

LAW ON CONCESSIONS

10 September 1996 No. I-1510

Vilnius

(As amended by 17 February 1998 No. VIII-629)

Chapter I

GENERAL PROVISIONS

Article 1. Objective the Law

This Law defines the concept of concession, objects of concessions and spheres of business activity for which concessions may be granted, the procedure for granting concessions, the rights and duties of government institutions of the Republic of Lithuania and those of enterprises of the Republic of Lithuania and foreign countries which operate on the basis of concession contracts.

Article 2. Definitions

As used in this Law:

1. Concession means the right to use the existing state-owned or municipal property or property that is to be created, which is granted under contract for the performance of certain business activity.
2. Concession contract means a written contract whereunder the grantor of the concession transfers to the concessionaire, in the manner established in the concession contract, the right to use for a certain fee and for a specified time period, the objects of concession determined by this Law.
3. Concession fee means the concessionaire's fee or payment in any other form (transfer of goods, provision of services, etc.) to the grantor of the concession for the right to use the objects of concession identified in the concession contract.
4. Objects of concessions means objects owned by the State of Lithuania or the municipality and specified in this Law, with respect whereto the concession contract is concluded.
5. Competition for the concession contract means the procedure established by this Law and other legal acts whereby a certain enterprise of the Republic of Lithuania or foreign state is declared the successful bidder for the concession contract.
6. Concessionaire means the enterprise which has concluded a concession contract with the grantor of the concession.
7. Foreign concessionaire means a subsidiary of a foreign state enterprise, set up and registered in the manner prescribed by the laws of the Republic of Lithuania, which is the successful bidder in the competition for the concession contract and concludes a contract with the grantor of the concession.

8. Grantor of the concession means the central or local government authority specified in this Law which is authorised to sign the concession contract.

9. Enterprise of the Republic of Lithuania means the enterprise set up and functioning in accordance with the Law on Enterprises of the Republic of Lithuania and the law regulating the establishment of the relevant type of enterprises and their functioning.

10. Foreign state enterprise means the enterprise, amalgamation, association or other organisation with or without the rights of legal person, set up and operating in accordance with the laws of the foreign state laws and domiciled therein.

Chapter II

OBJECTS OF CONCESSIONS AND SPHERES OF ACTIVITY THEREUNDER

Article 3. Objects of Concessions

1. In the Republic of Lithuania the following objects may be the objects of concessions:

1) objects to which, according to the Constitution of the Republic of Lithuania, the State of Lithuania has exclusive rights, e.g., the continental shelf and the economic zone in the Baltic Sea;

2) objects which are in the exclusive ownership of the State of Lithuania, i.e. the earth entrails, internal waters, roads, historical, archaeological and cultural objects of national significance;

3) state-owned enterprises of the Republic of Lithuania not to be privatised within the term of the concession;

4) buildings, structures, installations, transport and other facilities not to be privatised within the term of the concession;

5) facilities and enterprises owned by municipalities not to be privatised within the term of the concession.

2. When a state-owned or municipal enterprise is being transferred pursuant to a concession, the concessionaire shall be assigned the rights and obligations of the enterprise's founder established by the laws of the Republic of Lithuania and specified in the concession contract.

3. An object which is yet to be produced may also be the object of concession. In such event the concessionaire undertakes to produce a certain object and to use it for the performance of activity specified in the concession contract. After the expiry of the term of the concession or upon the termination of the contract the object of concession shall be transferred to the state or municipality under the conditions established in the contract.

4. State-owned land shall not be the object of concessions. Where the concession is related to the use of state-owned or private land, the competition for the concession contract may only be announced when the grantor of the concession is in the position to guarantee the drawing up of a land lease on the terms set in the state offer.

Article 4. Spheres of Activities Pursuant to a Concession and Restrictions thereon

1. Activities under a concession contract shall be permitted in all spheres of business, except for the spheres which under Article 13 of the Law on Enterprises are reserved exclusively for state-owned and municipal enterprises and special purpose companies.
2. Restrictions established in Article 8 of the Law on Foreign Capital Investment in the Republic of Lithuania shall apply to the operations of foreign concessionaires.
3. Business activity under a concession contract in the spheres prohibited under paragraphs 1 and 2 hereof may be permitted under separate laws.

Article 5. Licensed Activity

Where the terms and conditions of a concession are in conformity with the requirements for the acquisition of permits (licenses) for the activity specified in the concession contract as prescribed by the laws of the Republic of Lithuania, the granting of concession obligates appropriate institutions of the Republic of Lithuania to issue permits (licenses) for the activity.

Chapter III

PROCEDURE FOR GRANTING AND CANCELLING CONCESSIONS

Article 6. The Principles of Granting Concessions

1. Concessions shall be granted by holding an open competition.
2. The procedure for arranging and holding a competition for the concession contract, also for contracting the successful bidder shall be established by this Law and by the Regulations for Arranging Competitions for Concessions Contracts approved by the Government of the Republic of Lithuania.

Article 7. The Procedure for Granting Concessions

1. The decision concerning the feasibility of granting a concession for the use of objects may be made by:
 - 1) the Seimas of the Republic of Lithuania on the proposal of the Government, where the concession is to be granted for the use of objects specified in subparagraphs 1 and 2 of paragraph 1 of Article 3 of this Law;
 - 2) the Government of the Republic of Lithuania, if the concession is to be granted for the use of objects specified in subparagraphs 3 and 4 of paragraph 1 of Article 3 of this Law;

3) the municipal council, if the concession is to be granted for the use of objects specified in subparagraph 5 of paragraph 1 of Article 3 of this Law.

2. Where the object of concession is yet to be produced, the decision regarding the feasibility of its production and its subsequent use pursuant to the concession shall be made by the government or municipal institution which is authorised under this Law to decide on granting a concession for the use of objects of the type.

3. The decision regarding the feasibility of the concession must state the principal terms and conditions for the granting thereof.

4. After the decision on the feasibility of the concession is taken, a competition for the concession contract under the terms and conditions prescribed by the decision must be held by:

1) the Government of the Republic of Lithuania if the decision concerns the objects specified in subparagraphs 1 and 2 of paragraph 1 of Article 3;

2) the enterprise's founder if the decision concerns the objects specified in subparagraph 3 of paragraph 1 of Article 3;

3) the ministry of the Republic of Lithuania or any other government institution to whose sphere of regulation the appropriate object of concession is assigned, if the decision concerns the objects of concession specified in subparagraph 4 of paragraph 1 of Article 3 or the objects of concession planned to be produced which will be in the ownership of the state;

4) the executive body of local authority, if the decision concerns the objects of concession specified in subparagraph 5 of paragraph 1 of Article 3 or the objects of concession planned to be produced which will be in the ownership of the municipality.

Article 8. The Right to Take Part in the Competition for the Concession Contract

1. Enterprises of the Republic of Lithuania and foreign states which submit a bid in the manner and within the time limits specified in the government offer as well as other documents prescribed by the government offer shall have the right to take part in the competition for the concession contract.

2. The following entities shall be prohibited from participating in the competition for the concession contract:

1) state-owned enterprises of the Republic of Lithuania;

2) municipal enterprises of the Republic of Lithuania;

3) enterprises of the Republic of Lithuania in which over 50% of share capital is owned by the state or municipality;

4) public authorities of foreign states.

Article 9. Commission for Arranging the Competition

1. The government or municipal institution specified in paragraph 4 of Article 7 of this Law which is authorised to hold a competition for the concession contract shall form the Commission for Arranging the Competition and shall approve its regulations.

2. The Commission shall function on the instruction, accordingly, of the Government of the Republic of Lithuania or the municipality and shall be accountable to the institution which forms it.

Article 10. Terms and Conditions of the Concession

1. The Commission for Arranging the Competition must within the period specified in the Regulations for Arranging the Competition prepare the government offer and submit it for approval to the institution holding the competition. The offer must identify:

- 1) the object of concession and its specifications;
- 2) the time period for which the concession is to be granted;
- 3) types of activities, works and services;
- 4) terms and conditions of the concessionaire's activity, the rules for fixing the charges (rates) for the services and goods provided for under the contract;
- 5) the terms and conditions of the lease of land necessary for the activity planned under the concession;
- 6) the terms and conditions prescribed by the laws of the Republic of Lithuania for receiving a permit for the exploration, use of the underground resources and cavities, or for any other activity for which permits are required under laws;
- 7) the rights of ownership of the state, municipality and the concessionaire to the manufactured goods or received income;
- 8) the concession fee;
- 9) the procedure and terms and conditions of surrendering the object of concession to the state or municipality;
- 10) documents that are to be filed together with the bid for the competition, also the procedure and terms of their filing;
- 11) bid evaluation criteria.

2. In view of the type and specific character of the object of concession, the government offer may also set other special terms and conditions for granting the concession, especially those relating to the requirements established for the concessionaire in the spheres of environmental protection, labour relations and safety at work.

3. When the institution which holds the competition for the concession contract approves the government offer prepared by the Commission, the offer shall be announced over the national and, in certain cases on the decision of the above institution, also over foreign mass media.
4. The terms and conditions announced in the government offer may not be subjected to any changes during negotiations for the signing of the concession contract.

Article 11. Competition for the Concession Contract

1. Bids and documents received from the participants in the competition within the time period set in the government offer shall be verified and evaluated by the Commission for Arranging the Competition on the basis of the evaluation criteria set in the government offer.
2. Upon establishing the successful bidder, the Commission for Arranging the Competition shall propose that the institution holding the competition should approve the successful bidder and conclude with him the concession contract.
3. If within the time period set in the government offer only one bid meeting the terms and conditions of the competition is received, the Commission for Arranging the Competition shall declare the bidder to be the successful bidder.
4. Only enterprises set up and registered in the manner prescribed by the laws of the Republic of Lithuania may perform the activities specified in the concession contract.
5. Prior to signing the concession contract, the foreign enterprise which is declared the successful bidder must set up and register its subsidiary (foreign concessionaire) in the manner prescribed by the laws of the Republic of Lithuania. All the rights and duties attaching to the concession shall be assigned to the newly registered enterprise and the concession contract shall be signed with it.

Article 12. Concession Contract

1. The concession contract shall grant the concessionaire the right to use the object pursuant to the concession when performing the activity under contract within the territory and time period specified in the contract and in conformity with other contractual conditions.
2. The concession contract must be in conformity with the provisions of the Model Concession Contract approved by the Government of the Republic of Lithuania.

Article 13. Mandatory Requirements of the Concession Contract

1. The concession contract shall be signed on the terms and conditions specified in the government offer under paragraphs 1 and 2 of Article 10 of this Law.
2. In addition to the terms and conditions set in paragraph 1 hereof, the concession contract must also specify:

- 1) the term of the contract, contract extension procedure, the principles and procedure of the contract suspension and termination;
 - 2) the rights and obligations of the parties to the contract relating to the activity specified in the concession contract;
 - 3) the concessionaire's obligations to guarantee the funding of the contractual activity;
 - 4) the procedure for supplementing and amending the contract;
 - 5) liability of the parties to the contract for defaulting on the contractual obligations or for failure to duly perform the obligations;
 - 6) the procedure for settling disputes between the parties.
3. In view of the type of the concession object and other circumstances, the concession contract may also contain other terms and conditions which are in compliance with this Law and other laws and legal acts of the Republic of Lithuania.

Article 14. Contract Expiry and Termination

1. The concession contract shall expire:
 - 1) upon the expiry of its term if there is no extension;
 - 2) by agreement between the parties to the concession contract;
 - 3) in the event of the concessionaire's bankruptcy and liquidation.
2. The grantor of the concession shall have the right to request termination of the concession contract prior to the expiry of its term if the concessionaire:
 - 1) files incorrect and unjustified data pertaining to his financial position and business activity during the competition for the concession contract and the circumstances transpire after the signing of the concession contract;
 - 2) violates the terms and conditions of the concession contract as well as contractual obligations and fails to remove the violations in the manner and within the time period specified in the contract;
 - 3) violates the requirements of other laws and legal acts.
3. Upon the termination of the contract in the cases specified in paragraph 2 hereof the concessionaire must indemnify the state (municipality) for the losses incurred by reason of termination of the contract.
4. The concessionaire shall have the right to demand termination of the concession contract prior to its expiry if the concession grantor violates the terms and obligations established in the concession contract and in the government offer, and fails to rectify the violations in the manner and within the time period specified in the contract. Upon the termination of the concession contract the concessionaire shall be entitled to the compensation of losses incurred by reason of the contract termination.

5. Should it transpire after the signing of the concession contract that the contract was granted in contravention of this Law and other laws of the Republic of Lithuania and contrary to Lithuania's national and public interests, the following institutions shall have the right to demand termination of the concession contract:

1) the Seimas of the Republic of Lithuania by its resolution, if the concession was granted by the Government of the Republic of Lithuania;

2) the Government of the Republic of Lithuania by its decree, if the concession was granted by the institution specified in subparagraphs 2 and 3, paragraph 4 of Article 7 of this Law;

3) the municipal council by its resolution, if the concession was granted by the executive body of the municipality.

6. Upon terminating the concession contract in the cases specified in paragraph 5 hereof, the state (municipality) must buy back the concessionaire's contractual rights and indemnify him for the losses relating to the termination of the concession contract.

7. The losses relating to the termination of the concession contract and the rights to be bought back from the concessionaire shall be assessed by the institution authorised by agreement between the concessionaire and the grantor of the concession and specified in the concession contract.

8. Upon the expiry or termination of the concession contract the objects of concession assigned to the concessionaire or newly produced (finished or unfinished) must be surrendered to the state or municipality.

9. The procedure and terms and conditions of termination of the concession contract must be set forth in the contract.

Chapter IV

TAXATION, LEGAL PROTECTION AND GUARANTEES OF CONCESSIONAIRES

Article 15. Taxation of Concessionaires

1. Concessionaires shall be subject to tax in the manner prescribed by the laws of the Republic of Lithuania.

2. The concession fee and the procedure of its payment (transfer) pursuant to the decision regarding the feasibility of granting the concession to use the object shall be established by the central (local) government authority which holds the competition for the concession contract. The concession fee shall be specified in the concession contract and paid (transferred) to the central or local government.

Article 16. (Repealed)

Article 17. Concessionaires' Right of Ownership

1. Income received lawfully pursuant to the concession contract shall be owned by the concessionaire.
2. Upon paying the taxes prescribed by the laws of the Republic of Lithuania and the concession fee established in the concession contract, foreign concessionaires shall have the right to transfer abroad without any restrictions the income owned by them.

Article 18. Settlement of Disputes Relating to the Concession

1. Should disagreements or disputes relating to the interpretation or implementation of the concession arise between the grantor of the concession and the concessionaire, said disagreements or disputes must be settled by negotiation between the parties to the contract. In the event of failure to settle the dispute by negotiation it will be handled in the courts of the Republic of Lithuania provided that the concessionaire is a Lithuanian enterprise.
2. The venue of settling disputes with a foreign concessionaire and the applicable laws shall be negotiated, by mutual agreement between the parties, in the concession contract and the disputes may be settled by the courts of the Republic of Lithuania, international arbitral tribunals and other institutions. If the above stipulation is not negotiated in the contract, disputes shall be settled by the courts of the Republic of Lithuania in accordance with the laws of the Republic of Lithuania.
3. In the event of a dispute relating to the investment of foreign capital into the object of concession the foreign concessionaire may exercise the right established in subparagraph 7 of Article 7 of the Law on Foreign Capital Investment in the Republic of Lithuania.
4. If, in the cases specified in paragraphs 1 and 2 hereof, the dispute is submitted for resolution pursuant to the laws of the Republic of Lithuania, the laws which were in effect on the day of conclusion of the concession contract between the grantor of the concession and the concessionaire as well as the subsequently enacted new laws of the Republic of Lithuania, provided they do not undermine the concessionaire's legal position, shall be applicable.

Chapter V FINAL PROVISIONS

Article 19. International Treaties

If bilateral or multilateral international treaties to which the Republic of Lithuania is a party provide regulations other than those established by this Law, the norms of the international treaty shall apply.

Article 20. Coming into Force of the Law

This Law shall come into force as of 1 January 1997.

Article 21. Proposal to the Government

The Government shall approve, by 1 December 1996, the Regulations for Arranging Competitions for Concessions Contracts and the basic provisions of the Model Concession Contract.

I promulgate this Law passed by the Seimas of the Republic of Lithuania.

PRESIDENT OF THE REPUBLIC ALGIRDAS BRAZAUSKAS