



GRATA
INTERNATIONAL

CONCESSIONS: LEGAL FRAMEWORK IN MONGOLIA

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CONTENT

- General
- Concession
- Grant of concession
- Concession agreement
- Government support
- Projects



GENERAL

Applicable laws and regulations:

**STATE POLICY
ON PPP**



2009

**LAW OF
MONGOLIA ON
CONCESSION**

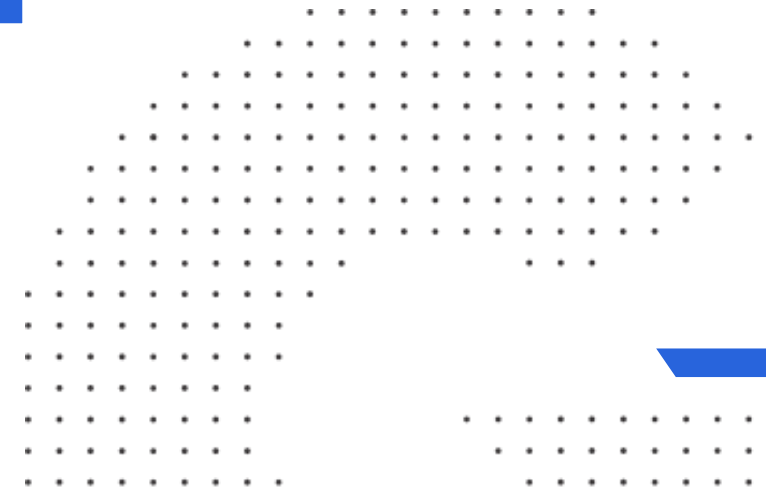


2010

**LAW OF
MONGOLIA ON
BUDGET**



2011



GENERAL

GOVERNMENT POLICY ON PPP:

- Partnership in provision of infrastructure and basic social services to public;
- Partnership in implementation of projects and programs prioritized by the Government;
- Optimization of government participation in the sectors above, enhancement of the quality and accessibility of basic services, and improvement of budget efficiency by having certain public functions performed by private entities.

FORMS OF PPP:

- Provision of government services by private entities;
- Concession.***



CONCESSION

What is concession?

Types

Build-Operate-Transfer

Build-Transfer

Build-Own-Operate

Build-Own-Operate-Transfer

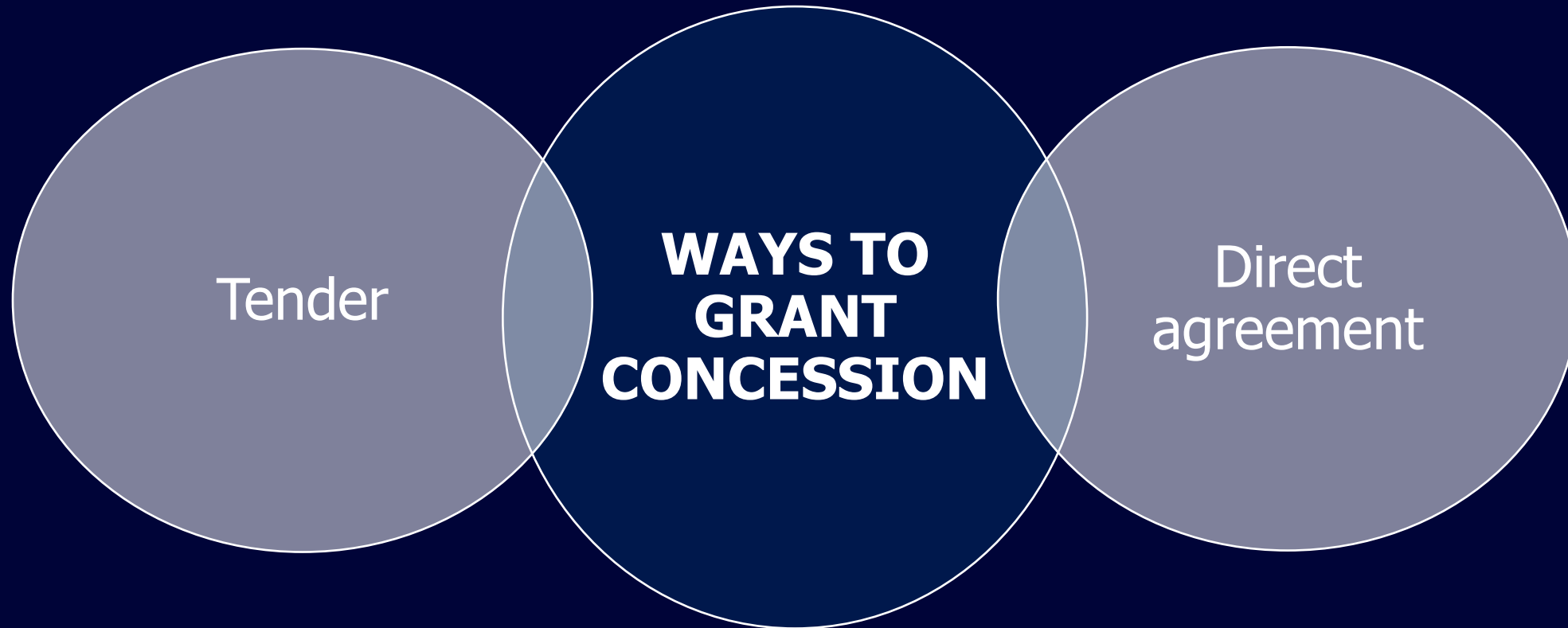
Build-Lease-Transfer

Design-Build-Finance-Operate

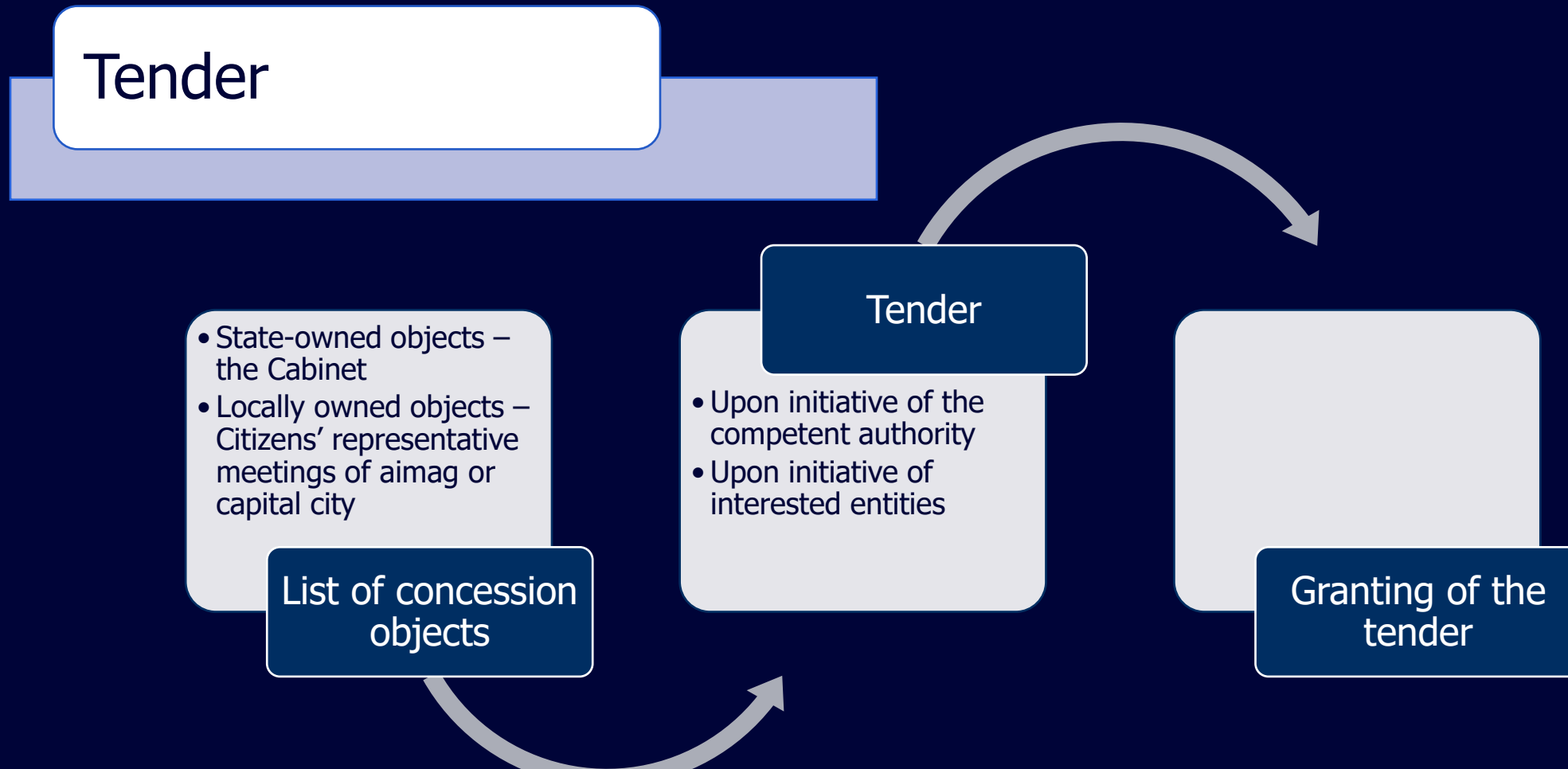
Renovate-Operate-Transfer

- Exclusive right to possess, use, build, and improve state or locally owned properties on the basis of an agreement and in accordance with terms and conditions under the Law on Concessions for the purpose of provision of infrastructure and basic social services to public.

GRANT OF CONCESSION



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Tender

Proposal to conclude a concession agreement



Announcement

Acceptance of applications

Evaluation & Selection of participants

Receipt of proposals from participants

Meetings with participants, if required

Provision of tender docs to participants

Evaluation of proposals & List of selected participants

Negotiation w/selected participants on the agreement terms

Submit the result to a competent authority – final decision

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Tender

- To meet general requirements specifically set for a particular project;
- To be a legal entity, either Mongolian or foreign;
- To have financial capability;
- To have management, professional personnel, technical and technological skills and experiences;
- To comply with requirements for a special license, in case of licensed activities;
- Others.

**Requirements
for
participants**

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Tender

- Proposal for the project;
- Technical and economic feasibility study;

Timeline for submission:
at least 2 months from
public announcement

**Submission of
proposal**

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Tender

Evaluation of the project proposal

- Technical capacity, evaluation on the business activity;
- Quality and accessibility of the service;
- Evaluation of general requirement;
- Total cost of the work or service during the term of the concession, current value;
- Design, cost of construction work, operating cost, total amount and current value of investment;
- State financial aid, its amount and form;
- Funding plan;
- Impact on social and economic development of the country;
- Compliance with environmental protection requirements;
- Others.

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Tender

- To negotiate with participants by chronological order they submitted proposals.



Negotiation

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Tender

- ❑ The right to possess and use the concession object may be limited under the agreement;
- ❑ Specific environmental, hygiene, and labor safety requirements may apply;
- ❑ Use of the concession object may require payment;
- ❑ The project may be supported with state financial aid;
- ❑ Participants are required to deposit certain amount of security payment.



Concerns

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Direct agreement

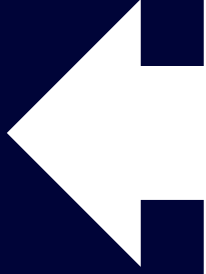
- ❑ Tender is considered as contrary to the national security;
- ❑ Intellectual property rights that are necessary for the implementation of the concession are owned by one or an affiliated person;
- ❑ No bids during the established period have been submitted, or no bids that meet the requirements have been submitted and the competent authority considers it is unlikely that bids would be submitted if the tender is announced again;
- ❑ Concession object is transferred to another entity.



Cases when concessions may be granted without tender

CONCESSION AGREEMENT

- ❑ To agree on whether or not transfer the rights and obligations of the concessionaire to a third party;
- ❑ To agree on ownership rights of tangible and intellectual properties that are created in the course of use of the concession object, and ownership rights of other income and future profits earned in the course of possession and use of the concession object;
- ❑ To agree on the governing law;
- ❑ To agree on whether the right to possess, use, and disposal of the concession object would be transferred to the state or local ownership upon the expiration of the agreement;
- ❑ To agree on whether the concessionaire would be entitled to pledge properties and rights related to the concession object;
- ❑ To agree on whether the concessionaire would be entitled to transfer its controlling parts of the shares by selling or pledge, etc.;
- ❑ To agree on business risks that may arise during implementation of the concession;
- ❑ To agree on risks that may arise out of force majeure events.



**Considerable
when
concluding
the
agreement**

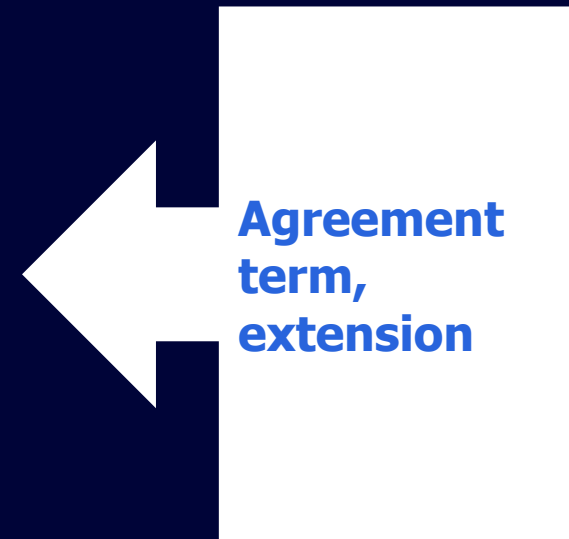
CONCESSION AGREEMENT

THE TERM:

- ❑ The term depends on sector specifics, implementation period of the investment plan, the amount of investment and profit, service life of the concession object, etc.

THE TERM MAY BE EXTENDED UPON THE FOLLOWING GROUNDS:

- ❑ Activities under the concession has been interrupted or postponed due to force majeure events or government decisions;
- ❑ Costs incurred by the concessionaire has been increased due to requests or demands by competent authorities that are not specified in the agreement;
- ❑ Unforeseen situation that may cause financial consequences, or too high tariff or payment has arisen.



GOVERNMENT SUPPORT

NON-FINANCIAL

Before granting of concessions:

- To settle any issues regarding third party land rights in accordance with laws;
- To repair or provide works or services to buildings and equipment related to concession objects on the land.

Immediately after entering into a concession agreement:

- To issue a special license /if required/;
- To resolve issues related to use of the land, if the concession object is a land component (*immovable property*).

FINANCIAL

- To issue a loan guarantee;
 - To fund some portion of the concession;
 - To provide tax and other financial support;
 - To insure;
 - To issue a guarantee for the minimum income to be earned under the concession agreement;
 - To provide compensation if provided by the Law on Concession or the Concession agreement;
 - To pay the difference, if the cost or fee of the work and service to be provided under the concession agreement is set less than the actual cost (*until the concessionaire becomes capable of operating without financial losses*);
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PROJECTS

- ❑ List of concession objects (Government decree No 317, 2013);
- ❑ Law on Budget – Annually;
- ❑ Government procurement agency of Mongolia - <https://www.tender.gov.mn/mn/index/>



**Source of
information
on
concession
projects**

PROJECTS

Announced projects

| | Projects | Type of concession | Financial aid, guarantee | Announced date | Deadline |
|--|---------------------------------|-------------------------------|--------------------------|----------------|--------------|
| | Railway between Huut-Choibalsan | Design-build-operate-transfer | No | 20 Oct, 2021 | 20 Dec, 2021 |
| | Railway between Huut-Bichigt | | | | |
| | Railway between Zuunbayan-Hangi | | | | |



THANK YOU!

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QUESTIONS?