

LAW OF UKRAINE

ON CONCESSIONS

As amended according to the Laws of Ukraine

no. 2921-III as of January 10, 2002,

no. 209-IV as of October 24, 2002,

no. 762-IV as of May 15, 2003,

no. 1414-IV as of February 03, 2004,

no. 2599-IV as of May 31, 2005,

no. 2857-IV as of September 8, 2005,

no. 891-VI as of January 15, 2009,

no. 1023-VI as of February 19, 2009,

no. 1444-VI as of June 4, 2009,

no. 2404-VI as of July 1, 2010

no. 2624-VI as of October 21, 2010

no. 2880-VI as of December 23, 2010

no. 3687-VI as of July 8, 2011

no. 4650-VI as of April 12, 2012

This Law determines the notions and legal principles of regulating the relations of the concession of the state and community owned property, as well as conditions and the procedure of its exercise in order to improve the efficiency of the utilisation of the state and community-owned property and satisfy needs of citizens of Ukraine for goods (works, services).

Section I. GENERAL PROVISIONS

Article 1. Definitions

For the purposes of this Law, the terms shall have the following meaning:

- the term "concession" shall denote the provision of a legal entity or a natural person (business) with the right to establish (construct) and/or manage (operate) the object of concession by an authorised executive or local self-government institution on a paid and timed basis (timed paid possession), in order to satisfy public needs, subject to the businesses' (concessionaire's) taking obligations to establish (construct) and/or manage (operate) the object of concession and assuming the property liability and possible business risk;

- the term "contract of concession (concession contract)" shall denote a contract, under which the authorised executive body or the local self-government institution (grantor) grants a business (concessionaire) the right on a paid and timed basis to establish (construct) the object of concession or substantially improve it and/or manage (operate) it according hereto in order to meet the public needs;

- the term "concessionaire" shall denote a business, which obtained a concession according hereto on the basis of a contract. Several persons may act as a concessionaire;

- the term "grantor" shall denote an executive body or a relevant local self-government institution authorised to conclude a concession contract by, respectively, the Cabinet of Ministers of Ukraine or local self-government institutions respectively;

- the term "applicant" shall denote a natural person or a legal entity (a business), resident or non-resident, which submitted an application for the participation in the concession tender;

- the term "concession payments" shall denote the payment stipulated by the concession contract payable by the concessionaire for the right to establish (construct) and/or manage (operate) objects provided on concession;

- the term "concession tender" shall denote the procedure established by this Law and other regulations, under which a certain applicant is declared a winner of the concession tender.

Article 2. Principles of the Concession Activities

The major principles of the activities related to granting and obtaining a concession (hereinafter referred to as the concession activities) shall be as follows:

- legality of exercising the concession activities;
- state regulation of the concession activities and control over the exercise thereof;
- exercise of the concession activities on the basis of a concession contract;
- selection of concessionaires preferably on a tender basis;
- allowance for the specifics of granting an object on concession in certain spheres of commercial activities;
- comprehensive utilisation of the concession object;
- mutual benefit for the parties to a concession contract;
- state guarantees for concessionaire's capital investments;
- use of the concession object against payment;
- protection of legal rights and interests of consumers of goods (works, services) provided by the concessionaire;
- stability of conditions of concession contracts;
- sharing of risks between the parties to a concession contract;
- participation of the state, the local self-government institutions in co-financing the concession objects, which are of social importance.

Article 3. Objects which may be Granted on Concession

1. The objects capable of being granted on concession shall be determined according hereto.

2. The state or community ownership rights, which are used to exercise activities in the below mentioned spheres of commercial activities (except for the business activities, which may be exercised solely by state-owned enterprises and associations) may be granted on concession:

- water supply, waste water disposal and purification in the manner set forth by the *Law of Ukraine On Peculiarities of Granting into Lease or Concession of Municipal Centralized Water- and Heat Supply and Sewage Facilities*, ensuring functioning of irrigation and drainage systems;

- rendering of local public transportation services;
- collection and recycling of litter, waste processing ;
- prospecting for, exploration of deposits of minerals and extraction of minerals, extraction of black coal, lignite (brown coal), its processing in the manner set forth by the *Law of Ukraine On Peculiarities of Granting into Lease or Concession of State-Owned Fuels and Energy Facilities*;
- construction (package of road constructions work involving construction, reconstruction and capital repair) and/or the operation of motor roads, road facilities, other road structures;
- construction and /or operation of railways, airports, runways on airfields, bridges, overpasses, other passageways, underground, sea and river ports and their infrastructure;
- mechanical engineering;
- health protection;
- rendering of telecommunication services, including with use of telenetworks;
- rendering of postal services;
- production, transportation and supply of heat in the manner set forth by the *Law of Ukraine On Peculiarities of Granting into Lease or Concession of Municipal Centralized Water- and Heat Supply and Sewage Facilities*, and distribution and supply of natural gas;
- generation and/or transmission of the electric power;
- public catering;
- housing construction;
- rendering of services in the field of administration of building utilities;
- the utilisation of social and cultural facilities (except for those located in recreation areas);
- establishment of municipal car parking services;
- rendering of ritual services;
- construction and operation of hotels, tourism complexes, campsites and other relevant objects of the tourism industry;
- the construction, the rehabilitation and the operation of intra-farm irrigation systems and specific objects of their engineering infrastructure.

3. Solely on their plenary meetings, the relevant local councils may decide on the additional list of the spheres of commercial activities, for whose exercise the community ownership rights may be granted on concession.

4. The state or municipal property granted on concession shall be as follows:

- property of enterprises constituting integral property complexes or a system of integral property complexes, which ensure the comprehensive rendering of services in the field of activities specified in parts 2 and 3 of this Article;
- uncompleted construction sites and mothballed facilities, which can be completed, for the purposes of the use thereof for the rendering of services satisfying public needs in the field of activities specified in parts 2 and 3 of this Article;
- specially constructed facilities according to the terms and conditions of the concession contract to satisfy public needs in the field of activities specified in parts 2 and 3 of this Article.

The concession may be granted for individual business activities in the field of commercial activities specified in parts 2 and 3 of this Article.

5. The property of enterprises constituting integral property complexes or a system of integral property complexes, which is granted on concession, shall be understood as property (fixed assets, including unfinished construction, intangible assets), which support production (creation) of the respective products (services) in the field of activities referred to in parts two and three of this Article.

Other fixed tangible assets, circulating tangible assets, cash, securities and property, which do not meet the requirements set forth in paragraph one of this part, as well as property rights and liabilities, held by the 'balance sheet' holder of the property granted on concession, are not concession objects.

Fixed tangible assets, current tangible assets may be purchased by the concessionaire per the terms of the agreement. Accounts receivable and payable, cash and other securities may be transferred to the concessionaire per the terms of the agreement.

The conditions of and the procedure for the transfer to the concessionaire of current tangible assets, accounts receivable and payable, cash and other securities may be included into the conditions of holding of the concession tender.

The concessionaire does not become a general legal successor under the rights and obligations of the enterprise, whose integral property complex is granted on concession. The conditions of and the procedure for the transfer to the concessionaire of rights and obligations of the enterprise, whose integral property complex is granted on concession may be set forth by the conditions of the concession tender.

In the event that all assets and liabilities of the enterprise, whose integral property complex is granted on concession, were transferred to be held and accounted on the balance sheet of the concessionaire, such enterprise shall be liquidated.

The property, comprising the integral property complex granted on concession shall be registered on the balance sheet of the concessionaire with a note that such property was given on concession.

6. In the event that the concession object is located on a state- or municipally-owned land plot, with which the concessionaire is empowered to transact with, such land plot shall be leased to the concessionaire together with the concession object for the duration of the concession contract in accordance with the *Land Code of Ukraine* and the *Law of Ukraine On Land Lease*. The right of ownership to the respective land plot shall be exercised by the concessionaire in accordance with the law.

7. The objects of the state or community ownership granted on concession shall not be subject to privatisation during the validity term of the concession contract without consent of the concessionaire.

8. In case of a decision to privatise the property of the object, which had been granted on concession, after the expiry of the concession contract validity period, the former concessionaire shall be entitled to buying out the said property according to the specified privatisation conditions, if the concessionaire had created (constructed) the said property in connection with the fulfilment of terms and conditions of the concession contract or improved the said property for a value of at least 255 per cent of the property value as of the time of the privatisation.

Article 4. Restriction of Concession Activities

Assignment by the concessionaire of property rights resulting from the concession contract or concession objects, partially or in their entirety, to third parties shall be possible only subject to the consent of the grantor, unless otherwise provided by a special law on concession activities in specific fields of commercial activity.

Article 5. Legal Principles of Concession Activities

1. The relations with regard to granting on concession the objects of the state or community property rights shall be regulated by the concession contract, this Law and other regulatory acts of Ukraine.

2. Special laws may set the specific features of exercising concession activities in certain spheres of commercial activities.

3. Should an international treaty of Ukraine approved as obligatory by the Supreme Council of Ukraine establish the rules other than those specified herein, the rules of the international treaty shall apply.

Section II. HOLDING OF THE CONCESSION TENDER

Article 6. Procedure of Making the Decision to Grant a Concession

1. The proposals on the list of specific objects of the state ownership, which are capable of being granted on concession, shall be made by appropriate central executive bodies. The object list shall be approved by the Cabinet of Ministers of Ukraine.

2. The list of the objects of the community ownership, which are capable of being granted on concession, shall be approved solely on plenary meetings of appropriate councils.

3. The decision to grant the concession for an object of the state ownership shall be made by the Cabinet of Ministers of Ukraine or an executive body authorised by the former on the basis of the results of the concession tender.

4. The decision to grant the concession for an object of the community ownership shall be made by an authorised local self-government institution on the basis of the results of the concession tender.

5. The concession over state property shall be granted taking into account the national interests and the maximum protection of interests of consumers of goods (works, services).

6. The concession over municipal property shall be granted taking into account the interests of the region, the territorial community with regard to the supply of goods (works, services) to the consumers residing on the territory of the relevant administrative and territorial unit.

7. Should only one applicant apply for the participation in the tender upon the announcement of the concession tender, the concession contract may be concluded by the authorised body with the said applicant by agreeing on the substantial terms and conditions of the contract with the said applicant.

Article 7. Major Principles of Holding the Concession Tender

1. The concession tender shall be organised and held by the grantor.

2. The grantor shall:

- approve the conditions of the concession tender;
- set up the tender commission, approve its complement and the working procedures;
- prepare the tender documents;
- announce the concession tender;

- determine the registration fee amount;
- confirm the receipt of applications for the participation in the concession tender in writing;
- provide applicants with the information (documents) needed for the preparation of the concession bids;
- make decisions on the admission (non-admission) of applicants to the participation in the concession tender with the justification of the grounds for the non-admission;
- notify the applicants on the admission (non-admission) to the participation in the concession tender;
- acts as the principal, performs actions relating to the approval of the land management plan with regard to allotment of land plots, other land management documents prepared with a view to the lease of the land plot to the concessionaire for performance of commercial activities.

The concessionaire shall be obliged to agree the conditions of the concession tender in respect of state or community-owned objects used for the exercise of business in the field of the centralised water and thermal energy supply, and waste water disposal with the central executive agency in charge of the state regulation in the relevant field before the approval of conditions of the said tender.

The admission of an applicant to the participation in the concession tender may be denied on the grounds of the failure to provide the necessary information in the application for the participation in the tender, provision of the incomplete or false information.

3. For applicants to be registered as concession tender participants, they shall pay a registration fee in the amount of one to ten non-taxable minimum individual income amounts, unless otherwise prescribed by a special law on concession activities in specific fields of business. The registration fee shall be paid by means of a cashless transfer to the current account of the grantor. The said funds shall be used for the preparation for the concession tender procedure and shall not be refunded.

4. Applications, documents and materials submitted by applicants shall be considered within 45 days upon the last application submission date.

5. A concession bid received by the grantor upon the expiry of the submission period shall not be considered and returned to the applicant at his expense.

6. The tender commission shall consider applications, documents and materials with offers on the concession conditions submitted by applicants admitted to the participation in the concession tender, determine their compliance with conditions of the tender, draw conclusions on ascertaining the best concession conditions offered by applicants.

7. An applicant, which offered the best concession conditions complying with the concession tender conditions shall be declared the winner of the concession tender.

8. On the basis of conclusions drawn by the tender commission, the grantor shall take a decision to determine the winner of the concession tender.

9. The notice of determining the winner of the concession tender shall be sent to the winner of the concession tender within five days upon the date of the decision.

10. A concession contract shall be concluded with the winner of the concession tender upon reaching an agreement on all the terms and conditions thereof.

11. The procedure of setting up the tender commission and holding the concession tender shall be determined by the Cabinet of Ministers of Ukraine.

Article 8. Announcement of the Concession Tender and Its Results

1. The information on the announcement of the concession tender for granting new concessions or renewing the concessions, which expired, shall be published in *Uriadoviy Kuryer* and *Holos Ukrainy* newspapers or in an appropriate bulleting of the local self-government institution.

2. The information on the announcement of the concession tender shall contain the data on:

- the authority providing the concession;
- the object of the concession (description, characteristics, etc.);
- the conditions of granting a land plot, if required to exercise the concession activities;
- the scope of work to be financed (carried out) by the concessionaire;
- the amount of goods (works, services), whose production (provision) should be guaranteed by the concessionaire;
- the scope of the data on the concessionaire;
- major responsibilities of the concessionaire;
- financial and other guarantees of the grantor;
- the registration fee amount;
- the term of the concession;
- the time for the submission of applications for the participation in the concession tender;
- the time for the announcement of results of the concession tender;
- the authorised body to be addressed for the purposes of obtaining the additional information.

3. On request of the applicant, the grantor or an agency authorised thereby shall provide additional information on conditions of the concession activities in respect of:

- the conditions of the provision of a land plot, if it is required for the concession activities;
- the volume of work to be funded (carried out) by the concessionaire;
- the amount of commodities (volume of work or services), whose manufacture (performance or provision) is guaranteed by the concessionaire;
- the amount of the information about the concessionaire;
- the core duties of the concessionaire;
- the financial and other guarantees from the grantor;
- special conditions related to the environmental protection and labour protection.

The grantor or an agency authorised thereby shall also provide information about the land plot which will be granted to the concessionaire for performance of concession activities (cadastre number, designated purposes, restrictions, charges over the land plot, information about systems of water-, heat-, gas supply, sewerage, other infrastructure), and other information needed by a applicant to take part in the concession tender.

4. Applications for the participation in the concession tender shall be submitted within sixty days of the tender's announcement or, in case of granting of concession for the construction and/or the operation of motor roads, within the time frame specified by the grantor.

5. The application for the participation in the concession tender shall contain information about:

- the full name of the applicant;
- offers on meeting the conditions of the concession tender;
- data confirming the applicant's ability to ensure the proper financing of its concession activity;
- the experience and the possibility of the technological and organisational support to such activities.

6. Information about the results of the tender, grounds for selection of the winner and rejections of proposals of other participants shall be published on the official website of the grantor immediately after announcement of the decision on selection of the winner of the tender and shall be published, within ten days from that day, in *Uriadoviy Kuryer* and *Holos Ukrayiny* newspapers or in an appropriate bulleting of the local self-government institution.

A concession contract shall be executed with the winner of the tender not later than three months from the date of publication of the results of the tender in the manner and on the conditions determined hereby. This period may be prolonged upon a written request of the tender's winner.

7. Disputes related to the concession tender shall be settled by a court.

Section III. CONCESSION CONTRACT

Article 9. Conclusion and Term of Validity of a Concession Contract

1. The concession contract shall be concluded for a term specified in the contract, which should not be less than 10 years and more than 50 years.

2. The concession contract shall be deemed concluded from the day of reaching the agreement on all the substantial terms and conditions and signing the text of the contract by the parties.

3. The validity term of the concession contract may be altered by consent of the parties within the limits set by part 1 of this Article.

4. The Cabinet of Ministers of Ukraine may approve model concession contracts for certain concession activities.

Article 10. Substantial Conditions of the Concession Contract

1. The substantial conditions of the concession contract are as follows:

- parties to the contract;
- activities, works, services to be carried out according to terms and conditions of the contract;
- object of the concession (composition and value of the property or the technical and financial terms of reference for the creation of the concession object);
- conditions of granting the land plot, if required to exercise the concession activities;
- a list of activities subject to licensing;
- conditions of fixing and altering prices (tariffs) for the goods (works, services) produced (provided) by the concessionaire;

- the term of validity of the concession contract, conditions of the employment and the use of the labour of employees, which are citizens of Ukraine;
- conditions of using the domestic raw and other materials;
- conditions and the scope of improving the concession object and the procedure of the compensation for the said improvements;
- conditions, scope and procedure of effecting the concession payments;
- the procedure of using the depreciation charges;
- the renewal of the concession object and conditions of the return thereof;
- the liability for the non-performance or the improper performance of responsibilities arising from the concession contract;
- the insurance of the concession objects taken on concession by the concessionaire;
- the procedure of the amendment and the termination of the contract;
- the procedure of settling disputes between the parties;
- the right to obtain information and to carry out the inspection of the compliance with terms and conditions of the contract;
- the procedure and conditions of the transfer of rights and responsibilities arising from the concession contract, including those related to the provision of guarantees to lenders;
- the procedure of the utilisation of intellectual property objects.

2. By agreement of the parties, the concession contract may also contain other conditions, including those provided for by special laws on concession activities in individual spheres of the commercial activities.

3. Should a land plot be required for performance of concession activities, a lease agreement with respect to such land plot shall be executed in accordance with the laws.

4. The terms and conditions of the concession contract shall be valid during the entire validity term of the contract, including the cases if, upon the concession contract conclusion, legislative acts establish rules, which deteriorate the situation of the concessionaire.

5. The reorganisation of a concessionaire, which is a legal entity, shall not constitute the basis for altering the terms and conditions of the concession contract or terminating it.

Article 11. Licensing

Should a concessionaire engage in business activities, which are subject to licensing under the legislation of Ukraine, the requirement to the concessionaire to obtain the appropriate license according to the established procedure shall be included into the essential conditions of the concession contract.

Article 12. Concession Payments

1. The concession payment shall be effected by the concessionaire according to the terms and conditions of the concession contract regardless of results of the commercial activities.

In the event that throughout the effective term of the concession contract certain assets, granted to the concessionaire as part of the concession object, are retired, in the result of which such objects are not used by the concessionaire in his commercial activities, the amount of concession payments shall be revised by way of decrease of the base of calculation of concession

payments by the value of such assets, determined on the date when they were granted into concession.

The amount of concession payments shall be increased if new facilities, created at the expense of local or state budgets, are granted to the concessionaire into management (operation) throughout the effective term of the concession contract.

In the event of granting into concession of the right of management (operation) of state or municipal property, which exist as of the date of execution of the concession contract, the concessionaire shall be released from payment of concession payment for new fixed assets and intangible assets created (purchased) by the concessionaire at his expense for performance of the concession contract.

Should concession be granted over a non-completed construction object or for development (construction) of a new object, concession payments shall be made from the time when the concessionaire derives income from the operation of the concession object, but not later than six months from the object's commissioning as specified by the terms and conditions of the concession contract.

2. Concession payments shall be credited towards the State Budget of Ukraine or a local budget, as appropriate.

3. The methodology of calculation and maximum amounts of concession payments shall be specified by the Cabinet of Ministers of Ukraine.

4. The grantor may provide privileges, including in the form of payment by instalments, deferral of the payment, complete or partial release from payment of concession payments for a fixed period of time, with regard to concession payments and provide for contractual provision of subsidies, compensations and privileges to concessionaires of loss-making and low-profit objects which serve important public needs. The procedure for determining such objects, as well as conditions of providing grants, compensations and privileges shall be specified by the Cabinet of Ministers of Ukraine.

Article 13. Liability of the Parties for the Failure to Fulfil Obligations under the Concession Contract

1. For the failure to fulfil or the improper fulfilment of terms and conditions of the concession contract, including the unilateral alteration or termination of the contract, except for cases provided for hereby, the parties shall bear the responsibility in accordance with laws of Ukraine and the concession contract.

2. In case of the declaration of bankruptcy of the concessionaire, the latter shall be liable under his debt liabilities with the property owned by him according to the legislation of Ukraine.

Article 14. Registration of Concession Contracts

1. If the concession object is state owned, the body authorised to conclude the concession contract according to the procedure specified by the Cabinet of Ministers of Ukraine shall notify the State Property Fund of Ukraine, which is in charge of keeping the register of concession contracts, of the conclusion of such a contract. The procedure of keeping such a register shall be specified by the Cabinet of Ministers of Ukraine.

2. If the concession object is community-owned, the body authorised to conclude the concession contract according to the procedure specified by the Cabinet of Ministers of Ukraine shall register such a contract in the executive body of the relevant council and notify the State Property Fund of Ukraine of the conclusion of such a concession contract. The procedure of

keeping the record of concession contract concluded by the local self-government institutions shall be specified by the Cabinet of Ministers of Ukraine.

Article 15. Termination of the Concession Contract

1. The concession contract shall be terminated in case:

- of the expiry of the term, for which it was concluded;
- liquidation of the concessionaire by a court decision, including declaration of his bankruptcy;
- of annulment of the licence issued to the concessionaire for carrying out of the relevant line of business;
- loss of the concession object.

2. The concession contract may be terminated by agreement between the parties.

Upon requirement of either party, the concession contract may be terminated by the decision of a court of law in case of the parties' failure to fulfil their obligations and for other reasons envisaged by the laws of Ukraine.

3. In case of termination of the concession contract, expiry thereof, liquidation of the concessionaire in connection with it being declared bankrupt or annulment of the licence for carrying out of the relevant line of business, the concessionaire shall return the concession object to the grantor on conditions set out in the concession contract. If the concessionaire allowed the condition of the concession object to deteriorate or allowed for the loss of the concession object, the concessionaire must reimburse the grantor for losses, unless the concessionaire proves that the object's deterioration or loss has not occurred through its fault.

4. A concession contract may be declared invalid by the court in accordance with the civil law.

5. In case of improvement of the property taken into concession, which was effected for the account of the concessionaire, or if the concessionaire created the property in compliance with terms and conditions of the concession contract, the grantor shall be obliged to reimburse the concessionaire for the expenses incurred in connection with substantial improvements or for the value of the created property to the extent, which was not recovered by the concessionaire in the result of concession activities in accordance with conditions of the concession contract.

Article 16. Settlement of Disputes Arising from a Concession Contract

1. Disputes arising from concession contracts shall be considered by the court of law according to the legislation of Ukraine.

2. Disputes arising from concession contracts with the participation of non-residents shall be settled according to the procedure provided for by the legislation and can be considered by an international court of arbitration in the location specified in the contract.

3. In case of the violation of terms and conditions of the concession contract the Parties shall be entitled to require the annulment of the concession contract according to the procedure specified by the legislation of Ukraine.

Section IV. PRIMARY RIGHTS AND RESPONSIBILITIES OF PARTIES TO A CONCESSION CONTRACT

Article 17. Rights and Responsibilities of the Grantor

1. The grantor shall be entitled:

- to control the concessionaire's compliance with terms and conditions of the concession contract;
- to grant the exclusive right to the establishment (construction) and/or management (operation) of the concession object;
- to require the early termination of the concession contract in case of the violation of its terms and conditions by the concessionaire;
- to require the concessionaire to refund damages in case of the deterioration of the concession object, which occurred through the fault of the concessionaire's.

2. The grantor shall be obliged:

- to hand over the concession object to the concessionaire in the condition and at the time specified by the concession contract;
- to provide the concessionaire in time and in full with documents envisaged by the concession contract, which confirm the concessionaire's right to establish (construct) and/or manage (operate) the concession object;
- to require a report on the utilisation of depreciation charges;
- to keep the concessionaire's commercial secrets;
- not to interfere with business activities of the concessionaire;
- if a land plot is needed to exercise concession activities, to ensure its provision according to the procedure established by the Land Code of Ukraine.

3. The grantor shall also have other rights and responsibilities envisaged by the concession contract and the legislation of Ukraine.

Article 18. Rights and Responsibilities of the Concessionaire

1. The concessionaire shall be entitled:

- to engage in business activities on the basis of the establishment (construction) and/or management (operation) of the concession object;
- to hold the exclusive right to establish (construct) and/or manage (operate) the concession object, if so provided by the terms and conditions of the concession contract;
- to require the annulment of the concession contract and the reimbursement for damages caused by the failure to fulfil the terms and conditions of the contract in case of the violation of terms and conditions of the contract by the grantor;
- to the prolongation of the validity of the concession contract in case of fulfilment of its terms and conditions;
- to receive payment for the produced goods (works, services) according to conditions of the concession contract;
- to utilise the depreciation charges for the restoration of fixed assets taken into concession;
- to involve third parties into the performance of special works on the concession object on contractual basis. In this case, the concessionaire shall be responsible for these persons' compliance with terms and conditions of the concession contract and the legislation of Ukraine.

2. The concessionaire shall be obliged:

- to fulfil the terms and conditions of the concession contract;

- to conclude labour contracts according to the legislation, as a rule, with employees, which are citizens of Ukraine;

- to use technologies, materials and equipment of domestic origin on the concession object, unless otherwise provided by the terms and conditions of the contract;

- to maintain the concession object in proper technical condition;

- upon expiry of the term of the concession contract, to hand over the concession object in proper technical condition back to the grantor according to the terms and conditions of the contract.

- to execute land lease agreement not later than one year from the effective date of the concession contract. This term may be prolonged upon a written request of the private partner, however not more than for one year.

3. The concessionaire shall also have other rights and responsibilities envisaged by the concession contract and the legislation of Ukraine.

4. In the event that several persons are acting as the concessionaire under the concession contract, they shall bear several and joint responsibility under obligations provided thereby.

Article 19. Organisational and Legal Forms of Concessionaire's Activities

1. The concessionaire shall exercise his activities in any organisational and legal form.

2. The procedure of establishment of legal entities to engage in concession activities, their reorganisation and liquidation, and the conditions of their fulfilment of the concession contracts shall be specified by the legislation of Ukraine.

Article 20. Legal Regime of the Property Granted on Concession or Created Due to Fulfilment of Terms and Conditions of the Concession Contract

1. The transfer of objects on concession does not result in the transfer of the title in the said object to the concessionaire and does not suspend the right of the state or community ownership of these objects.

The property created due to the fulfilment of the concession contract shall be the object of the state or community ownership.

The property procured by the concessionaire to fulfil terms and conditions of the concession contract shall be owned by the former and may be transferred to the ownership of the state or the territorial community upon expiry of the term of validity of the concession contract according to terms and conditions specified by the Law and concession contract.

2. The concessionaire shall own the profit received due to the management (operation) of the concession object, as well as the products received as a result of the fulfilment of terms and conditions of the concession contract.

3. Depreciation charges on the concession object are made by the grantor or an agency authorized by him. The amount of the depreciation charges shall be communicated to the concessionaire on a quarterly basis as set forth by the concession contract. The amount of the concession payment, payable by the concessionaire for the respective period, shall be decreased by the amount of the depreciation charges (however not more than the amount of the concession payment).

The concessionaire shall be required, in the manner and within the term set forth by the concession contract, to perform works with regard to improvement of the concession object for the amount of the depreciation charges by which the concession payment was decreased.

Misapplication of such funds shall result in penalties against the concessionaire in the amount of 100 per cent of the misapplied amounts, with the charge of a fine in the amount of 120% of the discount rate of the National Bank of Ukraine.

Depreciation charges on the property owned by the concessionaire shall be utilized by the concessionaire in accordance with the laws of Ukraine.

According to terms and conditions of the concession contract, the concessionaire shall have the right to rehabilitate, refurbish and improve the property obtained on concession at the expense of own funds.

The ownership of the improved, rehabilitated or refurbished property shall remain with the state or the territorial community respectively.

The concessionaire shall be entitled to the adequate and efficient reimbursement for expenses made due to the improvement of the property obtained on concession at the expense of the received property, unless otherwise provided by the concession contract.

Article 21. Protection of the Concessionaire's Right to the Property Obtained by Him on Concession

1. Provisions of the legislation on the protection of the property right shall extend to the concessionaire with regard to the protection of his right to the property obtained (created) by him according to terms and conditions of the concession contract.

2. The concessionaire may require to return the property obtained by him according to terms and conditions of the concession contract from the illegal possession by others, to eliminate obstacles in using it, to reimburse for damages caused to the property by individuals, legal entities or the grantor.

Article 22. Risk of Accidental Loss of or Damage to the Concession Object

1. The risk of the accidental loss of or the damage to the concession object shall be borne by the grantor, unless otherwise provided by the concession contract.

2. The property obtained by the concessionaire or created pursuant to terms and conditions of the concession contract shall be insured by the concessionaire to the benefit of the party of the concession contract, which bears the risk of the accidental loss of or damage to the concession object.

Article 23. Termination of Activities of the State or Community Owned Enterprise, Whose Property is Granted on Concession

1. The termination of the activities of a state or community owned enterprise, whose property is granted on concession, shall be effected by means of its liquidation.

2. The right of the full economic management of the property handed over to the state or community owned enterprise and granted on concession shall be terminated.

3. Employees of the state or community owned enterprise, which terminated its activities, shall be provided with social and legal guarantees provided by the legislation of

Ukraine for employees dismissed due to changes in the organisation of the production and labour.

4. When concluding the concession contract, the grantor shall provide in terms and conditions of the contract for the maximum use of employees-citizens of Ukraine in the concession activities, including those dismissed due to the liquidation of the state or community owned enterprise, whose property is granted on concession.

Article 24. Transfer of the Concession Object

1. The object shall be transferred on concession at the time and on conditions specified in the concession contract.

2. The property obtained on concession shall be included in the balance sheet of the concessionaire-legal entity with the indication that the said property is obtained on concession.

3. Should the grantor fail to transfer the concession object at the time and on conditions specified in the concession contract, the concessionaire shall be entitled to require the grantor to transfer the concession object and reimburse for the losses caused by the delay with the transfer or require to terminate the concession contract and reimburse for damages caused by the concessionaire by the non-fulfilment of the concession contract.

Section IV¹. STATE GUARANTEES

Article 24¹. Guarantees of concessionaires' rights

1. The state shall guarantee adhere to the conditions set forth by the laws for performance of concession activities relating to performance of concessions contracts, protection of their rights and lawful interests.

Amendments introduced into laws shall not worsen the conditions for performance by the concessionaires of their activities relating to implementation of concession projects.

2. Governmental authorities and self-government institutions, their official shall not have the right to interfere with the activities of concessionaires, relating to performance of concession contracts, save for instances when such interference is allowed by the laws, the concession contract and is performed within the limits of their powers.

3. Property and financial resources of concessionaires, which perform concession contracts in Ukraine, shall not be forcefully alienated, save for instances established by the laws. Such resources may be utilized solely for rescue operations in the event of anthropogenic or natural emergencies. In such instances the concessionaire shall be entitled to compensation in accordance with the laws.

4. In the event of approval by governmental authorities and self-government institutions of decisions which violate the rights of concessionaires, any damages caused thereby shall be subject to compensation in the manner set forth by the law.

Section V. ACCOUNTING, REPORTING AND TAXATION OF CONCESSION ACTIVITIES

Article 25. Accounting and Financial Reporting

The accounts and financial reports with regard to the concession activities shall be kept according to the legislation of Ukraine.

Article 26. Procedure of the Payment of Duty, Value-Added Tax and Excise Duty When Importing Tangibles in Connection with the Concession Contract

The duty, value-added tax and excise duty in the course of the import of tangibles in connection with fulfilment of terms and conditions of the concession contract shall be levied according to the legislation of Ukraine.

Section VI. FINAL PROVISIONS

1. This Law shall become effective from the date of its publication.

2. Laws of Ukraine and other regulations adopted prior to this Law's coming into effect shall be valid to the extent that they do not contradict this Law.

3. Within three months upon the publication hereof, the Cabinet of Ministers of Ukraine shall:

- prepare and submit to the Supreme Council of Ukraine the proposals on introducing changes in legislative acts, which result from this Law;

- bring its regulations in compliance herewith;

- develop regulations provided for by this Law;

- ensure the adoption of regulations provided for by this Law by ministries and other central executive bodies of Ukraine, as well as the revision and abolishment of their regulations contradicting this Law;

- develop and approve the model concession contracts.

4. Changes shall be introduced in the following laws of Ukraine:

1) Article 22 of the Law of Ukraine "On Procedure for Foreign Investments" (Vidomosti Verkhovnoyi Rady Ukrayiny, 1996, issue 19, page 80) shall be set forth in the following wording:

"Article 22 Concession Contracts

Granting foreign investors the right to engage in commercial activities related to the use of the state or community owned objects and transferred on concession shall take place on the basis of the relevant legislation of Ukraine by means of the conclusion of a concession contract";

2) In Law of Ukraine "On Local Self-Government in Ukraine" (Vidomosti Verkhovnoyi Rady Ukrayiny, 1997, issue 24,

page 170; 1998, issue 48, issue 292):

item 30 of part 1 of Article 26 after the word "invalid" shall be supplemented with words "about granting the community owned objects on concession";

sub-item 4 of item 'a' of Article 29 after the words "of these programmes" shall be supplemented with words "preparation and submission to the council for consideration of proposals on determining the spheres of commercial activities and the list of objects capable of being granted on concession";

item 19 of part 1 of Article 43 after the word " lease" shall be supplemented with the word "concession".

President of Ukraine
city of Kyiv
July 16, 1999
no. 997-XIV

L.KUCHMA