



**THE CONCESSION PROJECTS
ACT, 1999**

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ACT NO. 1 OF 1999

I ASSENT

Salmin Amour

**DR. SALMIN AMOUR
PRESIDENT OF ZANZIBAR**

AND

CHAIRMAN OF THE REVOLUTIONARY COUNCIL

28th September, 1999

**AN ACT TO PROVIDE FOR THE LEGAL FRAMEWORK
FOR THE EXECUTION OF PROJECTS UNDER
APPROPRIATE CONCESSION AGREEMENTS**

ENACTED by the House of Representatives of Zanzibar

**PART I
PRELIMINARY PROVISIONS**

- | | |
|-------------------------------------|---|
| Short title
and
Commencement. | 1. This Act may be cited as the Concession Projects Act, 1999 and shall come into operation on the date of assent by The President. |
| Interpretation. | 2. In this Act, unless the context otherwise requires:-

"Appropriate Minister" means the Minister responsible for the subject-matter of a concession project;

"Appropriate Ministry" means the Ministry responsible for forming the basis of the concession project;

"Concession agreement" means an agreement between a Grantor and a concessionaire relating to the implementation of a concession project;

"Concessionaire" means the party referred to in section 6(2); |



“Concession project” means a service or project to build, set up, own, operate, rent, lease, finance, modernise, manage, maintain, develop, or transfer in accordance with a concession agreement which may provide for any variant thereof, including BOT (Build, Operate and Transfer), BOOT (Build, Own, Operate and Transfer), MOT (Modernise, Own/Operate and Transfer, BRT or BLT (Build, Rent or Lease and Transfer), BT (Build and Transfer immediately), BTO (Build, Transfer and Operate) and ROT (Rehabilitate, Own and Transfer);

“Concession Project Unit” means the unit set up under section 3 of this Act;

“Concession certificate” means a certificate of approval granted to a concession project.

“Grantor” means the Minister responsible for Finance;

“Minister” means the Minister for the time being responsible for Planning and Investments;

“Ministers Committee” means the committee set up under section 12 of this Act;

“President” means President of Zanzibar and Chairman of the Revolutionary Council;

“Public Sector Institution” means any Ministry, Government Department, Statutory Body or Local Authority;

“pre-selected bidder” means a bidder pre-selected under section 15 of this Act;



PART II
ESTABLISHMENT OF THE CONCESSION PROJECTS UNIT

The Concession
Project
Unit.

3. There is established for the purposes of this Act a Concession Projects Unit, within the Ministry of Planning to deal with all concession projects including those set out in the Schedule to this Act.

The Concession
Project Unit

4.(1) The Concession Project Unit shall be primarily responsible for:-

- (a) promoting and marketing the development of concession project;
- (b) approving pre-selection procedures and invitations to bid documentation and drawing rules and regulations regarding the bidding procedures for concession projects;
- (c) assisting the relevant Ministries and Government agencies in the development, coordination and implementation of concession projects;
- (d) advising Government in rationalising and co-ordinating administrative procedures between Ministries, Government agencies and local authorities relating to concession projects;
- (e) overseeing and monitoring the progress of concession projects in close collaboration with the concessionaire;
- (e) keeping a register of all concession agreements and concession projects.

(2) The Concession Project Unit shall, if so requested in writing, make accessible to the public copies of any rule or regulation of general application relating to the bidding procedures for concession projects.

Licences.

5.(1) Notwithstanding any other enactment, any application for a permit, a licence, an authorisation or approval necessary for the performance and implementation of any concession project shall be made to, and promptly acknowledged by the Concession Projects Unit.



(2) The Concession Projects Unit shall deal with all applications within a period not exceeding three months.

(3) Subject to section 5 (2), if the application has not been dealt within three months, the Unit shall forthwith give to the applicant the reasons for the delay in writing.

(4) The public sector institution shall notwithstanding any other enactment, process the application for any licence, permit, authorisation or approval within a period of three months and shall issue and hand over such licence permit, authorisation or approval to the Concession Project Unit for delivery or to the applicant.

The Concessionaire.

6.(1) Every concession agreement shall be signed by the concessionaire.

(2) The concessionaire shall be a corporate body registered, incorporated or established in Zanzibar or a consortium of such corporate bodies.

Confidentiality.

7.(1) All documents and information relating to a concession project shall be treated as confidential and secret.

(2) No employee or member of the Concession Projects Unit, and no Minister's Committee or members or any other department handling any document or having any information relating to a concession project, shall disclose any matter relating to the project to any unsuitable person or to any person without authority of the head of the concession project unit.

Approval of the Minister.

8.(1) The award or issuance of a concession certificate in respect of a concession project shall be made only upon the approval by the Minister of the draft agreement relating to the concession project.

(2) The Minister shall issue a concession certificate upon approving the draft agreement relating to the concession project..

Signature of the concession agreement.

9. The Grantor and the concessionaire shall sign the concession agreement after the Concession Certificate has been issued under section 8.



PART III CONCESSION PROJECTS

Report of
Concession
projects to
Ministers'
Committee.

10.(1) Where the Minister is of opinion that any service or project specified in the Schedule may be suitable for execution as a concession project, the Minister shall submit a report in relation to the project for consideration and guidance of the Minister's Committee.

(2) A report submitted to Ministers Committee pursuant to subsection (1) shall:

- (a) define the nature and scope of the service or project;
- (b) specify the terms proposed for a concession agreement;
- (c) indicate whether there is any proposal in respect of the implementation of the project.

(3) Where a proposal has been received in respect of the project, the report shall specify its exact nature and scope.

Referral to
Concession.

11.(1) All concession projects shall be awarded through bidding and shall thereafter be referred to the Concession Projects Unit for implementation in accordance with this section.

(2) Upon a referral under subsection (1), the Concession Projects Unit shall:

- (a) examine the terms of the project in the light of the report;
- (b) draw up the final concession agreement in consultation with the appropriate ministry and;
- (c) submit its recommendations together with the draft concession agreement to the Minister who will seek the approval of Minister's Committee for the award of the concession project.

PART IV BIDDING PROCEDURE FOR AWARDING CONCESSION

Ministers
Committee.

12.(1) There shall be a Ministers Committee to be Responsible for the award of concession projects.



- (2) Ministers Committee shall consist of:
- (a) Minister of Planning and Investments;
 - (b) Minister of Finance;
 - (c) Attorney General;
 - (d) Appropriate Minister;
 - (e) Head of the concession Project Unit who shall be the Secretary of the Committee.

(3) The Chairperson shall be appointed by the President and the Ministers Committee will appoint the Vice-Chairperson of the Committee.

(4) (a) The Ministers' Committee may, for the purpose of obtaining technical expertise and assistance in respect of a concession project may, invite a oersib wgi us ab expert or professional in respect of the specific or general nature of the concession projects under their consideration.

- (b) An invited member shall be entitled to participate in the deliberations of the Ministers' Committee and shall not be entitled to vote.
 - (c) Ministers' Committee will appoint the Vice Chairperson of the committee.
- (5) At any meeting of the Ministers' Committee:
- (a) the Vice Chairperson shall preside over the meeting and in the absence of the Chairperson the Vice-Chairperson may preside;
 - (b) three members, including the Chairperson or Vice Chairperson or both of them, shall constitute a quorum;
 - (c) each member shall have one vote on the matter in question and in the event of an equality of votes, the Chairperson of the meeting shall have a casting vote;
 - (d) it may, subject to this section, regulate its meetings and proceedings, in such manner as it deems fit.



Disclosure of interest.

13.(1) Where any member of the Ministers' Committee or the Chairperson or Vice Chairperson of the Ministers' Committee or any officer assisting the Committee has any direct or indirect interest in any matter under consideration at a meeting, he shall as soon as practicable after the commencement of the meeting, disclose his interest and shall not, take part in the discussion and vote on that matter.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

Preselection exercise.

14.(1) The Ministers Committee shall conduct pre-selection exercise to select potential bidders of appropriate technical, financial and managerial capacity to carry out a project as a concession project.

(2) The pre-selection documents shall be prepared by the appropriate Ministry in collaboration with the concession project unit and shall include a public invitation for applicants to apply for pre-selection.

(3) Every pre-selection documents shall be subject to the approval of the Concession Projects Unit before issuance and publication.

(4) The Concession Projects Unit shall prepare appropriate questionnaires to elicit full information from potential bidders regarding experience in the domain of the specific concession project or concession projects generally, managerial ability, financial status, credit worthiness, specialised personnel, and such other matters as may be considered necessary.

(5) The Concession Projects Unit shall require potential bidders to submit full information regarding the structure of the bidding organisation and paid-up capital, the existence of any contract between its shareholders and of any insurance plan or other plan regarding the distribution of risks.

(6) The invitation to apply for pre-selection shall be open to all corporate bodies or consortium of corporate bodies registered, incorporated or established in Zanzibar or overseas.

Preselection.

15. The Ministers Committee functions shall be as follows:-

- (i) approving pre-selection procedures and invitations to bid, bid documentation and drawing rules and



regulations regarding the bidding procedures for concession projects;

- (ii) approving of all bidding documents which shall include;
 - (a) technical specifications;
 - (b) drawings;
 - (c) setting outs;
 - (d) maps;
 - (e) bills of quantities, and
 - (f) such other appropriate documents or reports that will provide all the appropriate details and feasibility of a concession project;
- (iii) preparing and issuing tender notices;
- (iv) receiving and opening tenders;
- (v) evaluation of all tender applications, and pre-selection of bidders;
- (vi) making stipulation on appropriate tender documentation and information to be furnished by bidders, in addition to any other information that may be required under this Act, to be furnished to the Ministers Committee by prospective bidders;
- (vii) such other functions or duties as may be conferred upon it by this Act or the Minister; and
- (viii) doing or carrying out such other functions that are conducive or incidental to the discharge of its functions under this Act.

Invitation to
to bid.

16.(1) The appropriate Ministry in collaboration with the concession project unit shall prepare the documents relating to the invitation to bid and such documents shall include rules for the submission of bids, a draft concession agreement and the criteria according to which bids shall be evaluated.

(2) The concession project unit shall issue the invitation to bid to the pre-selected bidders.



- (3) Every bid by the pre-selected bidder shall:
- (a) be a firm bid to the Ministers' Committee to enter into the concession agreement on the terms stated therein;
 - (b) be supported by a form of security specified in the invitation to bid documentation;
 - (c) give details of the legal capacity and ownership of the entity which will be the concessionaire;
 - (d) contain an affirmation that the information supplied at the state of pre-selection continues to apply.
 - (e) be submitted on or before the deadline specified in the invitation to bid.

Attribution
procedure.

17.(1) The Minister's Committee shall examine and evaluate all the bids received from pre-selected bidders and shall submit its selection to the appropriate Ministry for their comments.

(2) In the discharge of its functions under this Act, the Ministers Committee shall:

- (a) act expeditiously and with due diligence;
- (b) strive to achieve the highest standard of equity and fairness, by ensuring that all bidders are afforded equality of opportunity and are treated on an equal footing;

(3) Where the Minister has approved the award of a concession project under section 8, the Concession Project Unit shall give public notice of the name of the successful bidder and publish the award in government gazette.

(4) Upon signature of the concession agreement the successful bidder shall take the necessary steps to establish the concessionaire in accordance with the terms of its bid.



PART V
THE TERMS OF THE CONCESSION

The concession agreement.

18. A concession agreement concluded pursuant to this Act shall be in written form, signed by the concessionaire and the Grantor, and shall inter alia include:

- (a) the object of the concession;
- (b) the concession period;
- (c) the rights and obligations of the Grantor and the concessionaire;
- (d) the projects to be implemented by the concessionaire, the standards to which the works must conform and the time limits within which such works are to be executed;
- (e) the allocation of land to the concessionaire for the concession project;
- (f) the rights of the concessionaire to use the land and the buildings, structures and other installations he erects thereon;
- (g) the fee, if any, to be paid by the concessionaire for the performance of its obligations under the concession agreement;
- (i) the services to be provided by the concessionaire;
- (j) the regime for the fixing, adjustment, revision, publication and collection of tariff;
- (k) the financial organisation and reporting regime applicable to the concessionaire;
- (l) provisions relating to the transfer by the concessionaire to the Grantor or the Grantor's designee of the assets linked to the concession at the end of the concession period.
- (m) provisions governing the responsibility of the parties;



- (n) provisions relating to the possibility for the concessionaire to sub-contract the performance of its obligations under the concessions agreement;
- (o) provisions on the maintenance, upgrading and transfer of technology;
- (p) provisions relating to the environmental protection;
- (q) the conditions which may entitle either party to terminate the concession agreement prior to its agreed date of termination and the rights and obligations of the parties consequential on such termination;
- (r) provisions relating to the insurance of the objects of the concession;
- (s) provisions regarding the lender's step-in-rights in case of default of the concessionaire;
- (t) provisions relating to force majeure;
- (u) the procedure for the resolution of disputes between the parties;
- (v) provisions specifying the date of entry into effect of the concession agreement.

The concession period.

19. The period of the concession shall be agreed between the parties to the concession agreement.

The concessionaires obligations.

20.(1) The concessionaire shall perform its obligations under the concession agreement, including the management and operation of the services or project, at its own costs and risks in accordance with the terms of the concession agreement.

(2) The concessionaire shall finance or obtain the financing necessary for its activities under the concession agreement at its own costs and risks and without recourse to Grantor credits or guarantees except as expressly stated in the concession agreement.

(3) The concessionaire shall be liable to third parties for its activities under the concession agreement in accordance with all applicable laws and regulations.



(4) The concessionaire shall comply with all applicable laws and regulations.

The concessionaires rights.

21.(1) Subject to subsection (2) of this section the concessionaire shall have and enjoy the rights granted to it under the concession agreement exclusively throughout the concession period in accordance with the terms of the concession agreement.

(2) Where the concessionaire is not granted any exclusive right, he shall be entitled, subject to the concession agreement, to any compensation that is allowed.

(3) Subject to section 26, the concessionaire shall be entitled to charge and collect payment of tariff for the services performed by the concessionaire on such terms and conditions as may be set out in the concession agreement.

(4) The concession agreement may provide that the concessionaire shall be entitled to pledge or create any charge by way of security to a bank or financial institution providing financing in relation to the Project on the rights of the concessionaire under the concession agreement.

The Grantor's rights.

22.(1) The Grantor shall retain the right to monitor the performance by the concessionaire of its obligations under the concession agreement and, in the event of default by the concessionaire, the Grantor shall have the right in accordance with the terms of the concession agreement to impose sanctions on the concessionaire, rectify the default itself or terminate the concession agreement.

(2) The Grantor may require reports and information from the concessionaire on the performance and financial situation of the concessionaire.

Concession fee.

23. The concession agreement may provide that the concessionaire shall pay a fee for the grant of the concession pursuant to the conditions and terms specified in the concession agreement.

Default by a bidder.

24.(1) Where a bidder, having been selected as the successful bidder, fails to establish the concession project in accordance with the terms of its bid or where the concessionaire fails to sign the concession agreement, the Grantor may, after obtaining the prior approval of the Ministers' Committee revoke the selection of that bidder.



(2) Where a selection of a bidder is revoked under subsection (1), the Grantor may, after obtaining the prior approval of Ministers' Committee select the next placed bidder for the award of the concession project.

State Land.

25.(1) Land and buildings belonging to the Government be made available to the concessionaire as necessary in accordance with the terms of the concession agreement.

(2) Any expropriation of appropriate land required for a project shall be handled and managed in the manner provided for in any law regulating expropriation of land by the Government.

(3) The property rights in any expropriated immovable assets shall vest in the Government.

(4) The concession agreement may provide that either the Grantor or the concessionaire shall be responsible to pay any compensation for the expropriation of any property and the manner in which such compensation shall be paid.

(5) The concession agreement may provide for any necessary facilities which may be given by the State to the concessionaire in respect of right to use roads and other supporting public facilities in carrying out the project.

Tariff.

26. Subject to any enactment regulating the tariff and the conditions and quality of services governing them, a concession agreement:

- (a) may provide any tariff to be paid by user, including the State, as the Grantor and the concessionaire may agree;
- (b) shall specify the currency in which any tariff may be charged and collected;
- (c) may provide for any tariff to be fixed and adjusted in accordance to a defined index, including but not limited to a price index, or the value of the local currency against a foreign currency.

Remittance of profits abroad.

27. The concession agreement may set out the terms on which the concessionaire shall be entitled to remit all or part of its income from its activities under the concession agreement outside the country.



Foreign
exchange.

28. The concessionaire shall be entitled to convert its income from its activities under the concession agreement from the local currency into one or more foreign currencies specified in the concession agreement.

The assets of
the concession.

29.(1) subject to subsection (2) of this section the Grantor shall retain ownership of the assets which are the object of the concession throughout the concession period.

(2) The concession agreement may:

- (a) set out the conditions on which the concessionaire may be entitled to dispose of or sell to a third part assets which previously formed part of the property of the Grantor;
- (b) provide for the terms on which the concessionaire may retain all or part of the proceeds from such a disposition or sale;
- (c) set out the terms on which new assets brought into the concession by the concessionaire may become the property of the Grantor.

Return of
the assets of
the concession.
shall return

30. Where a concession agreement provided for the eventual transfer of the assets which are the subject of the concession, at the end of the concession period, the Concessionaire to the Grantor or its nominee all the assets.

Local services,
goods and
labour.

31. In performing its activities under the concession agreement, the concessionaire shall have recourse to local services and goods whenever they are available and competitive.

(2) With the exception of the concessionaire's permanent work force and the minimum of foreign specialist required if any, the concessionaire shall be required to employ competent local labour for the performance of its activities under the concession agreement.

Taxes and
Duties.

32. The Minister of Finance, may on such terms and conditions as she may decide, remit or refund the whole or part of any duty, levy, charge, fee, rate or tax payable or paid under any enactment in respect of a concession project to the concessionaire.

Government law.

33. A concession agreement concluded under this Act shall be governed by and construed in accordance with the laws of Zanzibar.



Resolution of disputes.

34.(1) The concession agreement may provide for disputes between the parties to be settled by the competent judicial authority or by arbitration according to rules defined in the concession agreement.

(2) An award issued by an arbitration tribunal in accordance with an arbitration clause included in a concession agreement concluded under this Act shall be valid and enforceable by and against both the Grantor and the concessionaire according to its terms.

Regulations.

35.(1) The Minister may:

- (a) make such regulations as he thinks fit for the purposes of this Act;
- (b) by regulations, may amend the Schedule.

(2) Any regulations made under this Act may provide for the levying of fees and charges.

(3) Any regulations made under this Act shall be published in the Government Gazette.

SCHEDULE (Section 3)

1. Telecommunication services, system and networks (public telephone service, public mobile radiophone service, nationwide public paging service, nationwide distribution and broadcast of public radio and television programs) not including closed circuit services.
2. Water supply, including production, management, cleaning and distribution, sewerage and drainage.
3. Electric power generation, transmission and distribution.
4. Public roads, highways, expressways, bridges, tunnels and their engineering structures.
5. Airports, terminals and related aviation facilities.
6. Port development including terminals, piers, handling, storage, Freeport infrastructure and other facilities and services



7. Environmental and solid waste management projects including composting plants, collection facilities, incinerators, landfill and other municipal and rural services.
8. Rail and non-rail based transportation system and facilities.
9. Development of Industrial zones, information and other export zones.
10. Leisure parks and theme parks, hotel and tourism related projects.
11. Storage infrastructure of bulk products.
12. Housing scheme project.
13. Health, education and scientific research infrastructure projects.
14. Development on state lands allowing the provision of services to support commercial and non-commercial activities.
15. Modern Shopping mill.
16. Other infrastructure projects to support development activities.

Passed in the House of Representatives on the 24th day of March, 1999.

K. J. Chande
{ KHAMIS JUMA CHANDE }
CLERK TO THE HOUSE OF REPRESENTATIVES.