

THE LAW OF THE REPUBLIC OF TAJIKISTAN “ON CONCESSION”

This law establishes main principles of doing concession economic activity within the Republic of Tajikistan and identifies legal, economic, and other privity relationships related to this activity.

I. COMMON REGULATIONS

Article 1. Concepts of terms being used in this law

Concession (Cession) – is an agreement allowing a foreign investor the take on for temporary operation on specific terms state-owned enterprises (associations), land with the right to extract mineral wealth, to build sites, and to use water resources, water and air space, flora and fauna, and other natural resources not prohibited by legislation of the Republic of Tajikistan.

A Concession Agreement is an agreement on passing of land, other natural resources, enterprises (associations), and other state property, not prohibited by legislation of the Republic of Tajikistan by an authorized state body or a local state body within their commission to a foreign investor for a temporary use.

Foreign investor is a legal entity or an individual of a foreign state performing long-term investment into economic activity of another country.

Concessionaire is a foreign investor with whom a concession agreement is concluded.

Objects of concession are the types of economic activities related to temporary yielding to a foreign investor of property, land, and other natural resources not prohibited by legislation of the Republic of Tajikistan.

Subject of concession - sides participating in concession relations.

Concession bodies are the bodies authorized by the Government of the Republic of Tajikistan or local government bodies which are authorized to deal in the established order with the concessions issues.

Article 2. Legal regulating of concession activity

Legal relations arising in the process of the concession activity are regulated by this law and other legislative acts of the Republic of Tajikistan.

Article 3. Basis of concession activity

The concession activity in the Republic of Tajikistan is implemented on the basis of:

- mutual benefit;
- choosing a concessionaire through competition and auctions;
- non-interference into the concessionaire’s economic activity performed in accordance with legislation of the Republic of Tajikistan;
- observing legislation of the Republic of Tajikistan on protection of land and mineral wealth, labor safety, nature and water resources use, environmental protection,

ecological and sanitary-hygienic safety, social insurance and provision;
- ensuring manufacturing of products which are ecologically safe and which meet standards and comply with the normative documents of the Republic of Tajikistan, if otherwise not stipulated by international agreements or agreements with participation of the republic of Tajikistan.

Article 4. Property relations during concession activity

Passing objects in concession does not mean transfer of the right for these objects to the concessionaire or granting him the unlimited right to perform some specific rights of state.

Products and profits, obtained by the concessionaire as the result of the concession activity, are his property in the limits stipulated by the concession agreement.

The Republic of Tajikistan has a primary right for purchase of products from the concessionaire.

II. Competence of public authorities in regulating concession relations

Article 5. State regulating of concession relations

The state regulation of concession relations is implemented by the government of the Republic of Tajikistan or by an authorized state management body, and also by the local state management bodies according to their competence.

Article 6. Competence of the government of Tajikistan

the government of the Republic of Tajikistan is entitled:

- to develop the program of priorities in the concession activity;
- to establish the procedure of state expertise of concession projects and programs;
- to establish the registration procedure of concession agreements and to control their performance;
- to provide the list of objects which are not subject to concession or limited transfer;
- to conclude concession agreements for use of earth, its interior, waters, water and air space, flora and fauna, other natural resources, enterprises (joint), other state property not prohibited by the legislation of the Republic of Tajikistan;
- to settle other issues related to concession relations in according with legislation.

Article 7. Competence of authorized public management body

The authorized state management body is entitled:

- to conduct contests and auctions;
- to conclude concession agreements within granted authorities;
- to control conditions' observance of concession agreements;
- to settle other issues in accordance with legislation of the republic of Tajikistan.

Article 8. Competence of local state bodies

Local state bodies are entitled:

- to characterize objects controlled by local state bodies which may be concluded in concession agreements;

- to conduct contests and auctions on objects belonging to them;
- to conclude concession agreements within their authority and to conform conditions of other concession agreements on objects located on their territory;
- to settle other issues in accordance with legislation of the republic of Tajikistan.

III. PROCEDURE AND CONDITIONS FOR GRANTING CONCESSIONS

Article 9. Preparation of concession offers

Preparation of concession offers is implemented by concession bodies taking into consideration their priority and economic expediency for the Republic of Tajikistan and it includes defining the type of activity and the list of property passed in concession.

Article 10. Procedure of granting concessions

Granting concessions is implemented through tenders. In exceptional cases, in accordance with discretion of the government of the republic of Tajikistan, granting concessions is performed through direct negotiations between concession bodies and potential investors.

Choosing the way of granting concessions through contests or auctions is made by the concession body.

Procedures and conditions for conducting contests and

Auctions are determined by the Government of the Republic of Tajikistan.

Bids for participating in contests and auctions are forwarded by potential concessionaires to the concession

Body. The bid should include:

- a) Data of the concessionaire, including his main job and his relations with financial and business partners;
- b) data of financial position of the concessionaire which demonstrate his ability to fulfill planned works;
- c) data of technical and technology potential of the concessionaire and other companies acting as contractors;
- d) information on forthcoming projects of the bidder-concessionaire, including the list of countries of his business in the last five years;
- e) the bidder's plans on using concessions, including the work plan and estimate of expenses;
- f) the period of concession;

The concession bid for extracting mineral resources should also include:

- g) concession data on prospecting and the concession results if any;
- h) the planned capacity and starting date of extracting mineral resources;

Information on concession contests and auctions is published in mass media in fixed periods with indication of their terms, place, and deadline.

The contest or auction bid may be refused in the following cases:

- the bid has been submitted beyond fixed periods;
- the bidder has submitted false information on his financial and technical capability.

Article 11. concluding concession agreement and its content

The concession agreement is concluded between the foreign investor and the government of the Republic of Tajikistan or by appropriate concession body. The agreement becomes effective from moment of its registration.

The concession agreement should include:

- subject of the agreement, names and cost of property passed in concession;
- space borders of land, mineral wealth, water, and air;
- terms of the concession agreement and the starting date of works;
- rights and responsibilities of sides;
- amounts, procedures, and terms of tax and other payments according to legislation of the Republic of Tajikistan;
- production shares and net profits of the concessionaire and the concession body;
- fixed amounts and terms of yearly investment and the production volume stipulated in the business plan;
- requirements on environmental protection, protection of mineral resources, and works safety;
- resume of state ecological expertise;
- right of sides for information received in the process of the concession activity;
- conditions of hiring, training, insuring, and social protection of employees not contradicting to legislation of the Republic of Tajikistan;
- procedures, conditions, and terms of by-step return of the agreement subject, land, and mineral wealth for their rehabilitation or re-cultivation;
- legal, economic, and organizational consequences under force majeure;
- procedures for settling disputes and responsibilities of sides when breaching agreement conditions;
- financial guarantees of sides, juridical addresses, and banks' data;
- amendments and cancellation conditions of the concession agreement.

The concession agreement may include other conditions which do not contradict to the current legislation of the Republic of Tajikistan.

Article 12. Concessionaire's payments

The concessionaire is to pay:

- fee for state registration of the concession agreement;
- fee for concession in the order established by the concession agreement;
- taxes and other payments stipulated by legislation of the Republic of Tajikistan.

Article 13. Period of concession agreement

The concession agreement may be concluded for a period not exceeding 50 years, depending on technical-economic characteristics of concession objects. Exceptional are deposits of mineral resources demanding major investment and known for a long-term repay period. Duration of the concession agreement may last as long as it is necessary to fully exploit the deposit but not longer than 99 years:

- when the concession agreement expires, the concessionaire

Who has conscientiously fulfilled the agreement conditions, has a principal right to prolong a short and medium-term agreement.

Article 14. Amending and canceling concession agreements

Conditions of concession agreements may be amended in the order stipulated by the agreement or by sides' consent.

If one of the sides breaks the agreement conditions, the concession agreement may be canceled at mutual consent of sides, by court's decision, or by the concession body if the concessionaire has provided false information when concluding the contract.

The concession agreement is canceled from the moment of its excluding from the state register.

Article 15. Transfer of rights and responsibilities on concession agreements

In case of reorganization of one of the sides of the concession agreement, his rights and responsibilities go to their legal legates, if otherwise not stipulated by Legislation of the Republic of Tajikistan.

Full or partial yielding of the concessionaire's rights on the concession object to third persons is not allowed.

Article 16. Insurance

The concessionaire independently insures risks of concession agreements, the concession activity, and employees.

IY. CONCESSIONAIRE'S RIGHTS AND RESPONSIBILITIES

Article 17. Concessionaire's rights

The concessionaire is entitled:

- in accordance with legislation of the Republic of Tajikistan and the concession agreement, to use the agreement subject, to build on used territory Premises, access roads, highways, and communications infrastructure;
- in accordance with the concession body and, if the positive ecological expertise is available, to amend the property stock, to renovate, to expand, and to technically modernize it resulting in property cost increase;
- to bring in his own property and necessary materials for own production needs and personal needs of employees;
- to bring out his property and produced products;
- to appeal in court illegal actions of state bodies, their officials, cooperative, public organizations, and individuals of the Republic of Tajikistan.

The concessionaire also has other rights provided by the legislation of the Republic of Tajikistan.

Article 18. Concessionaire's responsibilities

The concessionaire is responsible:

- to observe the concession agreement conditions;
- to perform an economic activity in strict accordance with legislation of the Republic of

Tajikistan and the concession agreement;

- To keep records in the order established by legislation of the Republic of Tajikistan;
- To return to concession bodies the property and objects passed to him in accordance with the agreement, and also to take care of his own property in a two-month period from the day of the concession agreement's expiration or cancellation;
- to fulfill other responsibilities stipulated by legislation of the Republic of Tajikistan.

Article 19. Concessionaire's profits

The concessionaire's profits left after payment of taxes and other fees, remains at his full disposal.

Y. FINAL PROVISIONS

Article 20. Procedure for considering disputes

Disputes between the concessionaire and concessionaire body are subject to consideration in economic courts of the Republic of Tajikistan, if otherwise not stipulated by international agreements and treaties of the Republic of Tajikistan. Disputes of concessionaires with state enterprises, public associations, other legal entities, and individuals of the Republic of Tajikistan, as well as disputes among concessionaires on issues connected with their activity, are subject to consideration in courts of the republic of Tajikistan and, if agreed with sides, in economic court or arbitration abroad.

Article 21. Responsibilities of concession relations subjects

The sides which have concluded the concession agreement are responsible for its non-performance or improper fulfillment according got the order established by legislation of the Republic of Tajikistan.

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