

GOVERNMENT NOTICE NO. 85 published on 7/2/2020

THE FOREST ACT

(CAP. 323)

REGULATIONS

(Made under section 106(h), (i) and (j))

THE FOREST (ECO-TOURISM FACILITIES CONCESSION) REGULATIONS,
2020

ARRANGEMENT OF REGULATIONS

PART I

PRELIMINARY PROVISIONS

Regulation Title

1. Citation.
2. Application.
3. Interpretation.

PART II

DESIGNATION AND ALLOCATION OF CONCESSION AREAS

4. Designation of concession areas.
5. General Management Plan.
6. Criteria for designation.
7. Process of allocation of concession areas.
8. Solicited proposals.
9. Unsolicited proposals.
10. Review of detailed investment proposal for unsolicited project.
11. Contents of business plan.
12. Contents of feasibility study for unsolicited proposal.
13. Procedure for unsolicited proposal.
14. Invitation of counter proposals.
15. Obligations, liabilities and confidentiality.
16. Issue of request for proposals.

17. Benefit of the People.
18. Guarantee of returns.
19. Participation of the People and Government.
20. Retention of earnings.
21. Due diligence.
22. Concession management.
23. Concession award.
24. Duration of concession contracts.
25. Change of ownership or operator without notification of Chief Executive.
26. Fees.
27. Concession area investment guidelines.
28. Concession contract terms and conditions.

PART III
MISCELLANEOUS PROVISIONS

29. Appeals.

SCHEDULE

THE FOREST ACT

(CAP. 323)

REGULATIONS

(Made under section 106(h), (i) and (j))

THE FOREST (ECO-TOURISM FACILITIES CONCESSION) REGULATIONS,
2020

PART I
PRELIMINARY PROVISIONS

- | | |
|--------------------------------|---|
| Citation | 1. These Regulations may be cited as the Forest (Eco-Tourism Facilities Concession) Regulations, 2020. |
| Application
Cap. 323 | 2. These Regulations shall apply to national forest reserves as prescribed under the Forest Act. |
| Interpretation

Cap. 323 | <p>3. In these Regulations, unless the context otherwise requires-</p> <p>“Act” means the Forest Act;</p> <p>“Agency” means the Tanzania Forest Services Agency;</p> <p>“award” means the establishment of a legally binding concession contract fully executed by the parties;</p> <p>“Board” means the Board of Directors of Tanzania Forest Services Agency;</p> <p>“Chief Executive” means the Chief Executive of Tanzania Forest Services Agency;</p> <p>“concessionaire” means an individual, corporation or other legally recognised entity that holds a concession contract;</p> <p>“concession area” means an area within a national forest reserve designated under regulation 4;</p> <p>“concession contract” means a binding written agreement between the Agency and a concessionaire entered in accordance with these Regulations that authorises the</p> |

- Agency to provide a concession within a national forest reserve under specified terms and conditions;
- “Director” means the person for the time being exercising the functions of the Director of Forestry;
- “eco-lodge” means a facility located in an ecologically rich area in terms of biodiversity in an environment little disturbed by human activity;
- “eco-tourism” means a form of tourism involving visiting fragile, pristine and relatively undisturbed natural areas intended for low impact and often small scale alternative to standard commercial mass tourism;
- “eco-tourism facility” means a place, thing or premises located in an ecologically rich national forest reserve managed by a tourism operator and which regularly or occasionally provides services or products for utilization by tourists or visitors for purposes other than the exercise of an activity remunerated from within the place visited;
- “lodge” means an accommodation establishment located within or near natural habitat rich in fauna and flora, in which the majority of clients are leisure seekers;
- “Minister” means the Minister responsible for forests;
- “national forest reserve” means a forest reserve declared under section 22 of the Act;
- “operator” means any person who owns, conducts or operates a tourism facility or activity or is responsible for its management;
- “recreation activity” means an activity which allows the use of scenery, cultural and natural resources but does not involve the taking of any specimen from the scene, cultural site or the wild and includes bird watching, walking safaris, hiking, canoeing, boating, scuba diving, mountaineering and any other similar or related activity;
- “solicited proposal” means any written proposal related to investment in the national forest reserve which is submitted in response to a request or solicitation issued by the Agency within the context of competitive selection procedures;
- “sport fishing” means fishing for recreational purposes;
- “tented camp” means accommodation establishment comprising mainly of semi-permanent or mobile tented accommodation facilities located in a national forest reserve;

“tourist” means a person who is travelling to a place outside his usual environment for a period between twenty four hours and one year and whose purpose of travel is other than the exercise of an activity remunerated from within the place visited, and where this activity is undertaken by a resident it shall be known as domestic tourist;

“unsolicited proposal” means any written proposal related to investment in the national forest reserve submitted to the Agency on the initiative of a private party for the purpose of obtaining a concession contract;

“visitor” means any person whose usual place of residence is outside an area visited, for a period not exceeding one year for reasons other than employment.

PART II

DESIGNATION AND ALLOCATION OF CONCESSION AREAS

Designation of
concession areas

4.-(1) The Minister may, by order published in the *Gazette*, designate concession areas in national forest reserves for the purpose of investment in eco-tourism facilities.

(2) Subject to subregulation (1), the Minister shall after consultation with the Board, give directives to the Chief Executive with regards to the nature and type of investments allowed in forest reserves.

General
Management
Plan

5.-(1) The Chief Executive shall, in collaboration with the Director and before advising the Minister to designate concession areas, ensure that a General Management Plan of the respective national forest reserve is in place.

(2) Any investment in a concession area shall be carried out in accordance with the General Management Plan of the respective forest reserve.

Criteria for
designation

6. The Minister shall, before designating a concession area, take into consideration that the area proposed meets the following criteria:

- (a) has resources capable of offering sustainable forms of recreation activities;
- (b) has Unique Selling Points (USP) for attracting investors and tourists;
- (c) has exceptional and diverse resources;
- (d) has potential to generate significant revenue;
- (e) is accessible in terms of terrain and infrastructure

development;

(f) is able to link into existing tourism circuit;

(g) the size and boundaries of the proposed concession area are clearly demarcated by Global Positioning System (GPS) coordinates.

Process of
allocation of
concession areas

7.-(1) The Chief Executive shall award all concessions in accordance with procedures set out in these Regulations.

(2) Subject to regulations 8 and 9, the Chief Executive may, in awarding concessions in concession areas, accept solicited or unsolicited proposals.

Solicited
proposals

8.-(1) The Chief Executive shall advertise concession areas for purposes of inviting interested persons to apply.

(2) The Chief Executive shall use open tendering procedures in advertising, evaluating and awarding solicited investment concessions in concession areas.

(3) Notwithstanding subregulation (2), the Chief Executive may, after consultation with the Board, award a solicited investment concession in a concession area to any person, who in the opinion of the Board is appropriate for such investment.

Unsolicited
proposals

9.-(1) A person may submit a written investment proposal to the Chief Executive applying to be allocated a concession area.

(2) Upon receiving the investment proposal, the Chief Executive shall, within sixty days, give a preliminary response as to whether the investment is of interest or not.

(3) The Chief Executive may request additional legal, financial and environmental studies to be done by the investor at their own cost.

(4) The Chief Executive shall, upon accepting the investment proposal, give the applicant a formal recognition of the proposal.

(5) Upon receiving acceptance of the investment proposal, the applicant shall prepare and submit to the Chief Executive a detailed investment proposal, business plan and feasibility study.

(6) The detailed investment proposal shall contain the following:

(a) proof of the investor's ability to develop and operate the investment;

- (b) financial bid covering a contribution towards the concession that the investor proposes to pay in addition to the statutory concession fees stipulated by law;
- (c) estimated project cost and financing plan;
- (d) an income and expenditure plan;
- (e) justification of the need for the project; and
- (f) commitment to undertake environmental and social impact studies.

(7) The Chief Executive shall require the applicant to submit a bid bond of 2% of the minimum investment capital of the proposed project as a guarantee

Review of
detailed
investment
proposal for
unsolicited
project

10. The Chief Executive shall, within thirty working days upon receipt of the detailed investment proposal, review the unsolicited proposal for the purpose of determining whether or not to subject it to competition.

Contents of
business plan

11. A business plan for solicited or unsolicited proposal shall contain the following:

- (a) background (project context);
- (b) market analysis;
- (c) economic, social and environmental impact analysis;
- (d) institutional arrangements;
- (e) concept or overview of the development;
- (f) procurement method;
- (g) staff requirements;
- (h) marketing plan;
- (i) financial plan which shall contain:
 - (i) financial investments;
 - (ii) projections of business growth;
 - (iii) sensitivity analysis evaluation of the likelihood and realistic nature of the projections;
 - (iv) project capital structure;
 - (v) cumulative cash flow;
 - (vi) budget and contributions;
- (j) annexes of detailed budget, visitor projections and financial analysis.

Contents of

12.-(1) The feasibility study for unsolicited proposal

feasibility study
for unsolicited
proposal

referred to under regulation 9(6) shall contain the following:

- (a) details regarding salient features of the proposed investment;
- (b) explanation of the strategic and operational benefits of the proposed investment in relation to its objectives;
- (c) description in specific terms-
 - (i) nature of the function concerned and extent to which it may be performed by the applicant;
 - (ii) description of the concession area applied and the types of use the area may be subjected to;
- (d) proposals for allocation of financial, technical and operating risks;
- (e) demonstration of the anticipated value for money to be achieved;
- (f) estimated costs of the investment;
- (g) investment financing model;
- (h) proposed partnership model;
- (i) procurement plan;
- (j) investment implementation and operation plan;
- (k) recommendation or advice on the technical and economic viability of the investment;
- (l) description of environmental and social impact assessments;
- (m) monitoring and evaluation;
- (n) the manner by which Tanzania citizens may be empowered and participate in the investment; and
- (o) any other information desirable to support the feasibility study.

(2) Subject to the provisions of subregulation (1), the Chief Executive may issue guidelines for preparation of feasibility study.

Procedure for
unsolicited
proposal

13.-(1) An unsolicited proposal shall be managed in the following stages:

- (a) first, the Chief Executive may approve the unsolicited proposal in accordance with the procedures set out under regulation 9;
- (b) second, where the unsolicited proposal does not get the approval under paragraph (a), it shall be subjected to competitive bidding in accordance with these Regulations.

(2) For purposes of subregulation (1)(a), an unsolicited proposal may be approved if it meets the following criteria:

- (a) the project has unique attributes that justify departing from a competitive tender process and that, others could not deliver a similar project with the same value for money outcome;
- (b) the project is of significant size, scope and financing as per conditions provided in these Regulations;
- (c) the project has wide social economic benefit including improved services, employment and taxation;
- (d) the concessionaire has similar values and goals as the Agency, a track record of engaging in sustainable tourism including engaging communities and growing local multipliers and commercial success;
- (e) the project has potential to lead to increased tourism market share and contribution to conservation and economic development, realizing conservation and economic benefits and enhancing the sustainability of conservation of forest reserves; and
- (f) the applicant commits to bear the cost of undertaking a feasibility study.

Invitation of
counter
proposals

14.-(1) Where the Chief Executive accepts an unsolicited investment proposal which does not meet the criteria specified under regulation 13 (2) he shall-

- (a) negotiate with the proponent and make necessary modifications to the proposal to enable the Chief Executive to subject the proposal to competition by allowing third parties to improve the original proposal;
- (b) follow the competitive bidding procedures provided in these Regulations to solicit counter proposals and the investment proponent who initially made the representation may be invited to participate.

(2) The Chief Executive shall make available to any interested tenderer the proposal and contract principles of the original investment proponent.

(3) Interested tenderers who submit counter proposals

may be given an opportunity to improve the proposal of the original investment proponent.

(4) Where the Chief Executive finds one of the counter proposals more attractive than that of the original investment proponent, the original investment proponent shall be given an opportunity to make his proposal competitive with that of the selected counter proposal within a period of thirty days from the date he is given the opportunity.

(5) The original proponent may be awarded the concession if the said proposal has been fine-tuned to meet the required standard.

(6) Where the original investment proponent fails to make his proposal competitive with that of the selected counter proposal within a period stated in subregulation (4), the Chief Executive may execute the concession with the tenderer submitting a more attractive counter proposal.

Obligations,
liabilities and
confidentiality

15.-(1) Upon receipt of unsolicited proposal, the Chief Executive shall neither make representations of any kind, nor accept any obligations or liabilities, through corresponding with the original investment proponent with regard to the proposal.

(2) The proprietary information of the original investment proponent contained in the proposal shall remain confidential and shall not be disclosed to any interested tenderer.

(3) The Chief Executive may disclose to any interested tenderer information of the original investment proponent which is already in the public domain or which the Chief Executive is by law required to disclose.

(4) Subject to subregulation (2), the Chief Executive shall not be responsible for any intellectual property rights accruing to the proposal of the original investment proponent.

Issue of
request for
proposals

16.-(1) Where the Chief Executive issues a request for proposals for the investment contemplated by the original proponent, the original proponent shall not be obliged to submit a different bid or a bid consistent with his original proposal.

(2) The original proponent, its employees and agents shall not disclose or make public any information relating to the unsolicited proposal without the consent of the Chief Executive.

(3) The Chief Executive shall, within thirty days of

being requested, grant or decline to grant the consent required under subregulation (2).

Benefit of the People 17. The Chief Executive shall, before signing a concession contract under this Part, ensure that the interests of the people and the United Republic are fully secured.

Guarantee of returns 18. The Chief Executive shall ensure that any contract or arrangement for investment in eco-tourism facilities in the concession areas guarantee returns into the Tanzanian economy from the earnings accrued or derived from such use.

Participation of the People and Government 19. Any contract or arrangement for investment in eco- tourism facilities in the concession areas shall be made or given to ensure that the Government obtains an equitable stake in the venture and the people who are citizens of the United Republic may acquire stakes in the venture.

Retention of earnings 20.-(1) Any contract or arrangement for investment in eco-tourism facilities in the concession areas shall require that earnings from dealings be retained in the banks and financial institutions established and registered in the United Republic.

(2) For the purpose of subregulation (1), it shall be unlawful to keep such earnings in banks or financial institutions outside the United Republic except where distributed profits are repatriated in accordance with the laws of Tanzania.

Due diligence 21.-(1) The Chief Executive shall cause to be conducted due diligence on the applicant who is recommended to be awarded the concession by-

- (a) the provided bank and surety references.
- (b) verifying experience of the applicant to ensure that he possesses the qualifications and expertise necessary to meet the Agency's objectives;
- (c) contacting a list of references provided by the applicant indicating other public agencies and investments similar to that being proposed;
- (d) ensuring that the person listed as the reference contact actually worked directly with the applicant in question and determining the capacity in which he worked;
- (e) ensuring that any litigation or controversy

associated with the applicant and its individual team members does not affect the ability to execute the concession;

- (f) confirming the qualifications and experience that the applicant possesses through verification of certificates of technical knowledge, education, and professional experience, including years in the specific business sector, experience with investment of similar size, nature, and complexity, as well as experience with public bodies;
- (g) verifying the potential applicant's financial capability and where the Agency lacks the expertise to determine financial capability, an independent financial review may be performed and certified by a competent authority prior to final private party selection;
- (h) confirming the available working capital proposed for the investment as well as the bonding capability of the proposed concessionaire through

(2) The references referred under subregulation (1)(b) shall provide:

- (a) information regarding interaction of persons listed in the references with the applicant and its staff; and
- (b) insight on issues they encountered, the resolution process and the responsiveness of the applicant to any concerns of the Agency

(3) The list of references shall relate to investments and public agencies which are similar to the proposed investment and the Agency, respectively.

Concession
management

22-(1) The Chief Executive shall, in consultation with the Board, assign matters related to concession to the Directorate responsible for forest resource management.

(2) Subject to subregulation (1), the Directorate responsible for forest resource management shall perform the following functions:

- (a) advising the Chief Executive on the investment proposals, procurement, contracts and investment implementation;
- (b) ensuring the investment is properly monitored and evaluated in accordance with the concession

- contract;
- (c) concession planning;
- (d) processing applications for concessions;
- (e) working closely with forest reserve operation staff in order to advise the Chief Executive on awarding concession opportunities, renewals and cancellations;
- (f) negotiating on behalf of the Agency with the private party on the terms, conditions and other issues of concessions.
- (g) gathering and reconciling all concession files;
- (h) conducting revenue audit;
- (i) formation of the concession database; and
- (j) concession contract management, evaluation and enforcement.

Concession
award

23.-(1) The Chief Executive shall, in consultation with the Board, review the evaluation report, due diligence report and recommendations made and shall-

- (a) approve the recommendations, accept the proposal and award the concession; or
- (b) reject the recommendations of any of the proposals and return the evaluation report to the Directorate of forest resource management with instructions to re-evaluate the proposals, re-tendering or other action.

(2) The Chief Executive shall sign a concession contract with a successful bidder on such terms and conditions as may be specified therein.

(3) Subject to subregulation (2), a person shall not operate an eco-tourism facility without a licence issued by the Tanzania Tourism Licensing Board under the Tourism Act.

Cap. 65

(4) Any person permitted to invest in accordance with the provisions of these Regulations, shall-

- (a) ensure that construction starts within eighteen months and investment is completed and granted the relevant licences and permits within a period of three years from the date of signing a concession contract; and
- (b) pay the concession fees set out in the Schedule to these Regulations from the date of signing the concession contract.

(5) Where a person fails to commence construction on the concession area within the prescribed period, the

concession contract shall be revoked and awarded to another person.

(6) Any person who fails to complete the investment in the prescribed period shall, on top of paying the concession fee, pay to the Agency sixty thousand USD for each delayed year:

Provided that, the delay should not exceed two years.

Duration of
concession
contracts

24.-(1) The concession contract for investment in the concession areas shall be for a period of not more than twenty years and may be renewed subject to the concessionaire meeting the requirements stipulated in the concession contract.

(2) Upon expiry or termination of the concession period prescribed in subregulation (1), all immovable assets in the concession area shall be vested in the Agency.

Change of
ownership or
operator without
notification of
Chief Executive

25.-(1) A person permitted to invest in eco-tourism facilities in accordance with these Regulations shall not transfer ownership of the eco-lodge, tented camp or similar establishment without prior notice to the Chief Executive of such intention and obtaining his written consent.

(2) The Chief Executive shall seek the advice of the Board before granting the consent for transfer of ownership referred to under subregulation (1).

(3) The transfer of ownership referred to under subregulation (1) shall be to the extent of the remaining period of the concession contract.

(4) Upon receiving the Chief Executive's consent under subregulation (1), a person who makes the transfer shall be required to pay a transfer fee of ten thousand USD before such transfer is effected.

Fees
GN. No.
153 of 2004

26. Every recreational activity conducted in a national forest reserve shall be charged fees in the amount set out in the Eighth Schedule to the Forest Regulations.

Concession area
investment
guidelines

27. The Chief Executive may, in consultation with the Director, prepare administrative investment guidelines and manuals for concession areas.

Concession
contract terms
and conditions

28. A concession area contract shall include the following elements:

- (a) precedent conditions for entry into force;
- (b) nature and scope of the concession rights (e.g. geographical area, works, services, level of exclusivity; permitted rights i.e. eco-tourism lodge, tented camp, hostels, etc.);
- (c) duration of contract;
- (d) nature of property interests of parties in the concession assets (e.g. right to use an area or infrastructure);
- (e) maintenance of concession assets (road maintenance, access, etc.);
- (f) fees payable (including, process for adjustments and reviews);
- (g) performance guarantees (e.g. service levels, occupancies);
- (h) monitoring, evaluation, with key performance indicators and template contract compliance checklist;
- (i) insurance policies;
- (j) limitations of liability and indemnification of the Agency;
- (k) force majeure (i.e. damage or destruction due to forces beyond the control of parties);
- (l) environmental management requirements (legal requirement, environmental objectives, environmental management plans, environmental impact assessment);
- (m) right to assign concession rights to third parties;
- (n) restrictions or conditions on transfer of the concession;
- (o) restrictions or conditions on related party transactions (e.g. if the concessionaire is part of a larger group);
- (p) socio-economic contributions (e.g. local equity, employment, procurement, social projects);
- (q) the law applicable;
- (r) breach and cancellation processes;
- (s) dispute settlement provisions;
- (t) circumstances that a third party or the Agency could take over the operation (e.g. temporarily if there is a serious failure); and
- (u) taxation and other fiscal matters.

Forest (Eco-Tourism Facilities Concession)

GN. No. 85 (contd.)

PART III
MISCELLANEOUS PROVISIONS

Appeals

29.-(1) Any person who is aggrieved by the decision of the Chief Executive under these Regulations may, within a period of thirty days from the date of receiving the decision, appeal to the Minister.

(2) The Minister shall, within a period of thirty days, make a decision.

(3) Any person who is aggrieved by the decision of the Minister may lodge an application for judicial review in the High Court.

SCHEDULE

(Made under regulation 23(4)(b))

BASELINE CONCESSION FESS FOR ECO-TOURISM FACILITIES IN
NATIONAL FOREST RESERVES

Category	Annual concession fees in USD
Tented camp	<10,000.00
Eco- Lodge	<20,000.00

Dodoma
3rd February, 2020

HAMISI A. KIGWANGALLA,
*Minister for Natural Resources and
Tourism*