

THE LAW OF TURKMENISTAN ON FOREIGN CONCESSIONS

The present Law shall define organisational, economic and legal conditions of establishment and activities of foreign concessions in Turkmenistan.

SECTION I. GENERAL PROVISIONS

Article 1. The concept of a foreign concession

A concession is the permission of the state to carry out a specific type of business activity on the territory of Turkmenistan granted to foreign legal entities and physical persons.

A concession shall provide for the right given by the state to a foreign legal entity or a physical person - a concessionaire - to use plots of land, natural resources, enterprises and other assets on the basis of an agreement for a specified period of time and in return for a payment.

Article 2. The legal regulation of foreign concessions

1. Legal relations resulting from Concession agreements shall be regulated by the present Law and other legislative acts of Turkmenistan.
2. The legislation of Turkmenistan determines territories, objects of the state property, types of enterprises and other assets the concession of which is limited or prohibited.
3. If the international agreements signed by Turkmenistan set forth another provisions than those contained in this Law, the provisions of international agreements shall be applicable.

Article 3. The basic principles of concession activity

Concession activity in Turkmenistan is carried out by the following principles:

- contribution to solving economic objectives of Turkmenistan, attraction of foreign investments, structural economic reforms and introduction of advanced technologies;
- rational use of natural resources, provision of ecological, sanitary and hygienic safety;
- provision of the production of goods meeting the requirements of industrial standards established in Turkmenistan;
- involvement in the social development of the territories where concession activity is carried out;
- assistance by the authorities and governmental agencies of Turkmenistan to concessionaires in achieving the objectives set out in concession agreements.

Article 4. Terms of granting a concession

1. A Concession shall be granted on a tender basis. The terms and procedure for the competition shall be determined by the Cabinet of Ministers of Turkmenistan. When

granting objects for concession the publicity shall be provided.

2. A concession shall be terminable, repayable and contractual.

3. Concession projects and programs as well as feasibility studies shall be subject to the state expert examination including their environmental, sanitary and hygienic qualifications.

Participants of a Concession agreement shall have the right to arrange for an additional expert examination on their own.

Article 5. Objects of concession activity

1. The right for exploration, development, production or operation of natural resources as well as for carrying out any other type of business activity shall be guaranteed to a concessionaire in all spheres and types of activity not prohibited by the legislation of Turkmenistan.

The objects of concession activity shall be:

- plots of land and territories with their natural resources;
- water surfaces with their natural resources;
- individual deposits of natural resources;
- industrial objects intended for the exploration, development, production or exploitation of natural resources;
- other objects.

2. Concession activity causing damage to the legally protected rights and interests of the citizens and the state and not meeting the requirements of ecological, sanitary and hygienic norms, radiological, fire and explosion safety standards, shall be prohibited.

Article 6. Subjects of concession activity

1. The subjects of a concession agreement (contract) shall be the state of Turkmenistan duly represented by the authorised bodies, and foreign legal entities and physical persons as well as foreign states (concessionaires).

2. A concessionaire - the general contractor - is granted the right to engage subcontractors for implementation of works in accordance with a concession agreement. Agreements signed with subcontractors must not contradict the provisions of a concession contract.

SECTION II. THE ESTABLISHMENT AND ACTIVITY OF CONCESSION ENTERPRISES

Article 7. The Procedure for granting a Concession

1. The Cabinet of Ministers of Turkmenistan shall approve priority sectors for concession activities by branches of industry, territories and objects.

2. An application for granting a concession enclosed by the documents verifying the applicant's professional qualifications and technological potentials of an applicant and

his guarantors confirmed by a bank as well as the feasibility study along with the results of an expert examination and the request from an executive body of the velayat where the concession object is located, shall be submitted to a state property administration agency.

3. After checking the submitted documents and selecting applications on a competitive basis the state property administration agency shall sign a concession agreement.

4. The Cabinet of Ministers of Turkmenistan shall specify the objects, concession agreements on which shall be subject to mandatory approval by this highest executive body.

5. Concession agreements shall be registered within ten days after being signed and approved by an executive body in the location of a concession object. Within ten days the registration agency that has completed a registration shall notify of the fact of registration the tax inspectorate and forward the formation to an authorised agency for inclusion in the State register.

6. A concession agreement shall be come into force from the day of receipt of the state registration certificate issued by the holder of the General state registrar of enterprises and organizations.

Article 8. The contents of a concession agreement

A concession agreement shall contain the information on:

- the subjects of the agreement;
- concession object and objectives;
- borders of the territory within the frameworks of which a concession shall be granted;
- the list of the assets conceded and their value;
- the rights and responsibilities of the parties;
- terms of payment;
- procedure for selling ready made products on the domestic and foreign markets;
- procedure for import of raw materials, component parts;
- the customs terms;
- procedure of insurance;
- validity period of a contract, procedure of its amendments, extension and termination;
- requirements for environmental protection and restoration, safeguarding historical and cultural monuments, natural landscapes, flora and fauna;
- concessionaire's obligations to submit new information obtained as a result of concession activity, including geological exploration data, to the grantor of the concession;
- terms of hiring labour force;
- procedure for settling disputes, each party's responsibility for violation of the

agreement;

- minimum requirement of the capital invested into the business;
- level of prices for concession products for the domestic and foreign markets;
- terms and procedure for the return of concession objects upon expiration of the agreement term, or for any other reason;
- each party's financial guarantees, legal addresses and bank requisites;
- legal, economic and organisational consequences in cases of emergency and contingency;
- procedure and terms of inspection, control for implementation of a concession agreement;
- other clauses of importance the contracting parties.

Article 9. Concession payment and taxes

Procedure and amounts of concession payments and taxes by foreign legal entities and physical persons are specified by the current legislation of Turkmenistan.

Article 10. Terms of concession agreements

1. A concession agreement shall be signed for the period from 5 to 40 years. In exceptional cases an agreement may be signed for 5 years. Upon expiration of the period specified in the agreement the latter may be renewed as agreed between the parties. Terms and conditions of an agreement being renewed may be altered.
2. Upon expiration of the period of a concession agreement the concession objects shall be returned to the State body that has granted the concession.

Article 11. Changes in the terms and cancellation of a concession agreement

1. Changes in the terms of a concession agreement or pre-term cancellation may take place by the mutual agreement of parties or in the legal order.
2. The liquidation of a concession shall be carried out in accordance with the procedure stipulated by the agreement, or by mutual agreement between the parties; in case of discord between the parties or bankruptcy of a concession enterprise liquidation shall be carried out by a court.
3. The fact of liquidating a concession shall be registered by the agency that has registered the concession agreement.
4. The concession shall be considered liquidated from the date of its exclusion from the Unified State Register of Enterprises and Organizations of all forms of property and management.

Article 12. Inheritance of concession rights

Inheritance of concession rights shall be carried out in accordance with the Laws of Turkmenistan.

Article 13. Insurance

1. Risks of a concession enterprise shall be insured by mutual agreement between a concessionaire and the granter of a concession.
2. The social insurance of the staff of concession enterprises shall be regulated by the legislation of Turkmenistan, and for foreign employees - by individual labour agreements (contracts) by transfer of payments to the corresponding funds in the countries of their permanent residence.

Article 14. Accounting and reporting

1. Concession enterprises carry out accounting and statistical reports of their activity in accordance with the current Laws of Turkmenistan.
2. The translation of foreign currency into the monetary units used in Turkmenistan for the purpose of accounting and calculating the book value of assets shall be carried out in compliance with the rules established by the Central Bank of Turkmenistan.

SECTION III. REGULATION OF CONCESSION RELATIONS

Article 15. The rights of the state body granting a concession

The State body of Turkmenistan that granted a concession has the right to:

- have a share in the concession's profits;
- to purchase the concession's products;
- to control the performance of the concession agreement;
- authorise the concessionaire to use and exploit natural by-resources. The list of mineral resources not subject to exploration as natural by-resources shall be determined by the Cabinet of Ministers of Turkmenistan.

Article 16. The obligations of the state body granting a concession

The state body that has granted a concession must:

- observe all the terms of the concession agreement;
- give the concessionaire exclusive rights to exploit and to use a concession object;
- must not publish and render to third persons information on commercial and production activities, obtained from the concessionaire, without his consent;
- guarantee that any alteration of terms of the concession agreement shall not be admitted without concessionaire's consent;
- compensate for the concessionaire's expenses in case of pre-term cancellation of the agreement on the grantor's initiative;
- compensate for the concessionaire's losses resulting from violating the agreement through someone else's fault;
- guarantee the right to export a stipulated share of the output and hard currency profit on conditions provided for by the concession agreement, or by additional agreements.

Article 17. The concessionaire's rights

A concessionaire shall have the right:

- to carry out business activity as stipulated by the concession agreement;
- to use on the terms set up for enterprises in Turkmenistan a plot of land, piped water, energy, communications, to construct on the concession territory buildings, structures, approach roads, highways, wire and telephone lines.
- to open representations, branches and offices in compliance with the legislation of Turkmenistan;
- to hire personnel from among the citizens of Turkmenistan in accordance with the labour legislation of Turkmenistan as well as personnel from among the citizens of other countries;
- to import, for the purpose of providing for the production process and labour force, instruments, overalls and foodstuff without the right to resell or use them outside the concession territory;
- to establish consortia;
- to appeal to the court against illegal actions by state administrative bodies and their officials.

Article 18. The obligations of a concessionaire

A concessionaire shall be obliged to observe the terms of the concession agreement and work strictly accordance with the legislation of Turkmenistan.

Article 19. Procedure for settling disputes

Disputes of a concessionaire with state bodies, enterprises, public organizations, other legal entities and citizens of Turkmenistan as well as disputes between concessionaires with each other related to their activity shall be solved in the courts of Turkmenistan if otherwise not stipulated by international agreement.

Article 20. The responsibilities of parties

The parties that signed concession agreements shall be responsible for its non-observance in the way established by the legislation of Turkmenistan and provided for by concession agreements.

**PRESIDENT OF TURKMENISTAN
SAPARMURAT TURKMENBASHY**

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