its conclusion specified in Article 11.2.3 of this law for decision to the government or Citizens' Representatives Assemblies of the aimags or the capital city.

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

11.3.1. announcement of a tender;

11.3.2. receipt of proposals to participate in the tender;

11.3.3. evaluation of the submitted proposals to participate in the tender and selection of the tender participants (hereinafter referred to as "participants");

11.3.4. provision of the tender documents to the participants;

11.3.5. if necessary, organization of meetings between the participants and the authorized entity, and review by the participants of relevant information and documents;

11.3.6. preparation and submission of project proposals by participants;

11.3.7. receipt of the project proposals in accordance with the relevant procedures;

11.3.8. evaluation of the project proposals and compilation of the list of qualified participants;

11.3.9. negotiation with the qualified participants of the terms of the agreement;

11.3.10. submission of the conclusion on the results of the tender to the relevant authorities and obtaining a decision thereon.

11.4. The government shall adopt regulations on the detailed procedures for tender, sample documents and criteria for the evaluation of proposals.

11.5. All the participants of a tender shall be treated equally, provided the same information, subjected to the same requirements, and all tender-related activities shall be conducted transparently.

11.6. Participants shall have a duty to provide any information requested by the authorized entity.

11.7. It shall be prohibited to include in the tender documents specific requirements and conditions related to trademarks, names, forms, types, origins, geographical locations, methods of production, or manufacturers and suppliers.

## **Article 12. Announcement of the tender**

12.1. Announcement of the tender shall contain the following:

12.1.1. description of the concession item;

12.1.2. if appropriate, general terms of the agreement;

12.1.3. general requirements for participants;

12.1.4. whether or not a consortium of legal entities may participate in the tender;

12.1.5. whether or not only a limited number of entities shall be allowed to participate in the tender;

12.1.6. whether or not a winner of the tender shall be required to establish a legal entity to implement the concession;

12.1.7. stages and procedures of the tender;

12.1.8. address, method and time to receive proposals to participate in the tender;

12.1.9. other information deemed necessary by the authorized entity.

12.2. An announcement of the tender shall be published in national daily newspapers and other media and, if necessary, in an industry publication issued in a language commonly used in international trade.

12.3. An entity, which has submitted its proposal to participate in the tender, shall have a right to retrieve its submitted proposal, and submit a revised proposal before the deadline for receiving proposals.

12.4. The deadline for receiving proposals to participate in the tender shall be no less than two months from the date of the tender's announcement to the public.

12.5. The authorized entity shall have a duty to provide information about the tender to the public by making presentations about the tender and convening meetings.

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

13.1. Mongolian and foreign legal entities or their consortia meeting the general requirements specified in Article 12.1.3 of this law shall have a right to submit to the authorized entity sealed proposals to participate in the tender prepared in accordance with the information specified in Article 12.1 of this law.

13.2. The authorized entity shall receive and register the proposals specified in Article 13.1 of this law by the order of their delivery.

13.3. The proposals specified in Article 13.1 of this law shall be evaluated on the following criteria in order to select the participants:

13.3.1. financial capacity;

13.3.2. management, professional personnel, technical and technological capacity and experience;

13.3.3. whether or not a participant satisfies the conditions required for issuing a license, if the business activity in question is licensed under the Law on Licensing of Business Activities;

13.3.4. whether or not a participant meets the requirements specified in Article 12.1.3 of this law;

13.3.5. other criteria deemed necessary by the authorized entity.

13.4. The following principles shall be used in evaluating a consortium of legal entities which submitted a proposal to participate in the tender:

13.4.1. the criteria specified in this law shall apply to a consortium of legal entities as a whole;

13.4.2. a member of the consortium of legal entities shall be a member of one consortium of legal entities only for the particular tender;

13.4.3. unless stated differently in the announcement of the tender, a legal entity that participates in the tender as a member of a consortium of legal entities shall not participate in the tender on its own.

13.5. The authorized entity may limit participants to a certain number depending on the nature of the concession item, and may verify at any stage of the tender whether the participants continue to meet the criteria specified in Articles 13.3 and 13.4 of this law.

13.6. The authorized entity shall prepare a list of participants who meet the criteria specified in Articles 13.3 and 13.4 of this law and who shall

be eligible to submit project proposals, and the authorized entity shall inform them accordingly and organize the distribution of the tender documents to them.

13.7. Tender documents shall include the following:

13.7.1. general information on the project;

13.7.2. detailed indicators for the capacity and quantity of concession items to be created or renovated;

13.7.3. limits to rights of possession and operation of the concession item and detailed indicators for quantity and capacity of the works and services to be rendered;

13.7.4. prices, tariffs and licenses related to the possession and operation of the concession item and other relevant information;

13.7.5. special requirements as to environmental, health and labour safety standards;

13.7.6. draft agreement containing general terms of the concession agreement, and non-negotiable terms of the agreement, an indication of whether there shall be additional agreements and, if so, information on them;

13.7.7. whether payments shall be required for operating the concession item and, if so, the amounts and forms of such payment;

13.7.8. whether there shall be financial assistance from the state and, if so, the amounts and forms of such assistance;

13.7.9. procedures to receive, open and evaluate project proposals and evaluation criteria;

13.7.10. amount of the bid security, accounts for deposit of the security, its duration and conditions;

13.7.11. address, form and deadline for receiving project proposals.

13.8. The authorized entity may revise the tender documents and, if it does, shall inform the participants of such revisions with reasonable advance notice before the submission of the project proposals or it may extend the deadline for submitting the project proposals.

13.9. The authorized entity may organize meetings to provide all participants with information related to the tender documents.

13.10. The authorized entity may appoint a working group comprised of representatives of relevant organizations to approve the tender documents, evaluate project proposals and conduct the negotiations specified in Article 15 of this law.

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

14.1. The participants specified in Article 13.6 of this law shall submit their sealed project proposals prepared in accordance with the tender documents together with the technical and economic feasibility studies.

14.2. The authorized entity shall receive the project proposals, register their form and delivery date, open and evaluate them in accordance with the tender documents.

14.3. The project proposals shall be evaluated in accordance with the following criteria:

14.3.1. technical soundness and operational feasibility;

14.3.2. quality and accessibility of services to be rendered;

14.3.3. the extent of acceptance of general terms of the draft agreement;

14.3.4. the total amount of payments and fees for works and services to be rendered during the term of the concession agreement, and their present value;

14.3.5. the cost of design and construction, maintenance cost, total investment, and their present values;



- 14.3.6. financial support from the state, its type and amount;
- 14.3.7. the financing plan;
- 14.3.8. the impact on the social and economic development of the country;
- 14.3.9. compliance with environmental standards;
- 14.3.10. other criteria deemed necessary by the authorized entity.

14.4. The authorized entity shall evaluate the project proposals as specified in Article 14.3 of this law and rank them beginning with the best proposal.

14.5. The procedure for submission of the project proposals and their evaluation shall be open to the public and, if necessary, may be published in the national daily press.

## **Article 15. Negotiations with participants, preparation of a conclusion on the results of the tender**

15.1. The authorized entity shall negotiate with participants the terms of the concession and other related agreements.

15.2. The negotiations specified in Article 15.1 of this law shall be conducted in the following manner:

15.2.1. the authorized entity shall begin to negotiate with the participant which offered the best proposal but shall retain a right to terminate the negotiations and start negotiations with the next participant;

15.2.2. negotiations shall be conducted in the order of the ranking specified in Article 13.6 of this law.

15.3. The authorized entity shall prepare a conclusion to enter into an agreement with the participant with whom it negotiated the best terms of the agreement and submit it to the government or the Citizens'

Representatives Assembly of the aimag or the capital city within five business days.

### **Article 16. Two-stage procedure for submitting project proposals**

16.1. When the authorized entity deems it impossible, in view of the nature of the concession item and the industry in question, to reflect in sufficient details in the tender documents the technical and economic feasibility, financing conditions and other requirements and criteria, it may organize the submission of the project proposals in two stages.

16.2. When organizing the submission of the project proposals in two stages, a request shall be sent to the participants to submit an initial proposal on the issues specified in Article 13.7 of this law.

16.3. Upon reviewing the proposals submitted by participants in accordance with Article 16.2 of this law, the authorized entity shall finalize the tender documents.

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

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

16.6. The authorized entity shall comply with the procedures specified in Articles 14 and 15 of this law when evaluating the project proposals, negotiating and preparing a conclusion on the results of the tender.

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

17.1. A concession can be granted by concluding a direct agreement under the following circumstances:

17.1.1. when it is deemed that conducting a tender would jeopardize national security;

17.1.2. when one or several entities with common interest own intellectual and related property essential for implementation of the concession;

17.1.3. when no proposal was submitted in response to the tender announcement or no proposals met the requirements of the tender and, in the opinion of the authorized entity, it was unlikely that any proposals would be submitted within the required timeframe if a tender is announced again;

17.1.4. when a concession item is transferred to other entities in accordance with Article 28 of this law.

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

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

18.1. Mongolian and foreign legal entities and their consortia may submit an unsolicited proposal to conclude a concession agreement together with the cost-benefit analysis to the authorized member of government in charge of the economic development policies, the Citizens' Representatives Assembly of the aimag or the capital city.

18.2 If the state owned concession item does not require financing from the state budget the opinion of the state central authority in charge of finances shall be obtained as stated in the Article 18.1 of this law.

18.3. If the concession item is a locally-owned property the aimag or capital city authorized entities shall obtain the opinions of the Citizens' Representatives Assembly of the aimag or the capital city.

18.4. If the government, the Citizens' representatives Assembly of the aimag or the capital city considers that the proposal should be added to the list of concession items for state owned property the project will be selected through a tender in accordance with this law.

18.5. If no other entity expresses an interest to participate in the tender specified in Article 18.4 of this law, the authorized entity shall consider the original proponent as having submitted the best proposal and deliver its recommendation to that effect to the government or the Citizens' Representatives Assembly of the aimag or the capital city

18.6. If several entities participate in the tender, the original proponent shall be given some preference in the process of evaluating the project proposals and preparing a conclusion on the results of the tender, and such preference shall be reflected in the tender documents.

#### **Article 19. Decision to conclude an agreement**

19.1. The government shall authorize the authorized entity to conclude an agreement based on the recommendations submitted in accordance with Articles 15.3, 17.2, 18.5 of this law.

19.2. If the concession agreement provides the concessionaire with tax exemptions and waivers, the government shall submit this matter to the State Great Hural (Parliament) for ratification.

19.3. The Citizens' Representatives Assembly of the aimag or the capital city shall authorize the governor of the aimag or the capital city to conclude an agreement based on recommendations specified in Articles 15.3, 17.2, 18.5 and 18.6 of this law.

19.4. If the government or the Citizens' Representatives Assembly of the aimag or the capital city does not support the conclusion of the

concession agreement, it shall decide either to renegotiate or organize the tender again.

19.5. The relevant procedures specified in this law shall apply to renegotiating the agreement or organizing the tender again.

## **CHAPTER FIVE. CONCESSION AGREEMENT**

### **Article 20. Parties to a concession agreement**

20.1. The following shall be parties to a concession agreement:

20.1.1. In the case of a concession that is a state-owned property, the state central administrative authority in charge of economic development policies, and, in the case of a concession that is a locally-owned property, the governor of the aimag or the capital city;

20.1.2. a winner of the tender;

20.1.3. in the case of a direct agreement, an entity that meets the requirements of concluding such an agreement as specified in this law.

### **Article 21. Contents of a concession agreement**

21.1 Unless the law and the agreement provide otherwise, a concession agreement shall be concluded and interpreted under the laws of Mongolia and shall include the following:

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

21.1.2. nature of the works and services to be rendered by the concessionaire, its scope of coverage and the scope of exclusive rights of the concessionaire;

21.1.3. a right of the concessionaire to receive payments for operating the concession item or providing services, methodology to determine and adjust prices and tariffs, and methods of oversight;

21.1.4. conditions for transferring the controlling interest in the concessionaire and for obtaining consent of the authorized entity for such a transfer;

21.1.5. amount of payments, if any, to be made by the authorized entity to the concessionaire for the works and services rendered;

21.1.6. rights of the concessionaire to obtain financing or create security interests;

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

21.1.8. rights and obligations of the regulatory authorities to provide support to the concessionaire in obtaining permits, licenses, land or land use rights necessary for the implementation of the concession;

21.1.9. rights and obligations of the parties to possess and use land and its subsoil;

21.1.10. the right of the concessionaire to modify works and services to ensure the continuity, quality and contractual obligations for the works and services to be rendered;

21.1.11. a duty of the concessionaire to provide services under essentially the same conditions for the users of the same category;

21.1.12. minimum capital and other requirements for the legal entity, if such a legal entity should be established under the laws of Mongolia to implement the concession;

- 21.1.13. the right of the concessionaire to receive compensation in the event of increase of the concessionaire's costs or decrease of its revenues as a result of changes in the legislation directly related to the implementation of the particular concession;
- 21.1.14. circumstances under which the authorized entity can temporarily take over the concession item;
- 21.1.15. conditions for the substitution of the concessionaire;
- 21.1.16. procedures to resolve debts, payments and receivables, obligations and liabilities of state and local administrative authorities, or of state- and locally-owned legal entities authorities related to the possession and operation of the concession item or the works and services rendered by using the concession item before the concession agreement came into effect;
- 21.1.17. an obligation of the concessionaire to report and inform;
- 21.1.18. conducting high cost or conflict-of-interest transactions, and procedures for the authorized state authority to monitor them;
- 21.1.19. rights and obligations of the concessionaire with regard to quality guarantees for the concession item after its transfer upon expiration of the concession agreement;
- 21.1.20. procedures for inspecting, testing, commissioning the concession item, overseeing the activities of the concessionaire, transferring the technology and training the personnel upon transfer of the concession item;
- 21.1.21. if necessary, the services that are related to the operation of the concession item that the concessionaire should continue to provide after the transfer of the concession item;

21.1.22. the amount of payments, if any, required upon the transfer of the concession item to the entity specified in the agreement, or to a new concessionaire;

21.1.23. duration of the concession agreement, its extension, transfer of rights and obligations under the agreement, revisions to the agreements, relationship between the concession agreement and other related contracts, force majeure, non-performance by parties of obligations, termination and Official Translation Approved by the Ministry of Foreign Affairs of Mongolia on 24 February 2010 expiration of the agreement, handing-over and transfer of the concession item, and settlement of disputes.

21.1.24. other issues agreed by the parties.

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

22.1. The parties to the agreement shall determine the duration of the concession agreement taking into account particulars of the industry in question, timeline of the investment, volume of investment, time to recoup the investment, expected profits, duration of the operation of the concession item and other factors.

22.2. The authorized entity shall extend the concession agreement if:

22.2.1. the activities specified in the concession agreement have been disrupted or delayed as a result of force majeure;

22.2.2. the activities specified in the concession agreement have been disrupted or delayed as a result of a decision taken by state authorities;

22.2.3. requests and demands by the authorized entity, not included in the concession agreement, and which resulted in an



increase of the concessionaire's costs that could not be recovered without extending the concession agreement.

22.3 The authorized entity may extend the concession agreement if unforeseen circumstances arise which have a financial impact on the concessionaire or which may lead to imposing tariff and payments for the population that are too high.

### **Article 23. Revision of a concession agreement**

23.1. The parties to the agreement may revise the concession agreement by mutual consent.

23.2. The concessionaire may propose to revise the agreement to receive compensations under the following circumstances:

23.2.1. changes in economic and financial conditions;

23.2.2. changes in legislation.

23.3. The proposal specified in Article 23.2 of this law shall be made if the circumstances specified in Articles 23.2.1 and 23.2 of this law occurred after the conclusion of the agreement, and it was impossible to foresee the occurrence of these circumstances, and the concessionaire cannot mitigate these circumstances by itself.

23.4. The concession agreement shall provide for procedures to revise the agreement under Articles 23.2 and 23.3 of this law.

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

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

24.1.1. by the mutual agreement of the parties;

24.1.2. the agreement expires and it has not been extended;

24.1.3. unless otherwise specified in the law and the concession agreement, the concessionaire is bankrupt or liquidated;

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

24.2. The concession agreement shall be terminated by the authorized entity under the following circumstances:

24.2.1. it is determined by the court that the concessionaire breached the law or submitted false tender documents when participating in the tender;

24.2.2. it is determined by the relevant authority that the concessionaire has repeatedly and/or seriously violated the legislation of Mongolia;

24.2.3. the concessionaire's non-performance or failure to properly perform under the concession agreement, if the agreement so provides;

24.2.4. the government has decided to terminate the concession agreement on grounds of national security, national defence or public interest;

24.2.5. unless specified in the concession agreement, the controlling interest in the concessionaire has been transferred to others without the consent of the authorized entity;

24.2.6 unless the law or the concession agreement provide otherwise, the concessionaire is bankrupt or liquidated.

24.3. The concession agreement shall be terminated by the concessionaire under the following circumstances:

24.3.1. non-performance or failure to properly perform under the concession agreement by the authorized entity or regulatory authority if the concession agreement so provides;

24.3.2. failure by the parties to revise the concession under Article 23 of this law if the agreement so provides;

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

24.4. The agreement shall specify how compensation due to either party is calculated in the event of the termination of the concession agreement, providing, where appropriate, for the proper value of the works rendered under the concession agreement, expenses incurred, and losses sustained by the relevant party including, as appropriate, lost profits.

24.5. Unless this law and the concession agreement specify otherwise, rights of possession, operation and disposal of the concession item shall transfer to relevant authorities in charge of state or local property upon termination of the concession agreement.

## **Article 25. Monitoring the implementation of the concession agreement**

25.1 The following entities shall monitor the implementation of the concession agreement:

25.1.1. the state administrative authority in charge of economic development policy and state administrative and local authorities in charge of state and local property;

25.1.2 the state administrative authority in charge of the particular concession item;

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

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

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

26.1. A concessionaire shall have the following generic rights:

26.1.1. as specified in the agreement, set, alter and collect, in consultations with the authorized entity and the regulatory authorities, payments and fees charged for the works and services rendered;

26.1.2. where necessary, enter into the concession-related agreements jointly with the regulatory authorities and the authorized entity;

26.1.3. obtain financing as specified in the agreement;

26.1.4. unless the concession agreement provides otherwise, create security interests over any of its assets, including assets and rights related to the concession item to secure financing to implement the concession.

26.2. The assets and rights specified in Article 26.1.4 of this law may include the following:

26.2.1. all kinds of payments and/or future earnings charged for operating the concession item or rendering the services;

26.2.2. the concession item created or renovated by the concessionaire, or the assets purchased by it.

26.3. A shareholder of the concessionaire may pledge its shares to finance the concession.

26.4. A concessionaire shall have the following generic obligations:

26.4.1. to conduct activities specified in the legislation and the concession agreement;

26.4.2. if the concession agreement so provides, pay the concession fee in accordance with the relevant procedures;

26.4.3. to ensure that the quality, quantity and volume of the works and services rendered not go below the levels specified in the concession agreement;

26.4.4. to possess, operate, repair and maintain the concession item for the purposes specified in the concession agreement;

26.4.5. to pay the taxes and fees imposed by the legislation;

26.4.6. a concessionaire is obligated to report quarterly in accordance with the relevant regulation to the administrative body in charge of the concession on performance and execution for the concession agreement.

26.4.7. other obligations specified in the law.

26.5. A concessionaire shall have obligation to have an accident insurance on the concession item if the concession agreement so provides.

26.6. A sub-contractor may perform certain works and services related to the concession agreement, and the concessionaire shall be responsible for the quality and performance of such works and services.

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

27.1. The following shall be prohibited for a concessionaire:

27.1.1. transfer its rights and obligations to others unless authorized by the law or the agreement;

27.1.2. transfer the concession item to others as a gift, trade or sell it, or pledge the concession item for the purposes other than those to finance the concession agreement or those specified in the concession agreement;

27.1.3. unless the concession agreement provides otherwise, disrupt or terminate the works and services rendered under the concession agreement without the consent of the authorized entity;

27.1.4. unless the concession agreement provides otherwise, transfer its controlling interest to others by pledging, selling or otherwise without the consent of the authorized entity.

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

28.1. A concession financier shall have the following rights:

28.1.1. monitor the activities of the concessionaire;

28.1.2. access the concession item and related facilities to exercise its rights specified in this law;

28.1.3. take over the pledged assets and the rights of the concessionaire subject to the relevant legislation and agreements;

28.1.4. in the event of non-performance or failure by the concessionaire to properly perform under the concession agreement or if the concessionaire is bankrupt or liquidated, submit a proposal to the authorized entity to manage the concession item or transfer it to others with the consent of the authorized entity in accordance with the procedures specified in the concession agreement.

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 procedures to substitute the concessionaire;

28.2.2. grounds for the authorized entity to withhold its approval for the new entity to possess the concession;

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

28.2.4. other items specified in the legislation on concession.

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

### **Article 29. Granting licenses and permits**

29.1. The fact that a participant in the concession tender does not have a license required for the particular works and services as specified in the relevant laws shall not serve as a ground for excluding the participant from the tender.

29.2. If the works and services to be rendered by the concessionaire require a license, the relevant license shall be granted to the concessionaire as soon as possible upon the conclusion of the concession agreement.

29.3. If a concession item is a facility that is inseparable from the land, the regulatory authority shall have a duty to resolve the land use issue in accordance with the relevant procedures as soon as possible upon the conclusion of the concession agreement.

29.4. If the implementation of the concession will require transit through the land possessed, used or owned by a third party, or works, maintenance and services need to be performed on any equipment and facilities that are related to the concession item and located on such land, the authorized entity and the regulatory authority shall resolve these matters in accordance with the relevant laws before granting the concession.

### **Article 30. Financial support from the state**

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

30.1.1. issue a loan guarantee;

30.1.2. provide a portion of the financing for the concession;

30.1.3. provide tax support and other financial support;

30.1.4. provide insurance;

30.1.5. issue a guarantee for the minimum amount of the concessionaire's revenues under the concession agreement;

30.1.6. provide the compensations specified in this law and the concession agreement;

30.1.7. others.

30.2. Amount, terms and conditions of the financial support specified in Article 30.1 of this law shall be set in the concession agreement.

30.3. If the parties set the payments and tariffs for the works and services to be rendered under the concession agreement below their actual costs, the parties may agree to reimburse the difference from the state or local budget.

30.4. The reimbursement specified in Article 30.3 of this law shall be provided to the concessionaire until the concessionaire operates without financial losses taking into account the nature of the concession item and of the industry in question.

30.5. Tax support specified in Article 30.5 of this law will be regulated as specified in tax legislation, and tax rate and stabilization of the tax environment will be regulated by investment legislation.

30.6. In the case of financial support or payment from the state budget as it is provided in the concession agreement, any such support and source of payment shall be reflected in the state budget in accordance with Article 30.4 of the Law on Budget.



30.7. Requirements specified in the Debt Management Law shall be in use in case of forming a concession agreement with terms of repayment from the State and local government budget.

### **Article 31. Risk allocation**

31.1. Unless the concession agreement provides otherwise, the concessionaire shall fully bear the business risks associated with the implementation of the concession.

31.2. The concession agreement shall provide for risk allocation related to emergency situations caused by force majeure.

31.3. The concessionaire shall be fully responsible for losses and damages caused to others and liabilities to third parties that result from its own wrongful actions during the possession and operation of the concession item.

### **Article 32. Assignment of a concession**

32.1. Unless the law and the concession agreement provide otherwise, rights and obligations of the concessionaire cannot be assigned to third parties without the consent of the authorized entity.

32.2. The concession agreement shall provide, inter alia, for conditions for the authorized entity to consent to the assignment to others of the concessionaire's rights and obligations, for the new concessionaire to assume these rights and obligations, and for procedures to verify its technical and financial capacity to provide the services under the concession agreement.

32.3. If the concessionaire has seriously and/or repeatedly breached the concession agreement and failed to meet the demand to rectify the breach, the authorized entity may temporarily take over the concession item subject to the terms of the concession agreement to ensure the

uninterrupted delivery of the works and services to be rendered by the concession agreement.

## **CHAPTER EIGHT. MISCELLANEOUS PROVISIONS**

### **Article 33. Database**

*A title of this article was amended repealed by the law, of June 16, 2011/*

*~~33.1~~ / This article was repealed by the law, of June 16, 2011/*

*~~33.2~~ / This article was repealed by the law, of June 16, 2011/*

*~~33.3~~ / This article was repealed by the law, of June 16, 2011/*

33.4. The authorized entity shall archive all documents and materials related to the tenders and keep them in a database.

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

34.1. Complaints related to granting the concession shall be filed with the authorized entity within 10 business days after such activity took place, and, if the complainant is not satisfied with the decision of the authorized entity, the complainant shall have a right to file a claim in court.

34.2. Any disputes between the parties to the concession agreement shall be settled in the manner prescribed in the agreement.

34.3 Disputes between the concessionaire and its shareholders, financiers or other entities arising in the process of their business activities shall be resolved in the manner agreed between them.

34.4. Disputes between the concessionaire and its customers related to the activities specified in the concession agreement shall be resolved in courts and/or by the means specified in the relevant laws.

### **Article 35. Penalties imposed for violation of the legislation on concession**

35.1. The parties to the concession agreement that failed to perform or performed inadequately their respective obligations under the relevant laws or the agreement, shall bear property liability as specified in the agreement or, if the agreement does not so provide, in accordance with the Civil Code.

35.2. If a breach of the following norms specified in the law does not constitute a criminal offence, the court or the state inspector shall impose the following administrative penalties:

35.2.1. a penalty of 200 000-250 000 tugrugs for government authorities and officials who breached norms related to the organization of a tender;

35.2.2. a penalty of 250 000-300 000 tugrugs for officials who breached norms related to evaluation of the tender documents and Article 11.1 of this law;

35.2.3. a penalty of 250 000-300 000 tugrugs for government authorities or officials for breaching Article 33 of this law.

35.3. Disciplinary sanctions specified in the Law on Civil Service may be imposed on civil servants who breached the legislation on concession taking into account the nature of the breach.

### **Article 36. Date of entry into force**

36.1. This law shall enter into force on March 1, 2010.

CHAIRMAN OF STATE IKH KHURAL  
OF MONGOLIA

D.DEMBEREL