

REPUBLIC OF BULGARIA
NATIONAL ASSEMBLY
CONCESSIONS ACT

*Promulgated State Gazette No. 92/17.10.1995
Amended SG Nos. 16 & 44/1996; 61 & 123/1997; 93/1998; 23, 56, 64 & 67/1999*

**Chapter One
GENERAL PROVISIONS**

Article 1

This Act shall govern the terms and procedure for granting concessions.

Article 2

- (1) (Amended, SG No. 61/1997) For the purposes of this Act "concession" shall mean:
1. the granted special right to use objects which are public state property, including those which shall be built by the concessionaire and funded by him.
 2. the granting of special right of use of objects over which the State exercises sovereign rights under Art.18, par.2 and 3 of the Constitution of the Republic of Bulgaria, inclusive through the use of existing facilities which are public state property and/or the construction of new facilities on the part and with the funding of the concessionaire;
 3. the granting of permission to perform activities over which monopoly has been established by law.
- (2) (New, SG No. 61/1997) In cases when concession is granted over objects that are public state property which shall be built by the concessionaire and funded by him, these objects shall be cited in the decision pursuant of Art.7, while the specific rights and obligations shall be settled in the concession contract.
- (3) The procedure for granting a concession shall include:
1. taking a decision to grant a concession;
 2. holding of a tender or auction to determine the concessionaire or direct selection of the concessionaire in cases envisaged by law;
 3. conclusion of a contract for concession.
- (4) No concessions may be granted that jeopardize the national security and the defence of this country, the environment, the territories and objects protected by law, and the public order.

Article 3

- (1) (Amended, SG No. 61/1997) Concessions shall be granted for periods up to 35 years as from the enforcement of the concession contract.
- (2) The term of a concession may be extended with the consent of the parties under the concession contract, pursuant to a decision by the body which has taken the decision to grant the concession. The overall term of a concession may not exceed 50 years.
- (3) The concessionaire under an expired contract, other conditions being equal, shall have preference for granting a new concession for the same object or activity.

Article 4

(Amended, SG No. 61/1997)

- (1) Concessions may be granted for objects such as:
1. (Amended, SG No. 23/1999) ores and minerals in connection with their extraction;
 2. the waterfront beach strip;
 3. the biological, mineral and energy resources of the continental shelf and in the exclusive economic zone, in reference to exploration, development, production, utilization thereof;
 4. (Repealed SG 93/1998);
 5. (Amended SG 93/1998) the national post;
 6. the national roads, ports for public transport and civilian airports, existing and/or such which shall be built by and with the funding of the concessionaire, public state property;
 7. (Amended, SG No. 67/1999) the waters, inclusive of mineral waters - which are state property;
 8. the aquaculture and the water supply facilities and systems, which are public state property;
 9. (Repealed, SG No. 64/1999)
 10. the forests and parks of national significance;
 11. the nuclear facilities;

12. the natural and archaeological preserves;
 13. other objects which are public state property, specified by law.
- (2) Concessions for objects under paragraph (1) may include the adjoining infrastructure and facilities.

Article 5

Permissions under Article 2, paragraph (1) may be granted for activities related to:

1. (Repealed, SG No. 64/1999);
2. post services;
3. (Repealed SG 93/1998);
4. transportation of passengers and cargo by railroad;
5. use of nuclear power;
6. manufacture of radioactive products, arms, explosives and substances with strong biological activity;
7. other activities for which a state monopoly is established by law.*

Chapter Two

DECISION TO GRANT A CONCESSION

Article 6

- (1) Decisions to grant concession shall be adopted by the Council of Ministers.
- (2) (Repealed, SG No. 61/1997)
- (3) (Amended, SG No. 61/1997) The Prime Minister and the Ministers, in compliance with their competence, shall make reasoned proposals to grant concession with a legal, financial-cum-economic, social and environmental analysis for the concession.
- (4) (New, SG No. 61/1997) When concession is granted in connection with privatization procedures, the proposal under par.3 shall be submitted by the relevant ministers following advance notice by the body pursuant of Art.3 of the Transformation and Privatization of State and Municipal Enterprises Act.

Article 7

- (1) The decision to grant a concession shall specify:
 1. the object of concession;
 2. the term of the concession;
 3. (Amended, SG No. 61/1997) the method of determination of the concessionaire - by tender or auction or the selection of a concessionaire without auction or tender;
 4. the type, amount and manner of payment of the deposit for participation in the tender or auction;
 5. the major rights and obligations under the concession;
 6. the initial term and the conditions for implementing the concession, including the mandatory development;
 7. the type and amount of guarantees for compliance with the obligations under the concession contract;
 8. the type, amount and mode of fulfillment of the obligation for the concession payment under the concession contract;
 9. any requirements related to environmental protection, the territories and objects protected by law, the national security, the defence of this country and the public order;
 10. other requirements related to the nature of the concession.
- (2) (Amended, SG No. 61/1997) The decision under paragraph (1) shall nominate the Minister who shall organize the tender or auction or shall sign the concession contract with the concessionaire selected without an auction or tender.
- (3) The decision under paragraph (1) shall be promulgated in the State Gazette and in one central daily.

Chapter Three

DETERMINATION OF CONCESSIONAIRE

Article 8

- (1) (Amended, SG No. 61/1997) The concessionaire shall be determined by tender or auction or without an auction or tender, in cases envisioned by law.
- (2) The tender may be with or without attendance. Winner of the tender shall be declared the candidate whose proposal satisfies the competition requirements to the maximum.
- (3) The auction shall be by secret or public bidding for the concession payment.

* Sub-paragraph 7 of Article 5 has been declared anti-constitutional - Decision No. 2/1996 of the Constitutional Court - SG, No. 16/1996.

Article 9

Participants in the tender or auction may be Bulgarian and foreign natural or legal persons registered as merchants.

Article 10

- (1) The Prime Minister shall appoint a commission to conduct the tender or auction, comprising a chairman and four members.
- (2) Chairman of the commission shall be the Minister nominated by the decision under Article 7.
- (3) As members of the commission shall be appointed representatives of the respective ministries and departments, considering also the requirements of Article 7, paragraph (1), item 9.
- (4) The commission shall take decisions by majority of the total number of votes.

Article 11

- (1) The Chairman of the commission shall promulgate in the State Gazette notification of the tender or auction within one month following the promulgation of the decision under Article 7, paragraph (1).
- (2) (Amended, SG No. 61/1997) The notification under paragraph (1) shall include: the date, place and time of holding the tender or auction, the deadline for submission of applications, the conditions and time for the on-site inspection of the objects subject to concession.
- (3) The commission shall approve the tender or auction documents and shall determine their price.
- (4) (Amended, SG No. 61/1997) The tender or auction shall be held within a month at earliest or six months at latest following promulgation of the decision under Article 7, paragraph (1).

Article 12

- (1) The application for participation in the tender or auction shall be in writing.
- (2) Enclosed with the application should be:
 1. certificate for registration of the participant as merchant;
 2. statement from the annual account reports for the last three years;
 3. certificate for purchased tender or auction documents and for paid deposit amount in compliance with Article 7, paragraph (1), item 4;
 4. declaration for compliance with the confidential nature of information included in the tender or auction documentation.
- (3) Where the documents under paragraphs (1) and (2) fail to meet the requirements, the applicant shall be granted a 7-day period to bring them in compliance.

Article 13

- (1) In the case of holding a tender it shall be necessary to submit also a complete plan for implementing the activity related to the concession for the term of the concession on the grounds of the conditions provided in the decision under Article 7, paragraph (1).
- (2) The commission shall not allow participation of applicants whose complete plans fail to meet the requirements of paragraph (1).
- (3) Upon signature of the concession contract the applicants under paragraph (1) shall be bound to comply to the contents of the submitted complete plan.

Article 14

- (1) The commission shall rule in writing on admission to participation in the tender or auction.
- (2) The decision under paragraph (1) shall be subject to appeal before the Council of Ministers within 7 days following its notification. The decision of the Council of Ministers shall be final.

Article 15

- (1) Participants in the tender shall submit within the term specified by the commission a proposal in a sealed envelope in compliance with the tender requirements.
- (2) In the case of holding a tender with attendance, no amendments to the proposal under paragraph (1) shall be allowed.

Article 16

- (1) In the case of holding an auction by secret bidding the participants shall submit proposal for the concession payment in sealed envelope.
- (2) In the case of holding an auction by public bidding the commission shall notify in advance the increment.

Article 17

- (1) A tender or auction shall not be held if there are no applicants or persons admitted to participation.

- (2) (New, SG No. 61/1997) When within the deadline set in the notification under Art.11, par.2 no proposal is submitted or such is submitted by only one bidder, the deadline for the submission of applications for participation may be extended on a decision of the Commission up to 30 days as of the promulgation of the announcement of the new date in the State Gazette. Should the Commission decide to extend the deadline and a proposal has been submitted within the initial deadline, the latter shall be opened and considered after the expiry of the extended deadline. Should more proposals be submitted within the new deadline, they shall be opened and considered with the proposal that had been submitted within the deadline announced originally.
- (3) A tender or auction shall be held also where only one applicant has been admitted.

Article 18

- (1) (Amended, SG No. 61/1997) The Commission shall submit to the Council of Ministers a report and draft decision on the results of the tender or auction within 7 days thereafter.
- (2) (Amended, SG No. 61/1997) The Council of Ministers shall adopt a decision on determination of the winner of the tender or auction, which shall be promulgated in the State Gazette. The decision shall authorize the Minister nominated by the decision under Article 7, paragraph (1), to conclude a contract for concession, on behalf of the State, with the concessionaire determined on the grounds of the tender or auction.
- (3) The decision under paragraph (2) shall be subject to appeal in respect of its compliance with the law within 7 days following its promulgation in the State Gazette.

Chapter Four

CONTRACT FOR CONCESSION

Article 19

- (1) The authorized Minister and the applicant who has been awarded the tender or auction shall conclude a contract for concession within one month following the entry into force of the decision under Article 18, paragraph (2).
- (2) (Amended, SG No. 61/1997) Where no contract has been concluded pursuant to paragraph (1), the Council of Ministers may adopt a decision to hold a new tender or auction for the same object or activity or propose to the runner-up to sign a concession contract under the terms of the bid winner.
- (3) Should the applicant who has been awarded the tender or auction decline to conclude a contract in compliance with the obligations he has undertaken and the requirements he had bound himself with, he shall forfeit his right to the deposit paid in compliance with Article 7, paragraph (1), item 4.
- (4) (New, SG No. 61/1997) In cases when the concessionaire is determined without an auction or tender, the concession contract shall be signed within a month of the promulgation of the decision under Art.7.

Article 20

The contract for concession shall comprise as mandatory:

1. the requirements under Article 7, paragraph (1);
2. (Amended, SG No. 61/1997) specification of other property rights and obligations of the parties under Article 4, inclusive of the rights of the concessionaire on the fruits of objects which the concessionaire shall built with his own finance and shall not be public state property, as well as the right to compensation related to accretions and improvements;
3. specification of other property rights and obligations of the parties, inclusive of the rights of the concessionaire on fruits, accretions and improvements of the chattels related to implementing the activities under Article 5;
4. the bans to dispose of and encumber the concession and other rights related thereto;
5. the type and amount of liability for failure to meet the obligations under the contract;
6. the control over the fulfillment of the obligations by the parties;
7. the method for settlement of disputes between the parties;
8. the reasons for early termination of the contract and the rights of the party which is not in default;
9. other elements on which the parties have reached agreement.

Article 21

- (1) The State shall preserve all its rights on the object of the concession, except those explicitly established or ceded by the contract for concession.
- (2) Any accretions to chattels that are state property related to the implementation of activities under Article 5 shall be state property.
- (3) Upon termination of the concession the concessionaire shall be entitled to compensation for any improvements made.

Article 22

- (1) In the case of subsequent occurrence of threat to the national security and the defence of this country, to the environment, to the territories and objects protected by law, and to the public order, the parties may amend the clauses of the contract, as well as terminate it before expiry of its term, by mutual agreement or unilaterally.
- (2) In cases under paragraph (1) the Minister under Article 19 shall send to the concessionaire notification in writing for termination of the contract within an appropriate term.
- (3) In the case of occurrence of threats pursuant to paragraph (1) the concessionaire shall be bound to notify forthwith the Minister under Article 19.
- (4) Upon termination of the contract in cases under paragraph (1) compensation shall be due to the concessionaire, provided the termination is not due to his default.

Article 23

- (1) The concession shall be terminated upon expiry of the contract for concession.
- (2) The contract for concession shall be terminated:
 1. upon expiry of its term;
 2. upon destruction of the object or in the case of objective incapacity to use it or to carry on the activity;
 3. upon death of a concessionaire who is a natural person, or in the case of dissolution of a concessionaire who is a legal person, unless the Council of Ministers agrees the contract to be extended with a successor;
 4. upon entry into force of a decision declaring the concessionaire bankrupt;
 5. by mutual agreement;
 6. by virtue of judicial or arbitration ruling;
 7. by other reasons provided in this Act or in the contract.
- (3) In the case of termination of the contract pursuant to paragraph (2), items 3 and 4, the State shall have the rights of a privileged creditor.

Article 24

(Amended, SG No. 61/1997) The provisions of Chapter Three of the Commercial Code and the Obligations and Contracts Act shall apply *mutatis mutandis* to all cases not regulated in reference to the conclusion, performance and termination of the contract for concession.

Chapter Five

FINANCING OF CONCESSION ACTIVITIES

(New, SG No. 61/1997)

Article 25

Cash revenues from the granting and execution of concessions shall be allocated as follows:

1. 85 per cent as revenue in the state budget;
2. 15 per cent to support the concessions cost recovery fund.

Article 26

- (1) A Concessions Cost Recovery Fund shall be set up with the Ministry of Finance.
- (2) Fund finance under par.1 shall be collected from:
 1. 15 per cent from the proceeds from the granting and execution of concessions;
 2. revenue from interest and other revenues.
- (3) Fund resources shall be used to cover concession awardal costs and other costs related to the implementation and control over concessions.
- (4) The surplus of revenues over expenses at year's end represents a floating balance and shall be used during the following year according to purpose.
- (5) Collection, use and recording procedures for Fund resources under par.1 shall be entrenched in the Rules for Application of the Concessions Act.

Article 27

On the proposal of the relevant ministers, chairmen of committees and heads of central institutions, the Minister of Finance shall prepare a draft statement of the revenues and expenses of the Concessions Cost Recovery Fund on an annual basis.

Article 28

- (1) The Council of Ministers shall adopt annually the revenues and expenses of the Concessions Cost Recovery Fund in compliance with a full budget classification.

- (2) The Council of Ministers shall approve the expenses under par.1 and by individual state bodies and budget organizations.

TRANSITIONAL AND CONCLUDING PROVISIONS

- § 1. (1) (Amended SG 44/1996) The procedure for granting concessions for objects which are municipal property, and for granting permissions for activities which shall be carried on by municipalities, shall be governed by a separate act.
- (2) (Amended, SG No. 61/1997) Until the act under paragraph (1) is passed, the municipal council may, pursuant to Article 21, paragraph (1), item 8, of the Local Self-Government and Local Administration Act, grant concessions for objects and activities under paragraph (1) under the procedure provided in this Act.
- § 2. (1) Article 5, paragraph (3), item 4, of the Economic Activity of Foreign Persons and Protection of Foreign Investments Act (SG, No 8/1992) is hereby repealed.
- (2) Persons who have acquired rights pursuant to Article 5, paragraph (3), item 4, of the Economic Activity of Foreign Persons and Protection of Foreign Investments Act, shall retain them until expiry of the term agreed.
- Within a month of the expiry of the contractual deadline, these persons are entitled to sign a concession contract, without an auction or tender, when the contracts' stated purpose is "prospecting and survey with the aim of extraction" under the terms of the original contract. After the expiry of that term, an auction or tender may be held under the general terms, provided no concession contract has been signed.
- (3) (New, SG No. 123/1997) The rights and obligations of the concessionaire under the contracts for research and production of petrol and gas in the continental shelf of the Republic of Bulgaria concluded in 1991 after holding an international tender can be transferred to third persons - traders, only once after approbation by the Council of Ministers
- § 3. (1) (Amended, SG No. 61/1997) Concessions shall not be granted for rights on objects under Article 4, and the activities under Article 5, acquired and exercised by single person limited liability company with state property and state enterprises within the meaning of Article 62, paragraph (3) of the Commercial Code.
- Concessions shall not likewise be granted in cases of commercial companies, established after the enforcement of this amendment to the law, whose shares or stock are the property of the State or companies where the State is sole proprietor of the capital.
- (2) (New, SG No. 61/1997) By a decision of the Council of Ministers, commercial companies whose shares or stock are the property of the State, or companies where the State is sole proprietor of the capital, and use objects or perform activities under the provisions of par.1, may be granted the right of use of other objects, public state property, without concession when the latter are located in the company area.
- (3) Persons who legitimately have acquired or who exercise rights over objects under Article 4 and activities under Article 5 prior to the entry into force of this Act, shall be bound to notify them to the Council of Ministers within three months following the entry into force of this Act.
- (4) Upon expiry of the deadline under paragraph (2) all rights not notified shall be considered lapsed.
- (5) With reference to rights notified pursuant to paragraph (2) the Council of Ministers shall adopt a decision on bringing them in compliance with this Act within three years.
- The decision to bring into compliance cannot extend the term for which the right had been granted prior to the enforcement of the Act, neither can conditions be created, more unfavourable to the lessor than those in place.
- § 3a. (New, SG No. 61/1997; Amended, SG No. 56/1999) In cases when concession is granted for objects, public state property, which shall be built by and with the funding of the concessionaire, the provisions of the Public Procurement Act shall not apply.
- § 3b. (New, SG No. 61/1997) The Council of Ministers can grant concessions without an auction or tender to companies in which the persons under § 3, par.1 hold shares or stakes of a nominal value of over 300 million BGL, comprising no less than 25 per cent of the capital of the company.
- § 4. Within three months following the entry into force of this Act the Council of Ministers shall adopt Rules on its application.
- § 5. (Amended, SG No. 61/1997) The implementation of this Act shall be hereby assigned to the Council of Ministers.

This Act has been passed by the 37-th National Assembly on 5 October 1995 and has been stamped with the State Seal.

Chairman of the National Assembly: **Blagovest Sendov**