

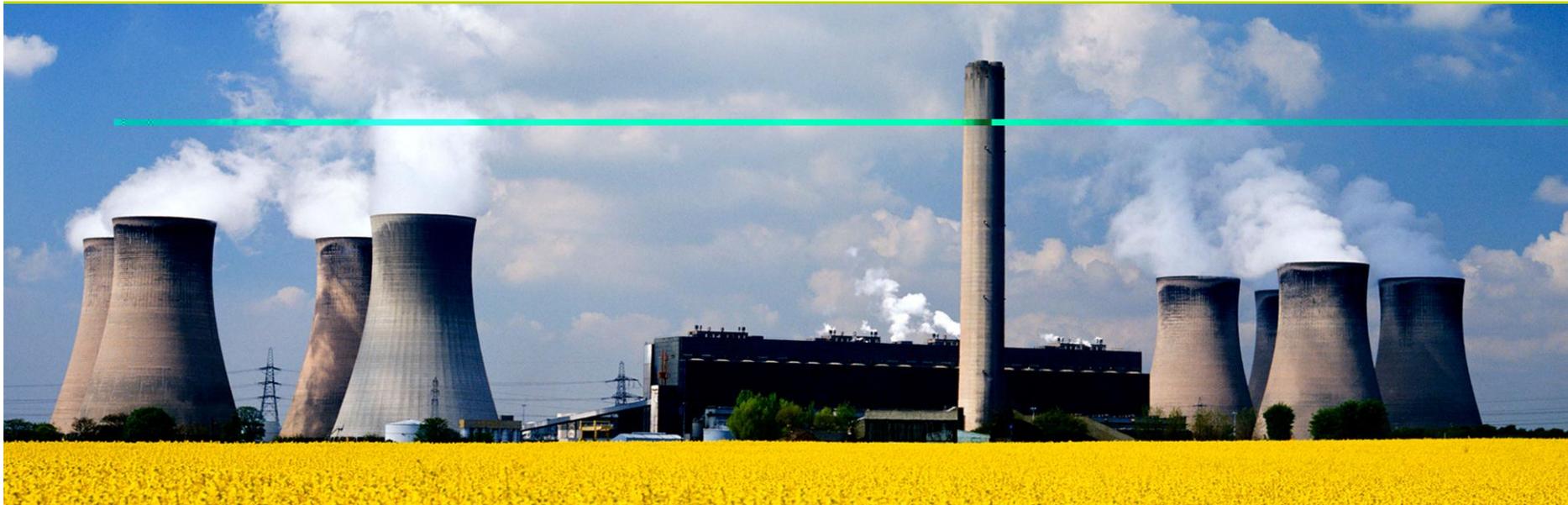
Law of Mongolia on Concessions

Frontier Conference: Invest Mongolia

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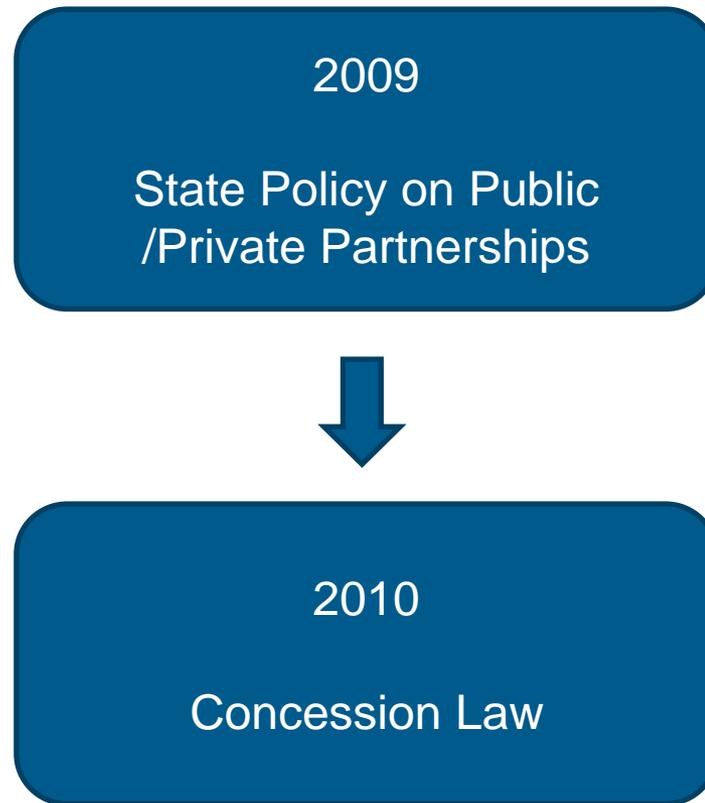
Tokyo



Content

1. PPP
2. Legislation on Concessions
3. Terms and Terminology
4. General Provisions of the Concession Law
5. Types of Concessions
6. Specific Steps for Granting a Concession
7. Concession Agreements
8. Rights and Responsibilities of the Parties
9. Approved List of Concession Items

PPP and Concession



Public/Private Partnerships

- the *State Policy on Public and Private Partnerships*, approved by Parliament Resolution #64 dated 15 October 2009 (the "**PPP Policy**").
- the PPP Policy is the first comprehensive document setting out the government's policy on PPP.

PPP Policy

PPP types:

- Contract-based services/work for the government;
- Contract-based outsourced government functions/services;
- Contract-based state-owned entity operation and management;
- Joint ventures with the government; and
- Other government/state partnerships.

PPP Policy sets out the following goals/objectives:

- to approve Law on Concessions;
- to approve specific regulations in relation to selection/procurement.

PPP Policy

Categories of partnership	Areas
Social	<ul style="list-style-type: none">• Health• Education• Culture• Science• Other
Infrastructure	<ul style="list-style-type: none">• Energy and renewable energy• Heating• Media and telecommunications• Water supply• Public transportation• Roads• Housing• Other
Certain government functions	n/a
National and regional projects	n/a
Environmental	<ul style="list-style-type: none">• Ecology• Waste management

Legislation on Concessions

- the *Law of Mongolia on Concessions*, enacted on 28 January 2010 (the "**Concession Law**"); and
- the *Regulation on Procurement of Concessions*, approved by government decree #103 dated 4 April 2012 (the "**Concession Tender Regulations**").

Terms and Terminology

Definitions under the Concession Law:

- Concession
 - "the right to possess, use, newly-create, or redevelop state or local authority property or assets on a contractual basis in accordance with the conditions and procedures specified in the Concession Law for the purpose of providing infrastructure or rendering fundamental social services to the public".
- Broad in meaning - any type of agreement in relation to the assets or property of the state or a local authority could be deemed a concession.

Terms and Terminology

- **Concession item:**
 - items approved by the government or the local authority
 - included in an official list
- **Authorised Entity:**
 - for state-owned concession items, the ministry charged with matters of economic development
 - for locally-owned concession items, the local authority
- **Sponsor:**
 - a party rendering a financial service, such as in the form of a loan or a guarantee, intended for the operations of the concession holder

Concession Law: General Provisions

- Parties involved:
 - the government
 - government agencies (ministries and agencies)
 - Ministry of Finance
 - State Property Committee
 - manages state property and state-owned enterprises
 - administers the privatisation process in Mongolia
 - the provincial or capital city Citizens' Representative Council (local authority)

Concession Law: General Provisions

- Concessions may be granted by any one of the two following methods:
 - Regular tender
 - Direct contracting
- Tenders may arise by way of an unsolicited proposal
- The government can itself directly grant the concession (e.g. CHP-5) or it may delegate the authority to a government entity/agency (e.g. MTZ)

Concession Law: General Provisions

- Tender process:
 - Except for direct contracting, all concessions must follow the regular tender process
 - Two-stage project proposals: where the Authorised Entity considers that one stage tender is not feasible, it may allow the project proposal to be submitted in two stages.
 - Unsolicited proposals for concession agreements
 - an entity may submit an unsolicited project proposal for a concession agreement, together with a cost-benefit analysis, to the Authorised Entity
 - if the Authorised Entity agrees to enter the concerned item in the concession list, it shall carry out a tender in which the unsolicited bidder shall be granted priority

Concession Law: General Provisions

- Direct contracting
 - if conducting a tender is considered contrary to national security
 - if rights connected with intellectual property essential to implementing the concession are vested in one party or its affiliates
 - if no proposals have been submitted or approved despite the tender announcement
 - if the concession item has been transferred to another party pursuant to the Concession Law
 - treatment of Chinggis Bond-financed projects (DBM)

Concession Law: General Provisions

- Granting licences and rights:
 - an unlicensed party may equally participate in the tender (i.e. foreign bidders)
 - upon conclusion of a concession agreement, the unlicensed party may be granted the relevant licence(s)
 - land issues regarding concession items are to be decided immediately after concluding the concession agreement (eg land possession/use agreement)
 - other land issues (third party rights, easements, etc.) are to be resolved prior to granting the concession

Concession Law: General Provisions

- the Authorised Entity must:
 - prepare tender documents, design the process and evaluation procedures
 - organise and announce the tender
 - evaluate project proposals, negotiate with the participants
 - deliver recommendations to the government or the local authority

Concession Law: General Provisions

- the State Property Committee is involved in the concession process:
 - providing support to other agencies in connection with granting and implementing concessions;
 - cooperating with relevant ministries in announcing, organising and evaluating tenders;
 - concluding concession agreements with selected bidders; and
 - monitoring implementation of concession agreements.

Types of Concessions

"Build-
Transfer"

"Build-Own-
Operate"

"Build-Own-
Operate-
Transfer"

"Build-Lease-
Transfer"

"Design-Build-
Finance-
Operate"

"Renovate-
Operate-
Transfer"

"Build-
Operate-
Transfer"

Specific Steps for Granting a Concession

1

- Announcement

2

- Submit pre-qualification bids

3

- Pre-qualification bids evaluation and selection

4

- Tender documents provided to prequalified participants

5

- Meeting with the Authorised Entity

Specific Steps for Granting a Concession

6

- Participants deliver their project proposals

7

- Project proposals are evaluated and qualified participants are selected

8

- Negotiations with qualified participants on concession agreement

9

- Negotiation results delivered to relevant agencies for decision

Concession Agreements

- The government may grant the Authorised Entity permission to conclude an agreement on the basis of the Authorised Entity's recommendation
- The parties to the concession agreement are:
 - the Authorised Entity
 - tender winner (for direct contracting, the entity meeting the requirements)

Concession Agreements

- The Concession agreement may include provisions covering:
 - Ownership/possession/use of relevant properties
 - Rights over income and profit
 - Rights and obligations of the parties involved
 - Financing matters
 - Permits, licences, and land use matters
 - Whether a legal entity will be established to implement the concession
 - Procedures relating to the concession item, its examining, testing, accepting and monitoring of the concession holder
 - Methodology for calculating any compensation payment upon termination of the concession agreement.
 - Others matters mutually agreed by the parties.

Concession Agreements

- Under the concession agreement, the state may provide various forms of financial support, which may be provided until the concession holder no longer operates at a loss.
- Forms of financial support by state:
 - guarantees
 - partial concession financing
 - tax concessions or exemptions pursuant to relevant laws
 - insurance
 - other forms.

Rights and Responsibilities of the Parties

- A concession holder and its shareholder(s) may pledge any of its own property, including shares, the property and rights connected with the concession item, for the purpose of obtaining financing
- Holder has right to propose amendments and compensation for changes in financial/economic circumstances or changes in law
- The concession holder shall be fully liable for losses when operating the concession, unless otherwise provided in the concession agreement

Rights and Responsibilities of the Parties

- Rights of the Sponsor:
 - monitor the operations of the concession holder
 - enforce its security interests over pledged property
 - exercise “step-in” rights
 - other rights provided in the concession agreement and ancillary financing contracts
- Any disputes arising between the parties shall be resolved by contractually-agreed means.

Approved List of Concession Items

- The concession list updated by the government in September 2013 contains over 50 projects.
- Existing projects:
 - Nariinsukhait – Shiveekhuren road project
 - Telmen power plant project
- Approved projects:
 - Altanbulag-Ulaanbaatar-Zamiin Uud highway project
 - Tuul-Songino power plant project

Approved List of Concession Items

Projects by Sector			
Type	Number	Type	Number
Infrastructure	7	Energy	12
Road and transportation	17	Environment	4
Pipelines	2	Education	2
Airport s	2	Health	1
Culture and sport	3		

Projects by Type			
Type	Number	Type	Number
Build-Operate-Transfer	8	Build-Transfer	19
Build-Own-Operate	11	Others	12

Summary: Interaction with “PPP” projects

- Not an exclusive method of implementing a PPP project, but provides a framework for various typical structures, such as BOT
- PPP can be structured contractually outside the scope of the Concession Law
- Affords significant flexibility for contractual arrangements
- Mechanism for facilitating the grant of property rights and security to investors and sponsors

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