

# **Law on Concessions**

## **CHAPTER I GENERAL PROVISIONS**

### **Article 1.**

The purpose of this Law is to promote and facilitate the implementation of privately financed in the Kingdom of Cambodia in order to ensure the public interest and the fulfillment of the national economic and social objectives.

### **Article 2.**

This Law governs Concessions as specified in Article 5 of this law.

A Concession shall be granted by a Concession Contract in accordance with the provisions of this Law, and its relating regulations.

### **Article 3.**

Within the meaning of this Law, the following terms shall be defined as follows:

- “Authorisations” means the authorisations, clearances, consents, licences, permits or registrations required to be obtained from any competent institution for implementation of a Concession Project as stipulated by Cambodian laws and regulations.
- “Concession” means any act attributable to the state whereby a competent institution entrusts to a private third party the total or partial implementation of an Infrastructure Project for which that institution would normally be responsible and for which the third party assumes a major part of the construction and/or operating risks or receives a benefit by way of compensation from government revenue or from fees and charges collected from users or customers. Such acts of the state will henceforth be considered as “concession” under this Law regardless of the legal name used for the act.
- “Concessionaire” means the person that carries out an Infrastructure Project under a Concession Contract entered into with a Contracting institution.
- “Concession Contract” means the mutually binding agreement between the Contracting institution and the Concessionaire that sets forth the terms and conditions for the implementation of an Infrastructure Project.
- “Person” means natural or legal person.
- “Concession Project” means the implementation of an Infrastructure Project under a Concession.
- “Contracting institution” means the competent institution that has the power to enter into a Concession Contract, as specified in Article 4 of this law.

- “Infrastructure Facility” means the physical facilities and systems that directly or indirectly provide services to the general public.
- “Infrastructure Project” means the design, construction, maintenance or operation of new Infrastructure Facilities or the modernisation, rehabilitation, expansion, management or operation of existing Infrastructure Facilities.
- “Qualified Investment Project” means an project which has received a final registration certificate from the Council for the Development of Cambodia pursuant to the Law on Investment.

#### **Article 4.**

All competent institutions entitled to undertake infrastructure projects within the eligible infrastructure sectors specified in Article 5 of this law, including ministries, institutions, State-owned legal entities, local governments which have been delegated the required institution in accordance with the laws of Cambodia have the power to enter into Concession Contracts for Infrastructure Projects falling within their respective spheres of competence and have the power to enter into ancillary or related agreements, including for the purpose of facilitating any related financing, subject to Articles 6 and 7 of this law and the provisions set forth in the Sub-decree.

#### **Article 5.**

Concession Contracts in relation to Infrastructure Facility providing directly or indirectly services to the general public may be entered into by the relevant institutions in the following sectors:

- a- power generation, power transmission and power distribution;
- b- transportation facilities systems, including, but not limited to roads, bridges, airports, ports, railways, channel.
- c- water supply and sanitation.
- d- telecommunication and information technology infrastructure.
- e- supra-structure related to tourism projects, but not limited to tourism resort museums;
- f- gas and oil related infrastructures including oil and gas pipelines;
- g- sewerage, drainage and dredging.
- h- waste management and treatment.

- i- hospitals and other infrastructure related to health, education and sport sectors.
- j- infrastructure related to special economic zones and social housing.
- k- irrigation and agricultural related infrastructure.
- l- other sectors for which a specific law allows for the granting of Concessions.

#### **Article 6.**

A Concession Contract may provide by means of the following :

- Build, operate and transfer
- Build, lease and transfer
- Build, transfer and operate
- Build, own and operate
- Build, own operate and transfer
- Build, cooperate and transfer
- Expand, operate and transfer
- Modernise, operate and transfer
- Modernise, own and operate.
- Lease and operate manage or management arrangements or any variant thereof or similar arrangement, including joint public-private implementation of Infrastructure Facilities.

#### **Article 7.**

No selection procedure for a Concession Contract shall commence unless the eligible Infrastructure Project has been approved as a Concession Project in accordance with the procedures set forth in the Sub-decree.

## **CHAPTER II ADMINISTRATIVE CO-ORDINATION AND SERVICES**

#### **Article 8.**

The Council for Development of Cambodia is the one stop service entity for obtaining authorisations required to implement a Investment Project in accordance with the Law on Investment. The Council for Development of Cambodia shall upon receipt of a request for a Qualified Investment Project to be implemented under a Concession Contract from a selected Concessionaire:

- a- Approve all investment incentives the Concessionaire is entitled to according to the Law on Investment of the Kingdom of Cambodia;
- b- Specify all Authorisations required to be obtained for the Concession Project, the competent institutions responsible for the issuance of the Authorisations.
- c- Obtain in a timely manner all required Authorisations as specified in this Article from the relevant institutions on behalf of the Concessionaire provided that all required information and documents have been duly supplied.

The Council for Development of Cambodia is authorized to provide for a time period beyond which an Authorisations required for a Concession Project is deemed to be granted, unless rejected in writing by the responsible institution before the end of that period.

#### **Article 9.**

The Council for Development of Cambodia shall be the centralised service institution providing, on request, general information to potential investors regarding investment in Concession Projects in the Kingdom of Cambodia, including such information as mentioned in Article 8 (a) and (b) of this law. The Council for Development of Cambodia shall make available copies to all potential investors of any laws and regulations of general application to Concession Projects in the Kingdom of Cambodia.

#### **Article 10.**

The Council for Development of Cambodia shall have it function for:

- a- Advising the Royal Government of Cambodia on Concession policy issues and making recommendations for improvement of laws and regulations applicable to Concession Projects
- b- Assisting other competent institutions in identifying and evaluating particular opportunities for privately financed Infrastructure Projects and in the promotion of viable projects to the investor community
- c- Developing, whether in the Council for Development of Cambodia or assessing externally, the necessary expertise to assist Contracting Institutions in preparing, tendering and monitoring complex Concession Projects
- d- Proposing model selection procedures and model project documents in order to rationalise the financing, implementation and monitoring of Concession Projects
- e- Coordinating the capacity building and training of officers and other civil servants involved in Concession Projects.

- f- Keeping a register of all Concession Contracts and Concession Projects for assessment and exchange of experience between Contracting Institutions.

### **CHAPTER III SELECTION AND ORGANISATION OF THE CONCESSIONAIRE**

#### **Article 11.**

The Contracting institution shall select the Concessionaire through international or national bidding procedures, by negotiated procedure according to the circumstances.

The selection of the Concessionaire shall be carried out in accordance with the procedures provided for in the Sub-Decree.

#### **Article 12.**

When the selection proceedings are completed and the Contracting institution is ready to accept a final bid or a negotiated proposal, the Contracting institution shall obtain approvals to the final terms of the Concession Contract as required by and in accordance with the procedures set forth in the Sub-decree.

If the review of the Concession Contract required by this law adversely affects the rights and obligations of the selected candidate, the selected candidate may withdraw his bid or proposal without forfeiting the bid bond.

#### **Article 13.**

After approvals have been obtained in accordance with Article 12 of this law, the Contracting institution shall issue a notification of award to the selected candidate prior to execution of the Concession Contract.

The Contracting institution and the Concessionaire shall sign the Concession Contract within 6 (six) months of the notification of award. If there has been a written agreement between the Contracting institution and the Concessionaire, The 6 (six) months period may be extended.

Failure of the Contracting institution to comply with Article 13(2) of this law shall entitle the Concessionaire to withdraw its bid or proposal without forfeiting its bid bond.

#### **Article 14.**

At least within 60 (sixty) days of upon receiving the notification of awards, the Concessionaire shall promptly establish and incorporate under the laws of the Kingdom of Cambodia the legal entity that will implement the Concession Project and apply, to the Council for Development of Cambodia for a final registration certificate in accordance with the Law on Investment of the Kingdom of Cambodia.

## **Article 15.**

Except as otherwise required by the express provisions in this Law or any other applicable law, The contracting parties shall mentioning into the Concession Contract such of matters as:

- a- The nature, scope and standards of works to be performed and services to be provided by the Concessionaire
- b- Any incentives to be granted to promote cost-efficiency, accelerate construction and increase quality of operation and maintenance to the benefit of the public interest
- c- Any fees, tolls, rentals or other charges to be applied by the Concessionaire and, when applicable, to be approved by the regulatory agency
- d- Agreed risk allocation or risk sharing
- e- Service levels and standards required from the Concessionaire in the operation and management of the Infrastructure Facility and consequences of non-compliance with the set service levels and standards
- f- Payment mechanisms
- g- Required commitment and cooperation of the Contracting institution and other competent institutions to support the implementation of the Infrastructure Project throughout the Concession Period
- h- May provide for such other matters, as the parties deem appropriate.

## **Article 16.**

The Concessionaire shall finance for the implementation of the Infrastructure Project, at its own cost and risk and without recourse to credits or guarantees made by the Contracting Institutions. In exceptional circumstances, a guarantee can be granted but only in accordance with procedures specified in the related financial management laws and regulation.

## **Article 17.**

Subject to any restriction contained in the Concession Contract or by the laws of the Kingdom of Cambodia, the Concessionaire has the right to create security interests over any of its assets, rights or interests, including those relating to the Concession Project, as required to secure any financing needed for the Infrastructure Project.

Unless otherwise provided in the Concession Contract, the shareholders of the Concessionaire have the right to pledge or create any security interest in their shares in the Concessionaire to secure any financing needed for the Infrastructure Project.

### **Article 18.**

The Contracting institution may agree with the entities extending financing for an Infrastructure Project on the substitution of the Concessionaire by a new entity or person appointed to perform under the existing Concession Contract upon serious breach by the Concessionaire or other events that could otherwise justify the termination of the Concession Contract in accordance with the conditions and procedures agreed in advance between the Contracting institution and the entities extending such financing.

### **Article 19.**

The rights and obligations of the Concessionaire under the Concession Contract may not be assigned to third parties without the prior consent of the Contracting institution.

Except pursuant to the exercise of a security right granted in accordance with Article 17 of this law or as otherwise provided in the Concession Contract a controlling interest in the Concessionaire may not be transferred to third parties without the prior consent of the Contracting institution.

### **Article 20.**

Except as otherwise provided in the Concession Contract, the Concessionaire shall be responsible for the design and construction of the Infrastructure Facility at its own cost and risk. The design and construction of the facility shall conform to all applicable Cambodian laws and regulations. The Concession Contract may provide for independent experts reporting to the Contracting institution on various matters related to the Infrastructure Facility.

### **Article 21.**

Except as otherwise provided in the Concession Contract, the Concessionaire shall operate and maintain the Infrastructure Facility at its own cost and risk in accordance with all applicable Cambodian laws and regulations.

Except as otherwise provided in the Concession Contract, the Concessionaire shall ensure continuous provision of service. Where so provided in the Concession Contract, the Contracting institution has the right to temporarily take over the operation of the facility for the purpose of ensuring the effective and uninterrupted delivery of the service in the event of serious failure by the Concessionaire to perform its obligations, provided that the Contracting institution has notified the Concessionaire to rectify the failure within the period stipulated in the Concession Contract or if not so stipulated, within a reasonable period of time.

### **Article 22.**

To guarantee the performance by the Concessionaire of its obligations under the Concession Contract, the Concessionaire shall, where so required in the Concession Contract, provide and

maintain adequate performance security for the specific phases of the Concession Project in favour of the Contracting institution and in the form, duration and amount prescribed in the Concession Contract.

### **Article 23.**

The Concession Contract may provide Cambodian enterprises and research institutions with the opportunity to become involved in the development of technology, manufacturing or other economic and social development activities in cooperation with the Concessionaire. The cooperation, which may generate additional revenue to the Concessionaire, shall aim at providing Cambodian enterprises and institutions with real opportunities to obtain orders and deliveries of goods and services at home and abroad and to participate in the development of technology related to infrastructure activities.

When evaluating bids for Concession Contracts, the Contracting institution may take into account the wider social and economic development potential offered by the bidder where such has been identified as criteria in the tender notice issued in relation to the Concession Project.

### **Article 24.**

The Concession Contract must be governed by the laws and regulations of the Kingdom of Cambodia.

If no relevant Cambodian laws or regulations exist on the issue in question then the relevant provision of the Concession Contract shall be governed by the law chosen by the parties provided such laws are not contrary to the laws of the Kingdom of Cambodia.

The Concessionaire shall be free to choose the governing law of any ancillary agreements related to implementation of the Concession Project.

### **Article 25.**

Where required in the Concession Contract, the Concessionaire shall transfer all of its rights, title and interest in the Infrastructure Facility to the Contracting institution or its designee at the end of the Concession Period, which transfer shall be on the terms provided for in the Concession Contract.

The facility to be transferred shall be in good operational condition in accordance with the requirements of the Concession Contract and free and clear of all liens, encumbrances, security interests and other claims of any kind.

### **Article 26.**

The Concession Institution or other public institutions under the terms of the law shall make available to the Concessionaire or, as appropriate, shall assist the Concessionaire in obtaining

such land use rights, and such other rights related to the project site as is necessary for the implementation of the Concession Project.

Any compulsory acquisition of land that may be required for the implementation of the Infrastructure Project shall be carried out in accordance with the Land Law.

The Concession Contract may provide that the Concessionaire shall pay for the acquisition of land, land use rights and easements and the manner of such payment.

The acquisition of land for any Infrastructure expansion Project, shall be borne by the Concessionaire, except as otherwise provided in the Concession Contract.

#### **Article 27.**

The Concessionaire has the right to receive or collect tariffs or users fees for the use of the facility or the services it provides. The Concession Contract shall provide for methods and formulas for the establishment and adjustment of those tariffs or fees.

The parties may agree on mechanisms aimed at ensuring a steady flow of revenue during the Concession Period by joint efforts.

#### **Article 28.**

The Concessionaire is entitled to convert its income from the local currency into foreign currencies and to remit abroad those currencies in accordance with the laws of Cambodia.

#### **Article 29.**

The Concessionaire is, during the term of the Concession Contract only, entitled to compensation in the event that the cost of the Concessionaire's performance of the Concession Contract has substantially increased or that the value that the Concessionaire receives for such performance has substantially diminished, as compared with the costs and the value of performance originally foreseen, as a result of changes in Cambodian laws or regulations specifically applicable to the Infrastructure Facility or the services it provides after the date of the Concession Contract, in accordance with the relevant terms of the Concession Contract which shall describe the nature of applicable legislation and the relevant financial consequences.

#### **Article 30.**

The Concessionaire shall, where required under the Concession Contract, pay royalties or a concession fee to the Royal Government of Cambodia on the terms and conditions specified in the Concession Contract.

#### **Article 31.**

The Contracting institution shall survey and inspect the Concession Project activities in order to ensure that the project is constructed, operated and maintained in accordance with Cambodian

laws and regulations and the provisions of the Concession Contract. The Contracting institution shall be given reasonable access to the Infrastructure Facility as well as to design, reports and other data, which are necessary to perform survey and inspection in accordance with the provisions of the Concession Contract.

If unnecessary the survey and inspection do not interfere with the process of works and provision of services of the concessionaire.

### **Article 32.**

Activities pursuant to the application of this Law shall comply with all health and safety and environmental which the Concessionaire shall at all times maintain such contingency plans to counter accidents and emergencies which may lead to loss of lives or personal injuries, pollution or major damage to property as required under the laws of the Kingdom of Cambodia and the Concession Contract.

### **Article 33.**

Where the Infrastructure Facility is to be transferred to a competent institution at the end of the Concession Contract, the Concessionaire shall provide training to Cambodian nationals in order that they can further take over positions at all levels for operation and maintenance of the Infrastructure Facility. This duty shall be done prior to the expiry of the Concession Period to the extent and in accordance with the conditions agreed with the Contracting Institution in the Concession Contract.

### **Article 34.**

In connection with activities covered by this Law, competitive Cambodian suppliers may be given genuine opportunities to secure orders for construction and deliveries of goods and services.

### **Article 35.**

Concession Contracts shall not create monopolies or exclusivity arrangements. But for the purpose of the benefit of the public interest this exclusivities can be included to the Concession Contracts as set forth in the Sub-decree. .

### **Article 36.**

The Concessionaire shall ensure that anyone performing works or services for him, including either personally, through employees, or through contractors or sub-contractors shall comply with the provisions of this Law.

If liability arises for damage caused to a third party by anyone undertaking tasks for the Concessionaire, the Concessionaire will be liable for damages etc. to the same extent as, and jointly and severally with, the tort-feasor and, if applicable, his employer.

## **CHAPTER IV CONCESSION PERIOD TERMINATION**

### **Article 37.**

The Concession Contract shall specify the Concession Period, which shall not exceed 30 (thirty) years from the date of signing of the Concession Contract pursuant to Article 13 of this law. If deemed necessary because of the nature of the Infrastructure Project, the Royal Government of Cambodia may approve a longer Concession Period.

The Concession period, as stipulated in the Concession Contract, shall not be extended except as a result of the following circumstances:

- 1/ Completion delay or interruption of operation due to breach of contract by the Contracting institution or by acts of other competent institutions;
- 2/ Completion delay or interruption of operation due to an event of force majeure as specified in the Concession Contract and provided the Concessionaire would not be able to recover the costs or losses brought about by such circumstances during the original Concession Period, including by way of customary project insurance.

The Concession Period as stipulated in the Concession Contract may be further extended to allow the Concessionaire to recover additional costs arising from new requirements of the Contracting institution not originally foreseen in the Concession Contract if the Concessionaire would not be able to recover such costs during the stipulated Concession Period.

### **Article 38.**

The Concession Contract shall specify, as appropriate, the conditions, which entitle a party to terminate the Concession Contract prior to the expiry of the Concession Period and the rights and obligations of the parties in case of termination.

As specified in the Concession Contract, force majeure may constitute an event entitling a party to terminate the Concession Contract.

In the event that termination of the Concession Contract is due to a serious breach by the Contracting institution or other competent institutions of their obligations in connection with the Concession Project, the Concessionaire shall be entitled to compensation in accordance with the terms stipulated in the Concession Contract, including for the fair value of works performed, costs incurred or losses sustained by the Concessionaire including, as appropriate, lost profits.

### **Article 39.**

Any dispute between the Contracting institution and the Concessionaire shall be settled in accordance with the dispute settlement mechanism set forth in the Concession Contract including if so agreed, international arbitration.

An award issued by a competent judicial institution or by arbitration according to this Article shall be valid, binding and enforceable by and against both the Contracting institution and the Concessionaire according to its terms.

**Article 40.**

The Contracting institution is responsible for ensuring that a Concession Contract is properly enforced, and must establish mechanisms and procedures for monitoring and regulating the implementation and performance of the Concession Contract and reporting on the management of the Concession Contract in the Contracting institution's annual budgetary report to the Ministry of Economy and Finance and/or the responsible line ministry.

**Article 41.**

Prior to entering an agreement to amend a Concession Contract, the Contracting institution must obtain the written approval of the Ministry of Economy and Finance and the appropriate regulatory, which was original approved the Concession Contract, the procedure for the amendment will be set forth in the Sub-decree.

**CHAPTER V  
PENALTIES**

**Article 42.**

Willful or gross negligent violation of any material provision of this Law is punishable in accordance with the Cambodian laws in force.

Complicity is punishable in the same way.

In case that the employees agencies or personal acting an activities under the scope and authorization of a legal persons, are punishable according to the paragraph 1 above, the legal person shall be liable or punishable.

Government officers, who have willful violate or neglect in its duties related to the concession, shall be punishable with additional administration measures according to the Co-Statute of civil servants of the Kingdom of Cambodia.

**CHAPTER VI  
FINAL PROVISION**

**Article 43.**

Any provisions that are contrary to this Law shall be null and void.

# LEXICON

## **Build Operate and Transfer (BOT):**

The competent institution grants the private a concession to build an infrastructure facility by assigning right to operate it and collect fee for an agreed period specified in the concession contract. After the expiry of the concession period, the private shall transfer all rights ownership and others interests with the quality condition comply with the contract to the competent institution.

## **Build Lease and Transfer (BLT):**

The competent institution grants the private a concession to build an infrastructure facility and lease it to the private for an agreed period with rental fee specified in the lease contract as for operating. After the expiry of the concession period, the private shall transfer all rights ownership and others interests with the quality condition comply with the contract to the competent institution.

## **Build Transfer and Operate (BTO):**

The competent institution grants the private a concession to build an infrastructure facility and transfer it to the competent institution upon it completion. The competent institute assigns the private a right for operating it for an agreed period specified the concession contract.

## **Build Own and Operate (BOO):**

The competent institution grant the private a concession to build an infrastructure facility and give it to the private to be the ownership for operating and collecting fee for the public interest under condition set forth in the concession contract.

## **Build Own Operate and Transfer (BOOT):**

The competent institution grant the private a concession to build an infrastructure facility and give it to the private to be ownership and the private operate it for collecting fees for an agreed period. After expiry of the concession period the private shall transfer all rights ownership and others interest with a quality condition comply with the contract to the competent institution.

**Build Cooperate and Transfer (BCT):**

The competent institution grant the private a concession to build an infrastructure facility, while cooperate to operate manage owned sharing a benefit and loss and others risks by way for an agreed period specified in the concession contract. After expiry the private shall transfer all rights ownership and interest of it in same quality condition comply with the contract to the competent institution.

**Expand Operate and Transfer (EOT):**

The competent institution grant the private a concession to expand an infrastructure facility and assign the private the right to operate it for collecting fees for an agreed period specified in the concession contract.

**Modernize Operate and Transfer (MOT):**

The competent institution grant the private a concession to modernize an infrastructure facility and assign right to operate it for collecting fees for an agree period specified in the concession contract. After the expiry concession period the private shall transfer all rights ownership and others interests of it in the same quality condition comply with the contract to the competent institution.

**Modernize Own and Operate (MOO):**

The competent institution grant the private a concession to modernize an infrastructure facility by assigning the private to be ownership on it and operate it for collecting frees for public interest under agreed condition of both parties mentioning in the concession contract.

**Lease and Management Operation or Management Agreement:**

That is a contract, which the competent institution agree to lease the private to operate on an infrastructure for an agreed period or that institution operate by itself while lease a private to manage or it may not operate itself but lease private to operate under their management by given them an agreed fees for the public interest. The above lease shall be applied only for a concession project stipulated in the Sub Decree.