

Amendments to legislation in the field of highways construction and operation

On 25 March 2018, the Law of Ukraine On Amendments to Several Legislative Acts of Ukraine in the Field of Highways Construction and Operation, passed on 27 February 2018 (hereinafter the Law), entered into force. The amendments aim at improving the legal framework for the construction and operation of public highways of national importance under the concession model.

It should be noted that until now, the existing legislation has had some problems which the adopted law is set to solve, namely:

- there were insufficient guarantees to protect private investors;
- there was no clear delimitation of powers between the state authorities authorized to take decisions in connection with the determination of concession objects and the conduct of concession tenders.

Certain amendments having been made to the Laws of Ukraine On the Concessions, On the Concessions for Highways Construction and Operation, On the Highways, On the Sources of Financing of the Ukrainian Road Industry, On the Alienation of Privately Owned Land Plots or Other Real Estate Located on These Land Plots to Be Taken for Public Needs or for Reasons of Public Necessity, it is provided that:

- concessions can be granted exclusively for the construction and operation of public highways of national importance. However, the public toll roads remaining state-owned, may not be privatised, and no actions that could result in the alienation of the roads owned by the state can be taken in relation to these;
- following the decision on the construction and operation of roads for which a concession can be granted, the executive authorities may not take any actions in relation to the use of land plots designated for the construction and operation of these roads and/or transfer of title to them to individuals or legal entities;
- resolutions on conducting concession tenders shall be adopted by the Cabinet of Ministers of Ukraine; these shall specify, in particular, the technical parameters of the roads, the basic financial indicators of the highway concession, the maximum duration for which the concession is granted, the maximum compensation for the concessionaire and an alternative toll-free route. As an alternative, toll-free passage of motor vehicles along the roads shall be ensured during the entire term of operation of the toll road;
- the Cabinet of Ministers of Ukraine determines the maximum toll price for a single trip on the concession toll road to be charged, taking into account the inflation rate;
- the conditions under which the concession grantor has to pay compensation to the concessionaire;
- roads or road sections will be declared toll roads only if they are substantially improved and an alternative toll-free route is provided for vehicles;

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- in case only a part of the land plot is alienated for the purpose of construction, repair, reconstruction and maintenance of roads, bridges, elevated highways and objects necessary for their operation, the possibility of using the remaining land plot shall be determined by the owner and the entire land plot shall be sold, should the owner so desire;
- resolutions of the competent executive bodies or local self-government authorities on the acquisition of land plots or other real estate located on these land plots for the purpose of constructing, repairing, reconstructing and maintaining roads, bridges, elevated highways and objects necessary for their operation, shall be valid for an unlimited period of time.

The compensation to the concessionaire is provided by law under the following conditions:

- the right to compensation for a part of the revenue not received in full amount, the amount of which shall be stipulated in the concession agreement;
- the concessionaire is entitled to compensation only if the annual revenue generated by the concessionaire from the operation of the concession object in the respective reporting year is less than the planned annual revenue;
- the compensation amount is based on the results of the reporting year and may not exceed 15 percent of the planned revenue for the respective year in accordance with the contract.

It is planned that the implementation of the Law will contribute to promoting investment in the transport industry in particular and the country in general in the field of construction and operation of public roads of national importance, which should ensure the maintenance and timely repair of these roads and the improvement of their technical condition.