

Law of the Republic of Belarus

July 12, 2013 No 63-Z

On Concessions

Adopted by the House of Representatives on June 26, 2013

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The present Law determines the legal bases of investment activities on the basis of concessions in the territory of the Republic of Belarus and is aimed to ensure the rights and legitimate interests of investors, the Republic of Belarus and its administrative territorial units.

CHAPTER 1

GENERAL PROVISIONS

Article 1. Main terms used in this Law and their definitions

For the purposes of the present Law, the following main terms and their definitions are used:

compensatory production – a fixed part of the production manufactured by the concessionaire which is transferred into the ownership of the grantor under the concession contract on production sharing;

grantor – the Republic of Belarus or its administrative territorial unit on behalf of which the concession bodies act, which concluded the concession contract with the concessionaire in accordance with the present Law;

concessionaires – investors with the exception of state legal persons that concluded the concession contract with the Republic of Belarus or its administrative territorial unit;

concession proposal – a proposal for investors being elaborated by the concession body on a certain concession object, which includes the name and main characteristics of the concession object, purpose of transferring it in concession and main technical conditions of use of the property which is the concession object as well as main conditions for carrying out a certain kind of activity being the concession object the carrying out of which is covered by the exclusive right of the state (hereinafter – kind of activity) and conditions of concessionaires' activity;

concession contract – a written agreement under which the one party (grantor) is obliged to grant to the other party (concessionaire) on a for-compensation or gratuitous basis for a definite time limit the right to possess and use the concession object or the right to carry out a certain kind of activity;

concession body – state body or other state organization authorized by the President of the Republic of Belarus, republican body of state administration authorized by the Government of the Republic of Belarus or other state organization subordinated to the Government of the Republic of Belarus as well as a local executive and administrative body performing actions determined in accordance with the present Law on behalf of the grantor;

concession – the right to possess and use a concession object or the right to carry out a certain kind of activity, based on the concession contract;

concession objects of administrative territorial units – concession objects that are in communal ownership with the exception of concession objects the data about which constitute state secrets and concession objects having strategic importance for the Republic of Belarus;

concession objects of the Republic of Belarus – concession objects that are in republican ownership as well as other concession objects that are in the ownership of the state and not

belong to concession objects of administrative territorial units, kinds of activity, with the exception of concession objects the data about which constitute state secrets and concession objects having strategic importance for the Republic of Belarus;

subject matter of the competitive bidding or auction for selection of the investor for conclusion of the concession contract (hereinafter – the subject matter of the competitive bidding (auction) – the right to possess and use a concession object or the right to carry out a certain kind of activity;

one-time payment – a payment provided by the concessionaire for the right to possess and use a concession object or the right to carry out a certain kind of activity;

own means – any things, including money and securities, belonging to the investor on the right of ownership or another material right, property rights and exclusive rights to results of intellectual activity and means of individualization of participants in civil turnover of goods (works, services) which can be used by the investor at the realization of the concession contract;

method of the selection of the concessionaire – competitive bidding or auction for selection of the investor for conclusion of the concession contract (hereinafter unless otherwise established – competitive bidding (auction)), unless otherwise established by the President of the Republic of Belarus or the present Law;

initial amount of one-time payment – opening amount of one-time payment from which the trading at the competitive bidding (auction) starts.

Article 2. Legislation on concessions

Relations related to carrying out investments on the basis of concessions in the territory of the Republic of Belarus are regulated by the present Law, other acts of legislation of the Republic of Belarus, including treaties of the Republic of Belarus.

If a treaty of the Republic of Belarus establishes other rules than those provided by this Law, the rules of the treaty are applied.

In case when concession objects are subsoil plots, water objects, forests (forest fund plots), land plots, concession in relation thereto is carried out in accordance with the present Law, unless otherwise provided by the legislation on subsoil, protection and use of waters, protection and use of forests, protection and use of lands.

Article 3. Concession objects

Concession objects may be objects that constitute in accordance with the Constitution of the Republic of Belarus the exclusive ownership of the state (subsoil, water, forests) , objects that are only in the ownership of the state, kinds of activity.

Article 4. Conditions of realization of concessionaires' activities

Concessionaires are provided with guarantees provided by the legislation for investors.

The interference in the activity of concessionaires is not allowed with the exception of instances stipulated by concession contract and (or) when such interference is carried out on the basis of legislative acts in the interests of national security (including protection of the environment, historical and cultural valuables), public order, protection of morality, health of the public, rights and freedoms of other persons.

A concession contract may, in accordance with the laws or under a decision of the President of the Republic of Belarus, guarantee privileges and preferences for concessionaires and (or) organizations established in the established order in the Republic of Belarus by the concessionaire or with his participation.

In case if within the validity period of the concession contract the legislation has been changed so that the concessionaire is deprived to a considerable extent of what he was entitled to expect at the conclusion of the concession contract, if it is stipulated by the concession contract, the parties to the concession contract change the conditions of the concession contract in regard to guarantees of rights of the concessionaire. In case of a failure of the parties to the concession contract to reach consent on changing the conditions of the concession contract, the dispute is considered, on the initiative of one of the parties, in accordance with Article 35 of the present Law.

CHAPTER 2

STATE REGULATION IN THE SPHERE OF CONCESSIONS

Article 5. Powers of the President of the Republic of Belarus in the sphere of concessions

The President of the Republic of Belarus, in the sphere of concessions:

determines the single state policy;

approves the list of objects proposed for transfer in concession (hereinafter – the list), on concession objects of the Republic of Belarus, determines type of concession contract and order of selection of the concessionaire;

determines the order of formation of and approves the lists on concession objects the data about which constitute state secrets and on concession objects having strategic importance for the Republic of Belarus, determines the grantor, concession body, type of concession contract, order of selection of the concessionaire and the order of establishing the initial amount of a one-time payment;

carries out other powers in accordance with the Constitution of the Republic of Belarus, this Law and other legislative acts.

The President of the Republic of Belarus may establish other order and method of transfer of concession objects in concession than those established by the present Law.

Article 6. Powers of the Government of the Republic of Belarus in the sphere of concessions

The Government of the Republic of Belarus, in the sphere of concessions:

ensures the implementation of the single state policy;

determines, in accordance with the present Law and other legislative acts, the order of organization and conducting of competitive biddings (auctions);

determines, in accordance with the present Law, the concession bodies on concession objects of the Republic of Belarus;

determines, unless otherwise is established by the President of the Republic of Belarus, the order of establishing the initial amount of a one-time payment on concession objects of the Republic of Belarus;

introduces for the consideration of the President of the Republic of Belarus drafts of legal normative acts on the approval of the list on concession objects of the Republic of Belarus, on introducing changes and (or) additions;

determines the order of maintaining the state register of concession contracts;

carries out other powers in accordance with the Constitution of the Republic of Belarus, this Law, other laws and acts of the President of the Republic of Belarus.

Article 7. Powers of republican bodies of state administration, other state organizations subordinated to the Government of the Republic of Belarus in the sphere of concessions

Republican bodies of state administration, other state organizations subordinated to the Government of the Republic of Belarus in the sphere of concessions:

guarantee the realization of the single state policy;

make proposals on inclusion of objects in the list of concession objects of the Republic of Belarus, on introducing changes and (or) additions;

consider and approve, in accordance with their competence, the concession proposals elaborated by the concession bodies;

act as concession bodies when providing in concession the concession objects the data about which constitute state secrets, and concession objects having strategic importance for the Republic of Belarus in accordance with the decisions of the President of the Republic of Belarus;

act as concession bodies when providing in concession the concession objects of the Republic of Belarus in accordance with the decisions of the Government of the Republic of Belarus, unless otherwise established by the President of the Republic of Belarus;

exercise other powers in accordance with this Law and other acts of legislation.

Article 8. Powers of local councils of deputies, local executive and administrative bodies in the sphere of concessions

Local councils of deputies realize a single state policy in the sphere of concessions in the territory of the respective administrative territorial unit according to their competence defined by the Constitution of the Republic of Belarus, this Law and other acts of legislation.

Local Councils of deputies in accordance with the Constitution of the Republic of Belarus, this Law and other acts of legislation:

determine the order of formation of lists on concession objects of administrative-territorial units;

approve lists on concession objects of administrative-territorial units, determine the type of concession contract thereon and order of selection of the concessionaire;

determine the order of establishing the initial amount of a one-time payment on concession objects of administrative-territorial units;

exercise other powers in accordance with this Law and other acts of legislation.

Local executive and administrative bodies in the sphere of concessions:

ensure the realization of a single state policy in the territory of the administrative-territorial unit in accordance with this Law and other legislative acts;

carry out the formation of lists on concession objects of the administrative units in the order established by the respective local council of deputies;

act as concession bodies when providing in concession the concession objects of administrative-territorial units;

act as concession bodies when providing in concession the concession objects the data about which constitute state secrets, and concession objects having strategic importance for the Republic of Belarus in accordance with the decisions of the President of the Republic of Belarus;

exercise other powers in accordance with this Law and other acts of legislation.

CHAPTER 3

ORDER OF PROVIDING CONCESSION OBJECTS IN CONCESSION

Article 9. Stages of providing concession objects in concession

Provision of concession objects in concession is carried out in four stages, unless otherwise established by this Law:

formation, approval, publication in the printed media and in the global computer network Internet of lists on concession objects of the Republic of Belarus and on concession objects of administrative-territorial units, definition of the type of concession contract and order of determination of concessionaire thereon;

determination of the concession body, elaboration, consenting and approval of concession proposals;

organization and conducting of the competitive bidding (auction), determination of the concessionaire;

conclusion of the concession contract.

Article 10. Formation, approval, publication of lists in the printed media and placement in the global computer network Internet

Proposals on inclusion of object in the list of concession objects of the Republic of Belarus, introduction of changes and additions shall be submitted by the state bodies and other state organizations subordinated to the President of the Republic of Belarus, the National Bank of the Republic of Belarus, the National Academy of Sciences of Belarus, the republican bodies of state administration, other state organizations subordinated to the Government of the Republic of Belarus, regional, Minsk city executive committees, investors and other persons interested in the conclusion of concession contracts with the Republic of Belarus to the republican body of state administration carrying out regulation and administration in the sphere of investments not later than on the 1st of March.

The republican body of state administration carrying out regulation and administration in the sphere of investments submits drafts of legal normative acts on approval of the list on concession objects of the Republic of Belarus, on introduction of changes and additions to the Government of the Republic of Belarus not later than on the 1st of April.

The Government of the Republic of Belarus submits, in the order established by the legislation, drafts of legal normative acts on approval of the list on concession objects of the Republic of Belarus, on introduction of changes and additions therein for consideration of the President of the Republic of Belarus.

The order of formation of lists on concession objects of administrative territorial units is determined by the local councils of deputies.

The lists are approved by:

the President of the Republic of Belarus – on concession objects of the Republic of Belarus, on concession objects the data about which constitute state secrets and on concession objects having strategic importance for the Republic of Belarus;

local councils of deputies – on concession objects of administrative territorial units.

The lists are subject to publication not later than within fifteen calendar days from the day of its approval:

on concession objects of the Republic of Belarus – in the printed mass media determined by the Government of the Republic of Belarus;

on concession objects of administrative territorial units – in the printed mass media determined by regional, Minsk city executive committees.

Additionally the lists are published in the global computer network Internet:

on concession objects of the Republic of Belarus – on official sites of the republican body of state administration carrying out regulation and administration in the sphere of investments, state organization authorized to present interests of the Republic of Belarus on issues of attracting investments in the Republic of Belarus, diplomatic missions and consular offices of the Republic of Belarus, and in regard to immovable property objects – also on the official site of the State Committee on Property of the Republic of Belarus;

on concession objects of administrative territorial units – on official sites of regional, Minsk city executive committees in the territory of which the concession contract will be realized, a state organization authorized to present interests of the Republic of Belarus on issues of attracting investments in the Republic of Belarus, diplomatic missions and consular offices of the Republic of Belarus.

Lists on concession objects the data about which constitute state secrets and on concession objects having strategic importance for the Republic of Belarus are not subject to publication in the printed mass media and in the global computer network Internet.

Article 11. Elaboration, negotiation and approval of concession proposals

Concession bodies, unless otherwise established by the President of the Republic of Belarus, not later than within sixty calendar days from the day of the decision on determining them as concession bodies or from the day of approval of the lists on concession objects of administrative territorial units, carry out the elaboration, negotiation with state bodies concerned and organizations subordinated to the President of the Republic of Belarus, republican bodies of state administration, other state organizations subordinated to the Government of the Republic of Belarus, other interested state bodies and approval of concession proposals.

Concession proposals are elaborated by the concession body having regard to:

problems of current state in the sphere of respective economic activity that affect its further development;

conformity of the objectives of a concession proposal to resolution of existing problems in the sphere of respective economic activity;

economic interests of the Republic of Belarus and material benefits from realization of the concession contract;

expected economic effect from realization of the concession contract within the limits of a particular territory, including expected change of the situation in the sphere of respective economic activity.

Article 12. Powers of concession bodies

Concession bodies:

carry out the elaboration, negotiation with state bodies and organizations mentioned in part one of Article 11 of this Law and approval of concession proposals on concession objects in relation to which they are determined in accordance with this Law as concession bodies;

act as organizers of competitive biddings (auctions), determine the date of their conduct, initial amounts of one-time payments, conditions of competitive biddings, amounts of earnest money for participation in competitive biddings (auctions), accept applications for participation in competitive biddings (auctions);

create commissions on conducting competitive biddings (auctions);
conclude concession contracts on behalf of the Republic of Belarus or its respective administrative territorial unit;

exercise other powers in accordance with this Law and other acts of legislation.

Article 13. Determination of Concessionaire

The concessionaire shall be determined through holding a competitive bidding (auction), with the exception of cases specified in part seven of this Article.

Competitive biddings (auctions) are open, with the exception of cases provided in part four of this Article. Application for participation in an open competitive bidding (auction) may be submitted by any investors, with the exception of state legal persons.

Open competitive biddings (auctions) are announced by the concession bodies by publishing notices in accordance with Article 15 of this Law within a time limit of not later than fifteen calendar days from the day of approval of concession proposals.

Closed competitive biddings (auctions) are conducted when providing in concession a concession object included in the lists on concession objects the data about which constitute state secrets, and concession objects having strategic importance for the Republic of Belarus. Application for participation in a closed competitive bidding (auction) may be submitted by investors who received an invitation from the concession body to take part in such competitive bidding (auction).

Concession bodies, commissions on conducting competitive biddings (auctions) and participants of a closed competitive bidding (auction) are obliged to fulfill the requirements of the legislation on state secrets.

Invitation to participate in a closed competitive bidding (auction) is sent by registered mail and (or) to the e-mail address of the investor not later than sixty calendar days prior to conducting the closed competitive bidding (auction) and must include the following information:

object of the competitive bidding (auction);

general characteristics of the concession object and the period for which the concession object is provided in concession;

reference to the concession body, its location, bank details, contact phone numbers, e-mail address (if available);

amount of earnest money to be submitted to participate in the closed competitive bidding (auction) (not more than ten percent of the initial amount of one-time payment), order and time limits for its payment;

initial amount of one-time payment;

list of documents to be attached to the application for participation in the closed competitive bidding (auction) and requirements for their format;

conditions of the closed competition (in case of conducting a closed competitive bidding) and description of the criteria for determining the participant who is the winner of the competition;

requirements for the participants of the closed competitive bidding (auction);

date and time of the end of acceptance of applications and documents necessary for participation in the closed competitive bidding (auction);

order of obtaining competitive bidding (auction) documentation by persons who have submitted applications for participation in the closed competitive bidding (auction);

time limit and order of submission of documents to the concession body in accordance with the competitive bidding (auction) documentation, and also of proposals of participants on fulfillment of conditions of the closed competitive bidding (when conducting a closed competition);

date, time and place of the closed competitive bidding (auction);

order of conducting the closed competitive bidding (auction);

information on necessity to reimburse the costs for organization and conducting the closed competitive bidding (auction), including expenses related to the production and provision of the participants of the closed competitive bidding (auction) with documentation required for its conducting, including competitive bidding (auction) documentation.

Conclusion of concession contracts without conducting competitive bidding (auction) is allowed only:

on a decision of the President of the Republic of Belarus in case of inexpediency to conduct closed competitive biddings (auctions) upon provision in concession of concession objects the data about which constitute state secrets and concession objects having strategic importance for the Republic of Belarus;

in the cases determined by parts four and seven of Article 20 and part one of Article 33 of this Law.

Organization and conducting of a competitive bidding (auction) is carried out at the expense of means of the republican or local budgets, unless otherwise established by the legislative acts.

Article 14. Conditions of competitive bidding

When conducting a competitive bidding, the concession body must determine amounts and time limits for carrying out investments.

When conducting a competitive bidding, the concession body may determined the following conditions of the competitive bidding:

conditions for carrying out activities at realization of the concession contract;

creation of a certain number of jobs within a certain period;

financing of development of social, industrial and transport infrastructure within a certain period and in an established amount;

other conditions.

Article 15. Information support at holding a competitive bidding (auction)

Notice on conducting a competitive bidding (auction) must be published not later than sixty calendar days prior to the day of conducting the competitive bidding (auction):

on concession objects of the Republic of Belarus – in the printed mass media determined by the Government of the Republic of Belarus;

on concession objects of administrative territorial units – in the printed mass media determined by regional, Minsk city executive committees.

Information about the announced competitive bidding (auction) and concession object is additionally published in the global computer network Internet not less than sixty days prior to the day of conducting the competitive bidding (auction):

on concession objects of the Republic of Belarus - on official sites of the republican body of state administration carrying our regulation and administration in the sphere of investments

and the concession body, and in relation to immovable property objects - also on the official site of the State Committee on Property of the Republic of Belarus;

on concession objects of administrative territorial units - on official sites of regional and Minsk city executive committees in the territory of which the concession contract will be realized.

Notice on conducting a competitive bidding (auction) must contain the following information:

object of the competitive bidding (auction);

general characteristics of the concession object and the period for which the concession object is provided in concession;

type of competitive bidding (auction);

reference to the concession body, its location, bank details, contact phone numbers, e-mail address (if available);

amount of earnest money to be submitted to participate in the competitive bidding (auction) (not more than ten percent of the initial amount of one-time payment), order and time limits for its payment;

initial amount of one-time payment;

list of documents to be attached to the application for participation in the competitive bidding (auction) and requirements for their format;

conditions of the competition (in case of conducting a competitive bidding) and description of the criteria for determining the participant who is the winner of the competition;

requirements for the participants of the competitive bidding (auction);

date and time of the end of acceptance of applications and documents necessary for participation in the competitive bidding (auction);

order of obtaining competitive bidding (auction) documentation by persons who have submitted applications for participation in the competitive bidding (auction);

time limit and order of submission of documents to the concession body in accordance with the competitive bidding (auction) documentation, and also of proposals of participants on fulfillment of conditions of the competitive bidding (when conducting a competitive bidding);

date, time and place of the competitive bidding (auction);

order of conducting the competitive bidding (auction);

information on necessity to reimburse the costs for organization and conducting the competitive bidding (auction), including expenses related to the production and provision of the participants of the competitive bidding (auction) with documentation required for its conducting, including competitive bidding (auction) documentation.

Invitation to participate in a closed competitive bidding (auction) is not subject to publication and placement in the global computer network Internet.

Article 16. Application for participation in competitive bidding (auction).

Competitive bidding (auction) documentation

Application for participation in the competitive bidding (auction) is made in Belarusian or Russian in a written free form, in two copies, each of them is certified by the signature of the applicant (his representative). One copy is submitted to the concession body in a sealed envelope, the other one is kept by the participant of the competitive bidding (auction). One participant of the competitive bidding (auction) may submit only one application.

Investors who have submitted an application for participation in the competitive bidding (auction) shall be issued, on the day of acceptance of the application, competitive bidding (auction) documentation prepared by the commission on conducting the competitive bidding (auction), approved by the concession body.

The competitive bidding (auction) documentation must contain:

information about the time limit of submission and requirements to documents that must be submitted by the participants of the competitive bidding (auction) to confirm compliance with the requirements established for the participants;

concession proposal;

draft of the concession contract;

reference to the right of the participant of the competitive bidding (auction) to modify or withdraw its application for participation in the competitive bidding (auction) before the date of conducting competitive bidding (auction);

information on the order of obtaining explanations on the content of the competitive bidding (auction) documentation.

Participant of the competitive bidding (auction) is entitled, not later than thirty calendar days prior to the end of time limit for submission of documents in accordance with the competitive bidding (auction) documentation, to apply to the concession body requesting explanations of provisions of the competitive bidding (auction) documentation. Concession body is obliged, within five calendar days from the moment of registration of the request, to respond and without naming the persons who sent the request, clarify the provisions of the competitive bidding (auction) documentation for all participants of the competitive bidding (auction) whom it has provided competitive bidding (auction) documentation.

Concession body is entitled, not later than twenty days prior to the day of conducting the competitive bidding (auction), to modify the competitive bidding (auction) documentation by means of approval of respective changes and (or) additions.

Changes and (or) additions introduced into competitive bidding (auction) documentation are binding, and not later than within seven calendar days from the day of their approval, they shall be brought to the attention of all participants of the competitive bidding (auction), whom the concession body has provided the competitive bidding (auction) documentation. In this case the date of the competitive bidding (auction) is postponed for a period of not less than thirty calendar days.

Article 17. Requirements established for participants of competitive bidding (auction)

Participants of the competitive bidding (auction) who are legal persons of the Republic of Belarus, foreign and international legal persons (organizations not being legal persons) must:

be solvent, not be in the process of liquidation, reorganization (with the exception of a legal person which takes over another legal person), their property should not be arrested, their financial and economic activity should not be suspended in accordance with the legislation of the Republic of Belarus and the law of the country of their establishment;

not be brought to liability for non-fulfillment or improper fulfillment of their obligations under concession contracts or investment contracts concluded with the Republic of Belarus on the basis of a court's judgment which has entered into legal force;

confirm the availability of its own funds and (or) contract (preliminary contract) with the bank or other credit financial institution on provision of monetary means to the participant of the competitive bidding (auction) in the amount of not less than seventy-five percent of the required amount of investments.

Participants of a competitive bidding (auction) who are citizens of the Republic of Belarus, foreign citizens and stateless persons, including individual entrepreneurs, must conform to the requirements provided in indents three and four of part one of this Article, their property should not be arrested, and the persons registered as individual entrepreneurs should not be in the process of termination of their activity.

A participant of the competitive bidding (auction), in order to confirm its compliance with the requirements provided in parts one and two of this Article according to the competitive bidding (auction) documentation should submit to the concession body the following documents:

copy of certificate of state registration - for legal persons and individual entrepreneurs of the Republic of Belarus;

legalized extract from the trade register of the country of origin or other equivalent proof of legal status of the organization in accordance with the legislation of the country of its establishment (extract must be dated not later than one year prior to the day of submission of application for participation in the competitive bidding (auction) with translation into Belarusian or Russian language (authenticity of the translator's signature must be certified by a notary)) - for international and foreign legal persons (organizations not being legal persons);

copy of the identity document of the citizen of the Republic of Belarus, foreign citizen or stateless person, permanently residing in the Republic of Belarus;

copy of the identity document of a foreign citizen or stateless persons, not permanently residing in the Republic of Belarus, with a translation into Belarusian or Russian language (authenticity of the translator's signature must be certified by a notary);

auditor's report on the results of audit of the annual financial statements for the previous fiscal year - for organizations for which the obligatory audit of the annual financial (accounting) statements is required in accordance with the legislative acts;

bank statement on the availability of monetary means on the bank account and (or) other documents confirming the availability of own means of the participant of the competitive bidding (auction), and (or) a copy of a contract (preliminary contract) with a bank or other credit and financial organization on provision of the participant of the competitive bidding (auction) with monetary means.

Participant of the competitive bidding (auction) that does not conform to the requirements and (or) has not submitted documents in accordance with parts one to three of this Article, and also who has submitted documents containing false information is not allowed to participate in competitive bidding (auction). Completeness of the information submitted by the participants of the competitive bidding (auction) is checked by the commission on conducting competitive bidding (auction) at consideration of the documents provided by part three of this Article.

A participant of the competitive bidding (auction) is responsible for the accuracy of the information contained in the documents submitted in accordance with part three of this Article.

The concession body is not entitled to present requirements to the participant of a competitive bidding (auction) not provided by this Law and other acts of legislation.

A participant of the competitive bidding (auction) has the right not to submit documents which are not provided by this Law and other acts of legislation.

Article 18. Commission on conducting competitive bidding/ auction

For organization and conduct of a competitive bidding (auction), the concession body establishes a commission on conducting competitive bidding (auction).

The commission on conducting competitive bidding (auction) includes representatives of interested state bodies and organizations subordinated to the President of the Republic of Belarus, republican bodies of state administration, other state organizations subordinated to the Government of the Republic of Belarus, local executive and administrative bodies, and also may include deputies of the House of Representatives and members of the Council of the Republic of the National Assembly of the Republic of Belarus, deputies of respective local councils of deputies, representatives of public associations, associations of legal persons and (or) individual entrepreneurs (associations and unions) and other organizations.

The rules of the work of the commission on conducting the competitive bidding (auction) are approved by the concession body.

Commission on conducting a competitive bidding considers and evaluates proposals of participants of the competitive bidding, determines the participant who won the competitive bidding. Commission on conducting an auction supervises the course of conducting the auction. According to the results of the competitive bidding (auction), the respective commission prepares the protocol on the results of the competitive bidding (auction).

Article 19. Checking conformity of participants of competitive bidding (auction) to the established requirements

Commission on conducting a competitive bidding (auction) shall, within twenty calendar days from the day of receipt of the documents provided by part three of Article 17 of this Law, verify the conformity of the participants of the competitive bidding (auction) with the established requirements. If it is necessary to send a request for obtaining information while checking the information submitted by the participant of the competitive bidding (auction), the specified time period may be extended by the commission on conducting the competitive bidding (auction), but not more than by thirty calendar days.

Information contained in the documents provided by part three of Article 17 of this Law shall not be disclosed, with the exception of the cases provided by legislative acts.

Based on the results of the consideration of the application and documents provided by part three of Article 17 of this Law, the commission on conducting competitive biddings (auctions) takes decision on the admission of the participant to the competitive bidding (auction), which is formalized by the protocol on the day of adoption of such decision.

Commission on conducting the competitive bidding (auction) informs participants of the competitive bidding (auction) on the adopted decision within three working days from the day of formalizing the protocol.

Article 20. Recognition of competitive bidding auction as having not taken place, having no result, determination of the participant who won the competitive bidding (auction)

Competitive bidding (auction) is declared as having not taken place if:

not a single application was submitted to participate in the competitive bidding (auction) or none of participants was allowed to participate in the competitive bidding (auction);

application for participation in the competitive bidding (auction) was submitted by only one participant or only one participant was admitted for participation in the competitive bidding (auction);

none of participants has appeared for participation in the competitive bidding (auction);
only one participant has appeared for participation in the competitive bidding (auction).

A competitive bidding is considered to have no result if among the applications filed by the participants of the competitive bidding under the conditions of the competitive bidding none of the proposals of the participants of the competitive bidding does not correspond to those conditions.

As participant who won the competitive bidding is recognized the participant whose proposal, according to the conclusion of the commission on conducting the competitive bidding, contains better conditions compared to the proposals of other participants, including with regard to the proposed amount of one-time payment.

If the competitive bidding is declared as having not taken place due to the fact that an application for participation in it was submitted by only one participant or only one participant has appeared for participation therein (hereinafter - the only participant of the competitive bidding), the commission on conducting the competitive bidding shall consider the proposals of this participant and give the conclusion on the compliance or non-compliance of his proposals with the conditions of the competitive bidding. In case of compliance of the proposals of the only participant with the conditions of the competitive bidding, the concession contract is concluded with him on conditions proposed by him. The commission on conducting the competitive bidding formalizes a respective protocol to be signed by members of the commission and the only participant of the competitive bidding.

An auction is declared as having no result, if in the course of the auction none of the participants expressed a desire to buy the object of the auction at the amount of a one-time payment announced by the auctioneer or the auction object was withdrawn from the auction by the auctioneer in accordance with the order of conducting the auction.

As participant who won the auction is recognized the participant who proposed the greatest amount of one-time payment.

If the auction is declared as having not taken place due to the fact that an application for participation therein was submitted by only one participant or only one participant has appeared for participation therein (hereinafter - the only participant of the auction), the concession contract is concluded with this participant upon his consent to pay one-time payment in its initial amount increased by five percent. The commission on conducting the auction formalizes a respective protocol to be signed by members of the commission and the only participant of the auction.

A repeated competitive bidding (auction) may be carried out in the even of:

recognition of the competitive bidding (auction) as having not taken place on the grounds specified in indents two and four of part one of this Article;

recognition of the competitive bidding (auction) as having not taken place on the grounds specified in indents three and five of part one of this Article, and the refusal of the only participant of the competitive bidding or the only participant of the auction to conclude the concession contract;

recognition of the competitive bidding (auction) as having no result.

The participant who is the winner of the competitive bidding (auction) and the commission on conducting the competitive bidding (auction) sign a protocol on the results of competitive bidding (auction) on the day of the competitive bidding (auction).

Article 21. Conditions and order for return of earnest money. Reimbursement of costs for organization and conducting competitive bidding (auction)

A participant who has not been admitted to the competitive bidding (auction), who did not win the competitive bidding (auction), the only participant of the competition whose proposals do not comply with the conditions of competitive bidding, the only participant of the auction who has not given consent to the conclusion of the concession contract, as well as in other cases provided by the legislative acts, shall get back the paid earnest money within five working days from the day of conducting the competitive bidding (auction). The winner of the competitive bidding (auction), as well as the only participant of the competition, the only participant of the auction who conclude the concession contract, the amount of earnest money is taken into account for fulfillment of his obligations under the concession contract to be concluded as a result of the competitive bidding (auction).

In case of refusal or evasion of the participant who won the competitive bidding (auction) to sign the protocol on the results of the competitive bidding (auction) and (or) the concession contract to be concluded on the results of the competitive bidding (auction), to reimburse costs for the organization and conduct of the competitive bidding (auction), and also in other cases provided by acts of legislation, the earnest money is not subject to return. In case of refusal or evasion of the only participant of the competitive bidding, whose proposals conform to the conditions of the competitive bidding, to sign the protocol provided by part four of Article 20 of this Law, and (or) the concession contract, reimbursement of costs for the organization and conduct of the competitive bidding, as well as in other cases provided by acts of legislation, the paid earnest money is not subject to return. In case of refusal or evasion of the only participant of the auction, who has given consent for the conclusion of the concession contract, to sign the protocol provided by part seven of Article 20 of this Law, and (or) to sign this contract, reimbursement of costs for the organization and conduct of the auction, and also in other cases provided by acts of legislation, the paid earnest money is not subject to return.

The organizer of the competitive bidding (auction) that evaded to sign the protocol on the results of the competitive bidding (auction) or protocols provided by parts four and seven of Article 20 of this Law, and (or) the concession contract is obliged to return the double amount of earnest money and reimburse damages caused by participation in the competitive bidding (auction) in the part exceeding the amount of the earnest money to the person who won the competitive bidding (auction), the only participant of the competition, the only participant of the auction.

Reimbursement of costs for organization and conduct of the competitive bidding (auction) is carried out by the participant who won the competitive bidding (auction), by the only participant of the competitive bidding whose proposals meet the conditions of the competitive bidding, the only participant of the auction who gave consent to the conclusion of the concession contract. The amount of such reimbursement shall not exceed the amount of actual costs for organization and conduct of the competitive bidding (auction), and also include costs on previously held competitive biddings (auctions) declared as having not taken place and

having no result in the case of repeated submission of the object of the competitive bidding (auction) for the competitive bidding (auction).

Article 22. Annulment of results of competitive bidding (auction), recognition as invalid of competitive bidding (auction)

Results of a competitive bidding (auction) are annulled on the decision of the organizer of the competitive bidding (auction) if the participant who won the competitive bidding (auction):

within the established time limit, has not signed or refused to sign the protocol on the results of competitive bidding (auction) being formalized according to the results of the competitive bidding (auction) or the concession contract;

submitted false information and (or) does not conform to the requirements provided by Article 17 of this Law, which was revealed after conducting the competitive bidding (auction) and prior to signing the concession contract.

In case of detection of submission of false information by the participant who won the competitive bidding (auction), or his non-compliance with the requirements provided by Article 17 of this Law, after the conclusion of the concession contract, the competitive bidding (auction) and concession contract may be recognized invalid by the court upon the claim of the interested person.

A competitive bidding (auction) conducted with violation of the order established by legislation may be declared invalid under the court judgment. In case the competitive bidding (auction) is declared invalid due to the fault of the organizer of the competitive bidding (auction), the winner of the competitive bidding (auction) gets back the earnest money and the sum of money paid for reimbursement of the costs on organization and conducting of the competitive bidding (auction) within the time limit defined in the court judgment.

Recognition of a competitive bidding (auction) being invalid:

constitute a ground for refusal to conclude the concession contract with the participant declared the winner of the competitive bidding (auction);

entails the invalidity of the concession contract concluded with the participant who won the competitive bidding (auction).

Article 23. Conclusion of concession contract

The concession body shall, within not more than five calendar days after the signing of the protocol on the results of a competitive bidding (auction) or protocols provided by parts four and seven of Article 20 of this Law, notify the participant who won the competitive bidding (auction), the only participant of the competitive bidding, the only participant of the auction, with whom the concession contract is concluded on the procedure and location of holding negotiations on preparing for signing of the draft concession contract being a part of the competitive bidding (auction) documentation. In this instance, changes and/or additions corresponding to the proposals of the participant of the competitive bidding or changes and (or) additions which do not affect the essential conditions of the draft of concession contract being part of the competitive bidding (auction) documentation may be introduced into the draft concession contract. The concession contract must include all essential conditions defined by this Law and other acts of legislation. The concession contract shall be concluded in writing and is subject to registration in the state register of concession contracts by the grantor in accordance with the legislation.

The order of maintaining the state register of concession contracts is determined by the Government of the Republic of Belarus.

The concession contract must be signed not later than within three months from the day of signing of the protocol on the results of competitive bidding (auction) or protocols provided by parts four and seven of Article 20 of this Law.

In case of conclusion of the concession contract without conducting a competitive bidding (auction) according to a decision of the President of the Republic of Belarus, the concession contract is concluded within the time limits and in accordance with the conditions defined by the President of the Republic of Belarus.

CHAPTER 4 CONCESSION CONTRACT

Article 24. Types of concession contracts

Concession contracts, with regard to this Law, include:

full concession contract;

concession contract on production sharing;

concession contract on rendering services (performing works).

Article 25. Full concession contract

The full concession contract means an agreement stipulating the origin and preservation of the right of ownership of the concessionaire to production manufactured by him.

Article 26. Concession contract on production sharing

The concession contract on production sharing is understood to be an agreement in accordance with which the manufactured production is shared between the concessionaire and the grantor in the amounts and order determined by the concession contract.

A part of the manufactured production which constitutes the share of the concessionaire in accordance with the conditions of the concession contract belongs to him on the right of ownership.

The order and proportion of production sharing between parties to the concession contract are determined by the concession contract. In case of selection of the concessionaire at a competitive bidding, the proportion of production sharing may constitute a condition of the competitive bidding.

Article 27. Concession contract on rendering services (performing works)

The concession contract on rendering services (performing works) is understood to be an agreement by virtue of which the right of ownership on the production manufactured, processed under the concession contract is transferred to the grantor. The concessionaire received remuneration for the services rendered (works performed) by him.

Under a concession contract on rendering services (performing works), the concessionaire bears the risk of accidental loss or accidental damage of the concession object transferred to him for processing, and also of production manufactured, processed under the concession contract till its transfer to the grantor.

At conclusion of the concession contract on rendering services (performing works) with a risk, remuneration to the concessionaire is paid only when the concessionaire achieved the result stipulated by the concession contract.

At conclusion of the concession contract on rendering services (performing works) without risk, the remuneration to the concessionaire is paid regardless of the result achieved.

Article 28. Conditions of concession contracts

A concession contract must include the following essential conditions:

- type of the concession contract;
- amount of one-time payment and time limit for its payment (except for cases of granting in concession of land plots);
- validity period of the concession contract;
- description of property or activity being the concession object;
- rights and duties of the parties;
- territory in which the concessionaire has the right, including an exclusive right, to carry out certain kinds of activity (if the concession object is the right to carry out certain kinds of activity) and also the program and schedule of works carried out in accordance with the contract with indication of time limits for their performance;
- liability of the parties.

A concession contract may, besides essential conditions provided by part one of this Article, contain other terms not contradicting the legislation, including:

- obligations of the concessionaire to use new and high technologies;
- mutual obligations of the parties to develop social, industrial and transport infrastructure;
- obligations of the concessionaire to use, when fulfilling the contract, goods (works, services) manufactured in the Republic of Belarus subject to their competitiveness;
- obligations of the concessionaire – foreign investor to employ and train the workder from among citizens of the Republic of Belarus;
- requirements of confidentiality of information;
- order of changing, terminating and rescinding the concession contract;
- order and body that settles the disputes between parties to the concession contract connected with the concession contract;
- other terms depending on the kind of the concession contract and specific nature of the concrete concession object.

The concession contract may stipulate the right of the grantor to unilateral refusal to fulfill the concession contract and/or unilateral changing its conditions. In this instance the concession contract must contain an exhaustive list of grounds for realization of these rights by the grantor.

The full concession contract may stipulate the duty of the concessionaire to realize a part of the production manufactured by him in accordance with the concession contract at the internal market of the Republic of Belarus.

The concession contract on production sharing must also include the conditions stipulating:

- order of determining the total volume of the manufactured production;
- order of determining the compensatory production (but not more than seventy percent of the total volume of the manufactured production) and also order of assessment of its value;
- structure of the costs to be reimbursed to the concessionaire at the expense of compensatory production;
- order of transfer of the compensatory production to the grantor or a person determined by the concession contract.

A concession contract on rendering services (performing the works) must also contain provisions stipulating:

- amount and order of payment of the remuneration to the concessionaire;
- order of rendering services (performing works) by the concessionaire.

A concession contract on rendering services (performing works) may include the provision on buying out by the concessionaire of a part of the production manufactured by him or on receiving the remuneration directly in the form of a part of this production.

Article 29. Main rights and duties of the grantor

A concession agreement must stipulate the following rights of the grantor:

- right to the production manufactured by the concessionaire upon conclusion of the concession contract on rendering services (performing works) or on a part of the production manufactured by the concessionaire upon conclusion of the concession contract on production sharing;

- right to demand elimination of violations committed by the concessionaire when carrying out the conditions of the concession contract;

- right to demand the rescission of the concession contract in the event of essential breach of its conditions by the concessionaire.

The grantor may exercise other rights in accordance with the legislation and the concession contract.

The grantor is obliged to provide the concessionaire with the concession object free of third party rights under the conditions and within the time limits stipulated by the concession contract, to register the concession contract in the state register of concession contracts.

In case of realization by the grantor of the rights specified in part three of Article 28 of this Law, the grantor is obliged to reimburse to the concessionaire additional costs related to the termination (change) of the concession contract and also to reimburse actual damages suffered by the concessionaire in connection with the rescission (change) of the concession contract, with the exception of the case determined by part five of Article 34 of this Law.

A concession contract may stipulate the duty of the grantor to provide assistance, in accordance with acts of legislation, to the concessionaire at the realization of the concession contract .

Article 30. Main rights and duties of the concessionaire

A concession agreement must stipulate the following rights of the concessionaire:

- right of possession and use of property being the concession object or right to carry out activity in accordance with the conditions stipulated by the concession contract;

- right to use the benefits and privileges provided in accordance with the legislation;

- right to fulfillment of the concession contract on its own and (or) with engagement of other persons. In this case, the concessionaire is responsible for the actions of other persons as for his own;

- right to receive land plots in accordance with the legislation on protection and use of lands, required for the realization of the concession contract;

- right of ownership to the manufactured production upon conclusion of a full concession contract or to a part of manufactured production upon conclusion of the concession contract on production sharing;

- right to obtained profit (incomes);

right to export from the Republic of Belarus the production belonging to him, manufactured as a result of carrying out activity at realization of the concession contract, and the obtained profit (incomes).

The concessionaire may exercise other rights in accordance with the legislation.

A concession agreement must stipulate the following duties of the concessionaire:

to use the property being the concession object or to carry out activity being the concession object with the aims and in the order, established by the concession contract;

to observe the legislation;

to provide financing of activities at the realization of the concession contract;

to bear costs related to the maintenance of the concession object;

to transfer the concession object to the grantor in a proper condition in accordance with the conditions of the concession contract after the end of the period for which the concession contract was concluded.

The concessionaire is not entitled to transfer concession objects in subconcession, to transfer its rights and duties under the concession contract to another person, to provide concession objects in lease, including financial lease (leasing) and gratuitous use (loan), as well as pledge its rights under the concession contract, to contribute to the statutory fund of a legal person and to burden them otherwise with rights of third persons.

Legislative acts or the concession contract may stipulate the duty of the concessionaire to insure his property interests in connection with the realization of the concession contract.

Article 31. One-time payment

The concessionaire, unless otherwise stipulated by legislative acts, shall pay a one-time payment:

the republican budget – on concession objects of the Republic of Belarus, on concession objects the data about which constitute state secrets and on concession objects having strategic importance for the Republic of Belarus;

to a respective local budget - on concession objects of administrative-territorial units.

The order of determining the initial amount of one-time payment is established:

on concession objects the data about which constitute state secrets and on concession objects having strategic importance for the Republic of Belarus – by the President of the Republic of Belarus;

on concession objects of the Republic of Belarus – by the Government of the Republic of Belarus, unless otherwise established by the President of the Republic of Belarus;

on concession objects of administrative territorial units – by local councils of deputies.

The amount of one-time payment is determined on the results of the competitive bidding (auction), with the exception of cases established by part four of this Article. The one-time payment is made within the time limit established by the concession contract, and in the case of granting land plots in concession – prior to signing the concession contract.

The amount of one-time payment paid by the concessionaire is established in the amount: proposed by the only participant of the competitive bidding whose proposals meet the conditions of the competitive bidding - in case of recognition the competition as having not taken place;

of the initial amount of one-time payment, increased by five percent - in case of recognition the auction as having not taken place and the consent of the only participant of the auction to the conclusion of the concession contract on the conditions proposed to him;

determined by the President of the Republic of Belarus - in the cases stipulated in indent two of part seven of Article 13 of this Law;

determined by mutual agreement of the parties, but not less than the initial amount of one-time payment determined in the order established in accordance with part two of this Article - in the event of conclusion of a new concession contract in accordance with part one of Article 33 of this Law.

Article 32. Validity period of the concession contract

The concession contract may be concluded for a period of up to ninety-nine years if in relation to individual concession objects a shorter period is not established by legislative acts. The period for which the concession contract will be concluded shall be initially determined in the concession proposal and may be defined more exactly on a mutual agreement of the parties at the conclusion of the concession contract.

The validity period of the concession contract may be extended on an agreement of the parties within the maximum period established by part one of this Article by conclusion of an additional agreement in compliance with the provisions of part one of Article 34 of this Law. An additional agreement providing the extension of the validity period of the concession contract must be concluded not later than two months before the expiration of the validity period of the concession contract.

The concessionaire must notify the grantor in writing about his intention to extend the validity period of the concession contract for a certain period not later than six months before the expiration of the validity period of the concession contract.

Article 33. Conclusion of a new concession contract

Upon the expiration of the maximum validity period of the concession contract provided by part one of Article 32 of this Law, unless otherwise established by legislative acts, the concessionaire who has bona fide carried out the conditions of this contract has the right to conclusion of a new concession contract in regard to the same concession object without conducting a competitive bidding (auction) on the conditions agreed with the grantor.

The concessionaire must notify the concession body in writing about his to conclude a new concession contract not later than one year before the expiration of the validity period of the concession contract.

For the conclusion of a new concession contract, the concession body shall elaborate the concession proposal with regard to the requirements of part two of Article 11 of this Law, obtain assent of state bodies and organizations specified in part one of Article 11 of this Law, and approve a new concession proposal. In this case, a new concession contract must be concluded by the parties not later than two months before the expiration of the validity period of the concession contract, unless another period established by the concession contract.

At the conclusion of a new concession contract its conditions may not to be less favorable for the grantor in comparison with the conditions of the concession contract the validity period of which expires.

Article 34. Order of changing, termination and rescission of the concession contract

Changing, termination and rescission of the concession contract are carried out in accordance with the civil legislation.

Changes in the concession contract are introduced by means of conclusion by the parties of additional agreements in a written form. Such additional agreements are subject to be agreed with the state bodies and other organizations whose sphere of competence includes the issues regulated by the concession contract and to registration in the state register of concession contracts.

The validity of a concession contract is terminated in the event of:

end of the validity period of the concession contract;

liquidation of the concessionaire – a legal person or termination of activities of an individual entrepreneur;

death, recognition as missing, declaration as deceased, recognition as incapable of the concessionaire – natural person;

rescission of the concession contract;

unilateral refusal of the Republic of Belarus or its administrative-territorial unit to fulfill the concession contract on the grounds provided by part five of this Article and (or) by the concession contract.

The concession contract is deemed to be rescinded in the event of a unilateral refusal of the Republic of Belarus or its administrative-territorial unit to fulfill the concession contract.

In case when within the validity period of the concession contract, reorganization of the concessionaire – legal person and (or) change in the owner of its property or change in the composition of its participants by more than half will occur, the concession remains valid in the absence of objections of the grantor. The concessionaire is obliged to notify the grantor in writing about these circumstances prior to the date of their occurrence. If there are objections on these circumstances, the Republic of Belarus or its administrative territorial unit is obliged to notify the concessionaire thereabout not later than within two months from the day of receipt of the notification of the concessionaire. If the Republic of Belarus or its administrative territorial unit notified the concessionaire about their objections, but the reorganization of the concessionaire – legal person and (or) change of the owner of the property or change in the composition of its participants by more than half has occurred, and also in the event of failure of the concessionaire to send the notice specified in this part, the Republic of Belarus or its administrative-territorial unit in the person of the concession body may unilaterally refuse to fulfill the concession contract by sending a written notification to the concessionaire not less than two months prior to the date of rescission of the concession contract.

CHAPTER 5

SETTLEMENT OF DISPUTES AND LIABILITY UNDER CONCESSION CONTRACTS

Article 35. Settlement of disputes arising when fulfilling, changing and rescinding concession contract

Disputes between parties to a concession contract arising while fulfilling, changing and rescinding the concession contract (hereinafter – disputes between the parties) are settled under a pre-trial dispute resolution procedure through holding negotiations, unless otherwise established by legislative acts and (or) the concession contract.

Disputes between parties not settled under the pre-trial dispute resolution procedure through holding negotiations within three months from the day of receipt of a written proposal about their settlement are resolved in the court in accordance with the legislation.

If disputes between parties not belonging to the exclusive competence of courts of the Republic of Belarus are not settled under the pre-trial dispute resolution procedure through holding negotiations, such disputes may, at the option the concessionaire, be settled:

in an arbitration court being established for settlement of each specific disputed according to the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), unless the parties to the dispute agree otherwise;

at the International Centre for Settlement of Investment Disputes (ICSID) in the case if this concessionaire is a foreign investor and citizen or a legal person of a member state of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of March 18, 1965.

In case when a treaty of the Republic of Belarus and (or) the concession contract establish otherwise in regard to the settlement of disputes between the parties, the provisions of this treaty of the Republic of Belarus and (or) of the concession contract are applied.

Article 36 Immunity of the state

Concession contracts concluded with foreign citizens, stateless persons, foreign and international legal persons (organizations not being legal persons) may stipulate the abandonment of the state of the legal immunity, immunity in relation to providing security for a claim and execution of a court resolution or arbitral award.

Article 37. Liability of parties to the concession contract

The parties to a concession contract shall bear liability for non-fulfillment or improper fulfillment of their obligations and other conditions of the concession contract in accordance with the legislation and concession contract.

The actual damage caused by one party to the concession contract to the other party is subject to be reimbursed in full.

CHAPTER 6

FINAL PROVISIONS

Article 38. Recognition as Invalid of some laws and some provisions of laws [translation is not given]

Article 39. Measures on implementation of provisions of this Law

The Council of Ministers of the Republic of Belarus shall, within a six-month period: ensure the bringing of acts of legislation in compliance with this Law; take other measures on implementation of provisions of this Law.

Local councils of deputies shall, within a six-month period, bring their decision in compliance with this Law and take other measures on implementation of provisions of this Law.

Regional and Minsk city executive committees shall, within a six-month period, take necessary measures on implementation of provisions of this Law.

Article 40. Entry into force of this Law

This Law enters into force in the following order:

Articles 1-38 – in six months after the official publication of this Law;
other provisions – after the official publication of this Law.

President of the Republic of Belarus

A. Lukashenko