

<< The translation is not official. Copyright © JSC Informtechnology >>

## LAW OF UKRAINE

### ON CONCESSIONS

*( Changed and amended according to Laws of Ukraine*

*#2921-III of January 10, 2002;*

*#209-IV of October 24, 2002;*

*#762-IV of May 15, 2003;*

*#1414-IV of February 03, 2004;*

*#2599-IV of May 31, 2005;*

*#2857-IV of September 8, 2005 )*

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

#### Section I. General Provisions

##### Article 1. Definition of Terms

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

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

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

- the term "concessionaire" shall denote a business, which obtained a concession according hereto on the basis of a contract;

- the term "concession provider" shall denote an executive body or a relevant local self-administration authority authorised to conclude a concession contract by the Cabinet of Ministers of Ukraine or local self-administration authorities respectively;

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

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

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

##### Article 2. Principles of the Concession Activities

The major principles of the activities related to granting and obtaining a concession (hereinafter referred

to as the concession activities) shall be as follows:

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

### **Article 3. Objects Capable of Being Granted on Concession**

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

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

- water supply, waste water disposal and purification;
- provision of the local public transportation services;
- collection and recycling of waste;
- provision of services related to the supply of the heat to consumers;
- construction and operation of motor roads, road facilities, other roadside structures;
- construction and operation of communications;
- construction and operation of cargo and passenger ports;
- construction and operation of airports;

*( Paragraph 10 of Part 2 of Article 3 has been deleted according to Law of Ukraine #2599-IV of May 31, 2005 )*

- provision of telecommunication services, including with use of telenetworks;

*( Paragraph 11 of Part 2 of Article 3 in the wording of Law of Ukraine #2599-IV of May 31, 2005 )*

- provision of postal services;
- transportation and distribution of the natural gas;
- generation and/or transmission of the electric power;
- public catering;
- housing construction;

- provision of services in the sphere of the housing operation;
- the utilisation of social and cultural facilities (except for those located in recreation areas);  
( Paragraph 18 of Part 2 of Article 3 in the wording of Law of Ukraine #2857-IV of September 8, 2005 )
- establishment of municipal car parking services;
- provision of ritual services;

- construction and operation of hotels, tourism complexes, campsites and other relevant objects of the tourism industry.

( The Paragraph added to the Section 2 according to Law of Ukraine #209-IV of October 24, 2002 )

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

4. The objects of the state or community ownership granted on concession shall be as follows:

- property of enterprises constituting integral property complexes or a system of integral property complexes, which ensure the comprehensive provision of services in the activity spheres specified in parts 2 and 3 of this Article;

- uncompleted construction sites and mothballed facilities, which can be completed, for the purposes of the use thereof for the provision of services satisfying public needs in the activity spheres specified in parts 2 and 3 of this Article;

- specially constructed facilities according to the terms and conditions of the concession contract to satisfy public needs in the activity spheres specified in parts 2 and 3 of this Article.

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

5. Should the exercise of the concession activities require land plots, they shall be provided to the concessionaire for the use on the lease conditions, during the term of the concession contract according to provisions of the Land Code of Ukraine.

( Section 5 changed and amended according to Law of Ukraine #1414-IV of February 03, 2004 )

6. The objects of the state or community ownership granted on concession shall not be subject to privatisation during the validity term of the concession contract.

7. In case of a decision to privatise the property of the object, which had been granted on concession, after the expiry of the concession contract validity period, the former concessionaire shall be entitled to buying out the said property according to the specified privatisation conditions, if the concessionaire had created (constructed) the said property in connection with the fulfilment of terms and conditions of the concession contract or improved the said property for a value of at least 255 per cent of the property value as of the time of the privatisation. ( Section 7 added to the Article according to Law of Ukraine #1414-IV of February 03, 2004 )

#### **Article 4. Restriction of Concession Activities**

The transfer of the property rights resulting by the concession contract or concession objects in part or in full by the concessionaire to third parties shall be possible only subject to the consent of the concession provider, unless otherwise provided by the special law on concession activities in individual economic activity spheres.

#### **Article 5. Legal Principles of Concession Activities**

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

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

3. Should an international treaty of Ukraine approved as obligatory by the Supreme Council of Ukraine

establish the rules other than those specified herein, the rules of the international treaty shall apply.

## **Section II. Holding the Concession Bidding**

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

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

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

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

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

5. The concession for the state ownership objects shall be granted taking into account the national interests and the maximum protection of interests of consumers of goods (work, services).

6. The concession for the community ownership objects shall be granted taking into account the interests of the region, the territorial community in the provision of consumers residing on the territory of the relevant administrative and territorial unit with goods (work, services).

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

### **Article 7. Major Principles of Holding the Concession Bidding**

1. The concession bidding shall be organised and held by the concession provider.

2. The concession provider shall:

- approve the conditions of the concession bidding;
- set up the bidding commission, approve its complement and the working procedures;
- prepare the bidding documents;
- announce the concession bidding;
- determine the registration fee amount;
- confirm the receipt of applications for the participation in the concession bidding in writing;
- provide bidders with the information (documents) needed for the preparation of the concession bids;
- make decisions on the admission (non-admission) of bidders to the participation in the concession bidding with the justification of the grounds for the non-admission
- notify the bidders on the admission (non-admission) to the participation in the concession bidding.

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

3. For the purposes of the registration of bidders as participants in the concession bidding, they shall pay the registration fee in the amount of one to ten non-taxable minimum individual income amounts, unless otherwise provided by the special law on the concession activities in individual spheres of the economic activities. The registration fee shall be paid by the transfer of funds to the relevant current account. The said funds shall be used for the preparation of the concession bidding procedure and not be subject to the refund.

*( The Section changed and amended according to Law of Ukraine #2921-III of January 10, 2002 )*

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

*( Paragraph 1 changed according to Law of Ukraine #1414-IV of February 03, 2004 )*

At the time of the consideration of applications, documents and materials, the bidders shall be entitled to make changes in the bids on meeting the concession bidding conditions to improve them or withdraw their bids. The changes in bids shall be made not later than in 10 days till the expiry of the time for the consideration of applications.

*( Paragraph 2 changed according to Law of Ukraine #1414-IV of February 03, 2004 )*

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

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

7. A bidder, which offered the best concession conditions complying with the concession bidding conditions shall be declared the winner of the concession bidding.

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

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

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

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

### **Article 8. Announcement of the Concession Bidding**

1. The information on the announcement of the concession bidding for granting new concessions or renewing the concessions, which expired, shall be published in newspapers Uryadovy Courier and Holos Ukrayiny or in an appropriate bulleting of the local self-administration authority.

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

- the authority providing the concession;

- the object of the concession (description, characteristics, etc.);

*( Paragraph 4 deleted according to Law of Ukraine #1414-IV of February 03, 2004 )*

- the conditions of granting a land plot, if required to exercise the concession activities;

*( Paragraph 5 deleted according to Law of Ukraine #1414-IV of February 03, 2004 )*

- the scope of work to be financed (carried out) by the concessionaire;

*( Paragraph 6 deleted according to Law of Ukraine #1414-IV of February 03, 2004 )*

- the amount of goods (work, services), whose production (provision) should be guaranteed by the concessionaire;

*( Paragraph 7 deleted according to Law of Ukraine #1414-IV of February 03, 2004 )*

- the scope of the data on the concessionaire;

*( Paragraph 8 deleted according to Law of Ukraine #1414-IV of February 03, 2004 )*

- major responsibilities of the concessionaire;

*( Paragraph 9 deleted according to Law of Ukraine #1414-IV of February 03, 2004 )*

- financial and other guarantees of the concession provider;

- the registration fee amount;
- the term of the concession;
- the time for the submission of applications for the participation in the concession bidding;
- the time for the announcement of results of the concession bidding;
- the authorised body to be addressed for the purposes of obtaining the additional information.

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

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

The concession provider or an agency authorised thereby shall also provide other information needed by a candidate to take part in the concession contest.

*( Section 3 in the wording of Law of Ukraine #1414-IV of February 03, 2004 )*

4. The concession contest participation bids shall be submitted within sixty days of the contest announcement or, in case of the provision of a concession for the construction and operation of motor roads, within one hundred and twenty days of the contest announcement.

*( Section 4 in the wording of Law of Ukraine #1414-IV of February 03, 2004 )*

5. The application for the participation in the concession bidding shall contain the data on:

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

*( Paragraph 6 deleted according to Law of Ukraine #1414-IV of February 03, 2004 )*

The data provided by bidders in the application for the participation in the bidding have to be published in official bulletins, except for the data identified by the bidder as confidential, and may not be disclosed by the bidding organisers.

6. Disputes related to the concession bidding shall be settled by a court.

### **Section III. Concession Contract**

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

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

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

3. The validity term of the concession contract may be altered by consent of the parties within the limits

set by part 1 of this Article.

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

#### **Article 10. Substantial Conditions of the Concession Contract**

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

- parties to the contract;
- activities, works, services to be carried out according to terms and conditions of the contract;
- object of the concession (composition and value of the property or the technical and financial terms of reference for the creation of the concession object);
- conditions of granting the land plot, if required to exercise the concession activities;
- a list of activities subject to licensing;
- conditions of fixing and altering prices (tariffs) for the goods (work, services) produced (provided) by the concessionaire;
- the term of validity of the concession contract, conditions of the employment and the use of the labour of employees, which are citizens of Ukraine;
- conditions of using the domestic raw and other materials;  
*( Paragraph 9 changed according to Law of Ukraine #1414-IV of February 03, 2004 )*
- conditions and the scope of improving the concession object and the procedure of the compensation for the said improvements;
- conditions, scope and procedure of effecting the concession payments;
- the procedure of using the depreciation charges;
- the renewal of the concession object and conditions of the return thereof;
- parties' responsibility for meeting their obligations;
- the insurance of the concession objects taken on concession by the concessionaire;
- the procedure of prolonging and terminating the contract;
- the procedure of settling disputes between the parties.

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

3. Should a land plot be required to exercise the concession activities, the land plot lease contract shall be annexed to the concession contract.

*( Section 3 changed according to Law of Ukraine #1414-IV of February 03, 2004 )*

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

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

#### **Article 11. Licensing**

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

## **Article 12. Concession Payments**

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

In case of the provision of a concession for a non-completed construction object or the development (construction) of a new object, the concession payments shall be made from the time of the obtainment by the concessionaire of the income from the operation of the concession object, but not later than in six months of the object commissioning as specified by terms and conditions of the concession contract.

*( Paragraph 2 added to the Section according to Law of Ukraine #1414-IV of February 03, 2004 )*

2. Concession payments shall be included in the State Budget of Ukraine or a local budget respectively.

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

4. The concession provider may provide privileges with regard to concession payments and provide for the provision of grants, compensations and privileges to concessionaires of the disadvantageous and low-profit objects in the contract. The procedure of determining such objects, as well as conditions of providing grants, compensations and privileges shall be specified by the Cabinet of Ministers of Ukraine.

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

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

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

## **Article 14. Registration of Concession Contracts**

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

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

## **Article 15. Termination of the Concession Contract**

1. The concession contract shall be terminated in case:

- of the expiry of the term, for which it was concluded;
- liquidation of the concessionaire by the court decision, including the declaration of his bankruptcy;
- loss of the concession object.

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

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

*( The Paragraph changed according to Law of Ukraine #762-IV of May 15, 2003 )*

3. In case of the termination of the concession contract, the expiry of its validity term, the liquidation of the concessionaire in connection with his being declared bankrupt, the concessionaire shall be obliged to return the concession object to the concession provider on conditions specified in the concession contract. If the concessionaire allowed the deterioration of the condition of the concession object or the loss thereof, the former



shall reimburse the concession provider for the losses, unless the former proves that the deterioration or the loss of the object occurred not through the fault of his.

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

5. In case of the improvement of the property obtained on concession, which was effected for the account of the concessionaire, or the concessionaire's having created the property in compliance with terms and conditions of the concession contract, the concession provider shall be obliged to reimburse the concessionaire for the expenses made in connection with substantial improvements or for the value of the created property to the extent, which was not recovered by the concessionaire as a result of the concession activities in accordance with conditions of the concession contract.

#### **Article 16. Settlement of Disputes Arising from a Concession Contract**

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

*( The Paragraph changed according to Law of Ukraine #762-IV of May 15, 2003 )*

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

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

### **Section IV. Major Rights and Responsibilities of Parties to a Concession Contract**

#### **Article 17. Rights and Responsibilities of the Concession Provider**

1. The concession provider shall be entitled:

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

2. The concession provider shall be obliged:

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

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

#### **Article 18. Rights and Responsibilities of the Concessionaire**

1. The concessionaire shall be entitled:

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

2. The concessionaire shall be obliged:

- to fulfil terms and conditions of the concession contract;
- to conclude labour contracts according to the legislation, as a rule, with employees, which are citizens of Ukraine;
- to use technologies, materials and equipment of domestic origin on the concession object, unless otherwise provided by terms and conditions of the contract;
- to maintain the concession object in the proper technical condition;
- upon expiry of the term of the concession contract, to hand over the concession object in the proper technical condition to the concession provider according to terms and conditions of the contract.

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

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

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

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

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

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

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

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

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

concession contract.

3. Depreciation charges charged on the fixed assets obtained on concession or created due to the fulfilment of terms and conditions of the concession contract shall remain in concessionaire's disposal and used solely for the renewal of fixed assets obtained on concession or created due to the fulfilment of terms and conditions of the concession contract.

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

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

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

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

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

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

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

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

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

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

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

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

3. Employees of the state or community owned enterprise, which terminated its activities, shall be provided with social and legal guarantees provided by the legislation of Ukraine for employees dismissed due to changes in the organisation of the production and labour.

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

#### **Article 24. Transfer of the Concession Object**

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

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

3. Should the concession provider fail to transfer the concession object at the time and on conditions

specified in the concession contract, the concessionaire shall be entitled to require the concession provider to transfer the concession object and reimburse for the losses caused by the delay with the transfer or require to terminate the concession contract and reimburse for damages caused by the concessionaire by the non-fulfilment of the concession contract.

## **Section V. Accounting, Reporting and Taxation of Concession Activities**

### **Article 25. Accounting and Financial Reporting**

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

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

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

## **Section VI. Final Provisions**

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

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

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

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

- bring its regulations in compliance herewith;

- develop regulations provided for by this Law;

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

- develop and approve the model concession contracts.

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

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

"Article 22 Concession Contracts

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

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

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

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

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

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

***L.Kuchma, President of Ukraine***

***City of Kyiv, July 16, 1999***  
***#997-XIV***