Public Works Concession Law and Regulations
Note should be taken that this document is not an official text but a translation of the Public Works Concession Law and its Regulations
Number 900.- Santiago, October 31, 1996.-

Whereas: as provided under article 32, N° 8, of the Political Constitution of the Republic of Chile, and the power conferred upon me pursuant to Article 5 of Law N° 19.460, of July 13, 1996.

I Decree that:
1. Decree N° 596, of August 23, 1996, of which the Office of the Comptroller has not made a record thereof, be repealed.

2. The Revised, Coordinated and Systematized Text of MOP Statutory Decree N° 164, of 1991, Public Works Concession Law, will be as follows:

CHAPTER I

General Provisions

Article 1°.- The execution, repair, maintenance or exploitation of state-owned public works, through the system established in Ministry of Public Works Supreme Decree N° 294, Article 87, of 1985, bids and concessions to be awarded, either regarding the exploitation of concessions of public words and services; of the use and usufruct on national assets or state-owned properties, destined to develop service areas as agreed upon, the up fitting or supply of related services, will be governed by the regulations established in this statutory decree, its regulations and the bidding conditions regulating each particular contract prepared by the Ministry of Public Works to said effect.

The concessions granted will contemplate the concession holder’s obligation, the for duration of the concession, to meet service levels, technical standards, or both, as established in the appropriate bidding conditions, for the different stages and conditions of the concession.

Article 1 bis.- There will be a consulting Concessions Commission made up of:

1) The Minister of Public Works, who will preside over it;
2) An advisor, who will be freely appointed and removed by the Minister of Public Works;
3) Four advisors: one of them being a faculty member of a School of Civil Engineering; one being a faculty member of the a School of Economics or of Economics and Administration; another being a member of a School of Law, and the other a member of a School of Architecture with a background of specialization on urbanism. All of the above from universities having accreditations in effect for at least four years, as provided under Law Nº 20.129. At least two of these faculty members shall be from universities having their headquarters in regions other than the Metropolitan one. Their appointment will be freely made by the Minister of Public Works.

This Commission shall inform on the kind of structure that is to be developed under this law, of the projects and modalities of the concession system, considering, among other antecedents, and of regional development plans and municipal, inter-municipal and metropolitan zoning plans, if any, as well as of the social evaluation approved by the appropriate planning entity.

This Commission will hear the Ministries assigning works to be operated under concession as regards issues being relevant to them. In addition, the Commission will require the opinion of other Ministers and government authorities as well as of the Government administration, if appropriate, depending on the nature of the matter under consideration, in order to assist in the coordination that shall exist among the public entities involved in the different kinds of concessions.
The aforementioned authorities shall attend meetings as required by the Commission, either in person or through a representative specially appointed and empowered to that effect.

The commission members appointed as provided under numerals 2 and 3 of this article will be subject to the regulations governing administrative disqualifications and incompatibilities, as provided under Organic Law Nº 18.575 Articles 54, 55, and 56, on General Conditions of the Government Administration. Should any of the commission members appointed in accordance with this paragraph, during his/her tenure, incur in any of the aforementioned disqualifying circumstances, they will be immediately removed.

Except for the Minister of Public Works, the Commission members will be entitled to be paid a monthly fee of 30 Unidades Tributarias Mensuales (Monthly Inflation Units). In addition, they will be paid 30 Unidades Tributarias Mensuales for their attending each Commission meeting. However, the maximum total fee they will be able to be paid for both items will be 90 Unidades Tributarias Mensuales each calendar month.

The Ministry of Public Works shall require the Concessions Commission’ previous report as for the following cases:

a) Declare private projects of a public interest;

b) Determine that a private project be executed through a mechanism other than the concession one, pursuant to Article 2;

c) Analyze the public projects to be executed through the concession system regulated by this law;

d) Establish the exception contained in Article 19, fifth paragraph, final part;

e) Subscribe new investments and works in exceptional conditions as provided under Article 20 bis, and

f) Review the concession system modalities of the projects being subjected to public bids, having to consider the social evaluation approved by the appropriate planning entity.

Notwithstanding the above, the Ministry of Public Works may require a report by the Concessions Commission of the following matters:

a) Once elapsed the concession period, analyze the origin of its new bid;

b) Modify the characteristics of the works and services contracted in accordance with Article 19;

c) Modify the characteristics of the works and services contracted in accordance with Article 20, in which case the Concessions Commission’s report shall refer to the costs of enlargements and their compensation;

d) Having a gross non-compliance been verified in accordance with Article 28, analyze the convenience of a new bid and its conditions, for the remainder of the period or whether it continues to exist as a state-owned public works;

e) Early terminate the concession pursuant to Article 28 ter, and

f) Any other matter that the Minister of Public Works may submit to the Concessions Commission’s consideration.

The Concessions Commission’s reports will be justified and shall be delivered within the term period as set by the Minister of Public Works, period that shall not be longer than 60 days as of the date of requirement thereof. Should the respective report not been deliver after said period, the Ministry of Public Works will proceed without the consulting opinion of the Concessions Commission.

This law’s regulations will establish the rules relating to summoning the Concessions Commission, the required quorum for it to convene, and to adopting resolutions and all other regulations related to its operation.
CHAPTER II
Preparatory Proceedings

Article 2.- The Ministry of Public Works will be the competent entity that will carry out any preparatory proceedings as required, in accordance with this statutory decree and supplementary regulations thereof.

Any individual or legal entity may apply to the Ministry for the execution of public works through the concession system. Evaluation of the applications will be made carried out by the Ministry of Public Works, in an informed manner, within a one-year period as filing thereof. The regulations will establish the criteria for evaluating these applications.

Notwithstanding the above, evaluation of these applications shall consider compliance with the provisions contained in regional urban development plans and in municipal, inter-municipal and metropolitan zoning plans, if any.

Only at the request of the applicant, as filed upon submitting an idea for a private initiative idea, and only in large scale or technically complex projects, or projects involving a very large initial investment, the Ministry may extend, up to two years in total, the period for the development of the studies of said proposal, as of the filing of the original one. In said event, the Ministry will be expressly empowered to set sub-stages for the submittal of these studies, at which end it may dismiss the idea proposed or define new studies. Notwithstanding the above, the Ministry of Public Works may require the jointly financing the necessary studies, as provided in Article 6 bis, in case it decides to use the pre-evaluation mechanism.

The applicant shall make its presentation as indicated in the regulations.

The works whose execution under concession is approved shall be bid within one year as of approval of the application.

The applicant that has originated the bid will have the right to a bonus in the evaluation of the bid it submits as a result of the concession bidding, whose consideration will be specified in the Regulation and in the Bidding Conditions. Further, the Ministry may offer the applicant reimbursement or all or part of the cost of the studies it has to carry out for its proposal. This reimbursement may be directly made by the Ministry of Public Works if the project submitted is not bid, or if the bid is not carried out for lack of awarding or for any other reason in one or two calls, or it is bid through a system different from the concession one. Should it be bid through concession, this reimbursement will be borne by the concession awardee, in the manner, modality and period as established in the Bidding Conditions. The Ministry will provide the applicant with a certificate that will single out the awardee and the amount of the reimbursement will be paid, certificate that will have executive value for all legal purposes. In case the applicant is awarded the concession, the manner, modality and periods the reimbursement will be subject to will be set forth by the Ministry in the corresponding concession contract.

The projects to be executed through the concession system shall be supported, as an internal document of the Administration, and prior to the call for a bid, by the report produced by the national planning entity, which shall be based on a technical-economic evaluation establishing its profitability.

Article 3.- The contract awarding, and the granting of the appropriate concession or concessions, will be preceded by the following proceedings, notwithstanding what is provided in Law N° 15.840.

a) Ministry of Public Works’ approval of the bidding conditions, and
b) Selection of the bid awardee through the mechanisms provided in this statutory decree and supplementary regulations thereof.
CHAPTER III

Bids

Concession granting and Contract Delivery

Article 4.- Bids may be national or international, and both individuals and legal entities meeting the requirements and demands as set by the Regulations may participate in them.

Article 5.- Repealed.

Article 6.- The seriousness of the proposal shall be guaranteed in the form, amount and conditions as established by either the Regulations or the Administrative Conditions for an interested party to participate in the public bid Article 4 of this statutory decree refers to.

Article 6 bis.- The Ministry of Public Works may call for the pre-evaluation of bidders in order to select, through a process comprising one or more stages, the interested parties complying with any uniform, objective and reasonable requirements established in the appropriate pre-evaluation conditions, which may only refer to legal aspects, financial or technical capacity, expertise, results in other works assigned in the past, historic compliance with labor and social security regulations, and responsibility of the interested party or of related parties thereof.

Further, when relating to public or private projects being multi-functional and implying a high degree of complexity, such as jails, hospitals, urban highways and the like, the pre-evaluation conditions may demand other objective and necessary requirements to participate in projects of this kind, as long as they are not arbitrary elements and safeguard equal treatment among those participating in this process. In addition, the pre-evaluation conditions may contemplate a procedure and a term period for short-listed candidates to propose to the Ministry of Public Works any improvements, additions or adjustments they may deemed as convenient to include in the final project design. During said procedure, within the term period established in the pre-evaluation conditions, the short-listed parties and the Ministry of Public Works may submit to each other questions and requests for clarifications. The Ministry of Public Works may, to this effect, require additional studies, which shall be governed as provided in the paragraph below. With all these antecedents, the Ministry of Public Works may execute and harmonize the project’s service levels and technical standards. The Ministry of Public Works, within the term period as set in the pre-evaluation conditions, will communicate the additional contents or adjustments that are to be incorporated into the bidding conditions.

The pre-evaluation conditions may establish that the short-listed parties will finance, on an equal basis, the studies that Ministry of Public Works may deem as necessary for preparing the bidding conditions, individualizing the studies and cost thereof. The making of such studies shall be assigned by the Ministry of Public Works to independent entities specialized in the appropriate matter.

The Ministry of Public Works will prepare the bidding conditions within the term period as established in the pre-evaluation conditions, and will select the awardee as provided under Article 7 and its supplementary regulations.

The bid’s awardee shall reimburse to the bidders the amount contributed by them for financing the studies that would have been assigned as provided in the third paragraph of this article, in the manner, modality and term period as established in the pre-evaluation conditions. Said reimbursement will be made by Ministry of Public Works should the awardee abandon the bid after the completion of the pre-evaluation stage or should the bid be declared void for substantiated reasons.

Article 7.- The bid for the works that is the subject matter of the concession will be decided after evaluating the technically acceptable bids, according to the particular characteristics of the works, and based on one or more of the following factors, depending on the evaluation system the Ministry of Public Works may establish in the Bidding conditions:
a) rate structure,
b) Concession period,
c) State subsidy to the bidder,
d) payments to the Government as offered by the bidder, should the former grant assets or rights to be used in the concession,
e) revenues guaranteed by the Government,
f) degree of commitment that the bidder undertakes during the construction or exploitation of the works, such as acts of god or force majeure,
g) rate adjustment formula and its revision system,
h) total or partial score in the technical evaluation, as established in the bidding conditions,
i) opposing party’s offer to reduce user rates, to reduce the concession or special payments to the State when profitability on equity or assets, as defined in the bidding conditions or by the opposing party, exceeds a preset maximum percentage. In any event, this offer may only be made in those bids where the State guarantees revenues as provided in letter e) above,
j) evaluation of other useful and necessary additional services,
k) environmental and ecological considerations, such as noise, landscape beauty in the case of road layout, plating of trees on the strips of public roads under concession, as evaluated by experts and their cost in relation to the project’s total price having been evaluated.

In addition, consideration on compliance with provisions contained in regional urban development plans municipal, inter-municipal and metropolitan zoning plans, and

l) total revenues from the concession as estimated as provided in the bidding conditions. This bidding factor may not be used in conjunction with the factors listed in letters a), b) or i) above.

The definition of these factors and their application to award the concession will be established by the Ministry of Public Works in the Bidding Conditions. Said conditions may contemplate one or more of the aforementioned factors as part of the concession’s economic regime. Likewise, the conditions shall establish whether the investment and construction will be carried out in a single stage or in several stages, during the validity of the contract, depending on compliance with the previously established service levels. The investments and construction activities to be made after commencement of the partial or total exploitation of the works, may be subject to one or several term periods, or to compliance with one or more conditions, jointly or separately. The term periods and conditions shall be clearly indicated in the conditions.

However, if the bidding conditions contemplate, as part of the economic regime of the concession contract, the factor contemplated in letter d) of the first paragraph of this article, and this is not a bidding factor, payments shall be equivalent to the economic value of the respective assets or rights. This will be determined through expert analysis, as previously retained by the Ministry.

A bidding factor will only be that as contemplated in letter d) of the first paragraph of this article, should the service provided by the works under concession also be supplied in competitive conditions, in the market that, for purposes hereof, is deemed as relevant. The Ministry will appropriately state this condition in the bidding conditions.

On the other hand, in bids originating from a private initiative, the factor contemplated in letter h) of the mentioned paragraph may only be considered to settle any draw between economically identical offers.

The rates bid, with their appropriate adjustments, will be regarded as maximum rates, reason
by which the concession holder will be able to lower them.

The Director of the Public Works Department, with the authorization of the Minister of Public Works, may require from bidders, until before opening of the economic bids, clarifications, amendments to the format or omissions, and in the submittal of antecedents, in order for them to clarify and specify the correct meaning and scope of the offer, thus preventing any of the bids from being disqualified due to formal aspects of their technical evaluation.

**Article 8.-** Contract awarding Article 1 refers to will be resolved through a Ministry of Public Works supreme decree, which shall, in addition, bear the signature of the Ministry of Finance.

The contract will be executed once the awarding supreme decree has been published in the Official Gazette.

**Article 9.-** The awardee shall:

a) Organize, within the term period and as provided in the Regulations or Administrative Conditions, a Chilean company or agency of a foreign company, with which the contract will be entered into and which objective will be the execution, conservation and exploitation of state-owned public works through the system established in Article 87 of Ministry of Public Works supreme decree No 294, of 1984.

b) Subscribe, before a notary public, three transcriptions of the concession awarding supreme decree, as a sign of acceptance of the content thereof, one of their counterparts having to be executed into a public deed in the presence of same notary, within the period as set in the bidding conditions, as of its publication in the Official Gazette. One of the aforementioned transcriptions shall be kept by the Concessions Section of the Public Works Department, and the other by the Legal Department of the Ministry of Public Works. The transcriptions executed as provided will serve as evidence as regards any individual, and will have executive value, without requiring any previous acknowledgment.

Said term periods will be final and may not be shorter than sixty days. Non-compliance with the obligations indicated in letters a) and b) will be stated through a Ministry of Public Works supreme decree annulling said assignment. In said case, the Ministry may call for a new public bid or, through a private bidding mechanism, call the other parties that participated in the annulled bid to improve their offers within a 15-day period.

Commencement of the concession contract period will be governed as provided in Article 25 of this law.

**Article 10.-** The concession contract will leave on record if other benefits to be included as a compensation for services supplied, as established in the conditions, such as tourist service concessions, self-service shops, advertising, and other.

In cases where, as a result of the execution of works, the concession holder would recover state-owned riverside land that was previously underwater, the Ministry may offer as payment the delivery of the part of the state-owned riverside land thus recovered or other pre-existing, jointly or alternatively to the other benefits as established by this law.

**Article 11.-** The concession holder will receive as a only compensation for the services it renders, the agreed upon price, rate or subsidy and all other additional benefits as expressly stipulated. The concession holder will not be obligated to set exemptions in favor of any user.

**Article 12.-** The concession holder shall furnish a definite guarantee for the construction stage, in the form and amount as established in the bidding conditions.

**Article 13.-** Prior to the total or partial commissioning of the works, likely to be exploited independently, the concession holder shall furnish a guarantee for the exploitation in the form and amount as established in the bidding conditions.
Article 14.- The guarantees this statutory decree refers to shall be sufficient, being either collateral or personal. Their nature and amount will be determined in the bidding conditions.

CHAPTER IV

Purchase, Expropriation and Limitations of Private Property

Article 15.- The assets and rights purchased by the concession holder in any capacity, and being subject to the concession, shall not be sold separately from it, nor mortgaged or subjected to encumbrances of any kind, without the consent of the Ministry of Public Works, and will become state property upon extinction of the concession.

Should assets and rights have to be expropriated for the construction of the works and its supplementary services; same will take place in virtue of the declaration of public utility as established in Article 105 of Ministry of Public Works supreme decree Nº294, of 1984, and in accordance with the procedure established in statutory decree Nº2.186, of 1978.

Any disbursements, expenses or costs arising from the proceedings or contracts this article refers to will be borne by the concession holder. However, the State may totally or partially pay for the expropriations if so established in the bidding conditions.

Article 16.- Each time should it be indispensable for the execution of works under concession to modify existing rights of passage, the concession holder shall reestablish them, at its own cost, in the manner and within the term periods as set forth by the Ministry of Public Works in the bidding conditions.

CHAPTER V

Powers of the Administration

Article 17.- The commissioning of the works will be authorized by the Ministry of Public Works after approval of its conformity with the projects and all other approved technical specifications. The works may be executed partially, provided these portions constitute, by themselves, units likely to be exploited independently, and in conditions as determined in the appropriate bidding conditions.

Article 18.- During both the construction and the exploitation stages, the Ministry of Public Works may impose on any concession holder failing to comply with its obligations, the fines established in the bidding conditions.

Article 19.- The concession holder may request compensation in case of any supervening action by any authority with public power if so justified, only when, copulatively, it meets the following requirements: the action takes place after the concession has been awarded; it could not be foreseen upon its awarding; is not a legal or administrative regulation issued with general effects, exceeding the scope of the appropriate concession's industry, and significantly altering the contract's economic regime.

The concession holder’s investment to meet the service level and technical standards established in the bidding conditions and in the concession contract, will not be likely to any more economic compensations than those considered in said instruments, except for exceptional cases where the bidding conditions had so provided.

The Ministry of Public Works may modify the characteristics of the works and services contracted in order to increase the service levels and technical standards set in the bidding conditions, or for other duly substantiated reasons of public interest. As a result thereof, the Ministry shall economically compensate the concession holder, when appropriate, for any additional costs so incurred by the latter.

The bidding conditions will indicate the maximum amount of the investment the concession holder shall make in virtue of the provisions contained in the foregoing paragraph, as well as the
maximum term period within which the Ministry may order the modification of the works under concession. However, the maximum amount of these new investments shall not exceed fifteen percent of the official budget for the works, nor will it be required, at a later date, to comply with three fourths of the concession’s total term period, except in cases as expressly agreed upon in writing with the concession holding company.

Should the amount of the additional investment, during the exploitation stage, exceed five percent of the official budget for the works or be an amount above one hundred thousand unidades de fomento, its execution shall be bid by the concession holder, under the supervision of the Ministry of Public Works, in the manner as provided in the regulations, in which case, the value of the concession holders’ investments that will be compensated will be the one resulting from the bid, which will be added an additional amount as administrative costs on the contract, amount that will be established in the bidding conditions. The Ministry will have a 60-day period to approve or submit its objections to the appropriate conditions, as of reception thereof. Once this period has elapsed without the Ministry’s having expressed its position, the conditions will be deemed as accepted. However, for substantiated reasons, as contained in the bidding conditions, after the report of the Concessions Commission, an exception to the obligation to bid the additional works in the aforementioned conditions may be made.

The economic compensations the preceding paragraphs refer to shall be expressed in the following factors: subsidies provided by the State, voluntary payment made directly to the concession holder by third parties interested in the development of the works, modification to the current amount of the concession’ total revenues, change in the concession term period, modification to the rates or any other factor of the concession’s agreed upon economic regime. One or several of these factors may be use simultaneously.

In case of the third, fourth and fifth paragraphs of this article, the determination of the compensations and the adjustment to the parameters as mentioned in the foregoing paragraph, shall always be done in such a way to get the present net value of the additional project to equal zero, all that considering the applicable discount rate and the economic effect the additional project may have on the original project, including the higher risk that may be added thereto. The applicable discount rate will be determined based on the average interest rate in force for debt instruments consisting of the investment period, adjusted by the additional projects relevant risk and by that corresponding to the indemnifying mechanisms applied. In case if any discrepancies on the applicable discount rate, the parties may resort to the entities indicated in Articles 36 and 36 bis. To this effect, additional project will be understood as the one directly deriving from the modification to the characteristics of the works and services contracted.

Any modification to the original contract to include additional works, separately or jointly exceeding five percent of the official budget for the works, and provided such percentage corresponds to an amount in the excess of fifty thousand unidades de fomento, shall be accompanied by a report prepared by the appropriate Department of the Ministry of Public Works on the impact of the modification on the levels of service as originally committed, on the valuation of the investments to be made, and on the observance of the proportionality and equivalence of the mutual economic benefits and of the rate structures and levels as provided in the concession contract.

Any modifications incorporated into the concession in virtue of what is provided in this article shall be made through a substantiated supreme decree of the Ministry of Public Works, which shall bear, in addition, the signature of the Minister of Finance.

**Article 20.-** The Ministry of Public Works and the concession holder may agree to modify the characteristics of the works and services contracted, in order to raise the service levels and technical standards established in the bidding conditions, by subscribing the appropriate agreement supplementing the concession contract.

The bidding conditions will establish the maximum amount of the investment that the Ministry of Public Works and the concession holder may set upon mutual agreement, as well as the maximum
period within which modifications to the works under concession may be executed. However, the maximum amount of these new investments, at the construction stage, may not exceed twenty percent of the official budget for the works. In all, during the exploitation stage, when the value of these investments would exceed five percent of the official budget for the works or were in excess of fifty thousand unidades de fomento, its execution will be carried out as provided in third paragraph et seq of the foregoing article. This restriction will not operate on new investments being fully financed by the concession holder and giving place to no compensations.

Any compensation being agreed upon in favor of the concession holder will be fully governed by the provisions contained in Article 19, sixth and seventh paragraphs.

Approval of the respective supplementary agreement will be given through a substantiated Ministry of Public Works supreme decree, which shall also bear the signature of the Minister of Finance, after a report prepared by the respective Department on the impact of the modification on the service levels as originally committed, on the valuation of the investments to be made, and on the observance of the proportionality of the mutual economic benefits and the rate structure and levels as provided in the concession contract.

**Article 20 bis.**—Exceptionally, during the construction stage, and for duly substantiated reasons of public interest, whenever works under concession require any redesign or supplementation so that the total additional investments required during said stage, including costs of maintenance, operation and conservation, exceed twenty-five percent of the official budget for the works, such additional investments and works modifications may be contracted by the Ministry of Public Works with the concession holder, once the following conditions have been met:

1) That the facts and circumstances giving place to the need of redesigning or supplementing arise after the awarding of the concession, and could not be foreseen upon its awarding;
2) That for reasons regarding expertise, behavior, performance, social and environmental impacts, management economies or economies of scale, awarding the new works to the original concession holder is more efficient;
3) That the design, technical characteristics and service levels that shall the works subject to redesigning or supplementing have been specifically agreed upon;
4) That the compensations for execution of the works subject to a redesign or supplementation have been agreed upon, and that said compensations are fully regulated as provided in Article 19 sixth and seventh paragraphs, and
5) That the Technical Panel, as established in Article 36, explicitly pronounces favorably on the agreement between the Ministry of Public Works and the concession holder, based on compliance with requirements indicated in numerals 1), 2), and 4) of this article, and on the differences to arise in case what is provided in Article 28 ter applies. However, the Technical Panel may make recommendations prior to the final pronouncement.

The above requirements met, all the antecedents shall be put at the Concessions Commission’s disposal, for it to inform the Ministry of Public Works, on the convenience of agreeing on new investments and works in the aforementioned conditions.

Any modifications incorporated into the concession in accordance with this article will be made through a substantiated Ministry of Public Works supreme decree, which shall also bear the signature of the Minister of Finance.

**CHAPTER VI**

**Concession holder’s rights and obligations**

**Article 21.**—The concession holder will performed the functions incorporated into the concession contract in accordance with legal norms, especially with those referring to its relationship with the Ministry, to the regulations on works construction and exploitation and
rate collection, its rate restatement system and payments with the State, that comprise the contract’s economic regime. Likewise, it shall comply with regulations governing the activity granted under concession.

Instead, as for its rights and economic obligations with third parties, the concession holding company will be governed by the private law regulations and, in general, it may carry out any lawful operation without having to obtain the Ministry of Public Works’ previous authorization, with the only exceptions expressly regulated by this law and those as provided in the contract. Thus, among others, the concession holder may pledge the contract or pledge future cash flows and revenues from the concession to guarantee obligations deriving from said concession, freely assign or pledge any payment offered by the State as contemplated in the contract, without the need of any previous authorization from the Ministry of Public Works.

In all, the concession holding companies shall, on a monthly basis, submit to the Ministry of Public Works information on payments made to the contractors. Sale obligation will apply on contractors in connection with subcontractors. This information shall be published on the webpage of the Ministry of Public Works and updated on a monthly basis.

From the execution of the contract, the concession holder may transfer the concession or the rights of the concession holding company. The Ministry of Public Works will authorize said transfer provided that it fulfills what is provided in the paragraph below. Otherwise, it shall deny said authorization through a substantiated resolution. Should, after sixty days as of the request for authorization, the Ministry have not expressed any decision, the request will be deemed as granted.

The voluntary or forced assignment of the concession shall be total, comprising all the rights and obligations in said contract and may only be assigned to an individual or a legal entity, or a group thereof, meeting the requirements to be a bidder, and not being subject to disabilities and complying with what is provided in Article 9 hereof.

The Ministry will always authorize the transfers to a pledgee, when these transfers are the result of the execution of obligations guaranteed with the pledge that is established in Article 43 hereof, in favor of any financial institution being supervised by the Superintendency of Banks and Financial Institutions, by the Superintendency of Securities and Insurance, or by the Investment Funds authority, regulated by Law N° 18.815, or by the Pension Fund Managers authority as established in accordance with the regulations contained in decree law N° 3500, of 1980, and, certainly, in favor of any other individual or legal entity meeting the requirements established in the bidding conditions. Should the pledgee fail to meet said requirements, it shall have a qualified operator in the term periods and terms as established in the bidding conditions.

**Article 22°.-** The legal regime of the concession, during the works construction stage, will be as follows:

1.- The concession holder will have the rights and obligations of the expropriation beneficiary limited to what is needed to comply with the concession contract.

2.- The works shall be executed at the concession holder’s full risk, having to make as disbursements as required until their total completion, whether arising due to an act of god, force majeure, or for any other reason. The State will not be liable for any consequences arising from the contracts the concession holder may enter into with constructors or suppliers. Nevertheless, the State will pay for any damages resulting for any act of god or force majeure, if so established in the bidding conditions.

Notwithstanding the above, the concession holding company’s contractors shall be registered in the Contractors Registry of the Ministry of Public Works. No individuals being in the situation as indicated in Article 28 bis hereof will not be able to be contractors or subcontractors of a concession holder. Neither contractors nor subcontractors may start up any works without their appropriate contracts being delivered, the concession holder having to have registered a copy thereof in the Ministry.
Any controversies arising between the concession holder and the contractors or between the latter and their subcontractors, as a result of the application, interpretation or execution of the contracts entered into between one another in connection with the execution of works, may be known and settled by arbitrators that will determine their procedural norms, always guaranteeing a fair and rational proceeding or due process, and who whose final resolutions will be in strict accordance with the law. In such a case, the arbitrators may be appointed, upon mutual agreement between the parties, from among those being members of a mediation, conciliation and arbitration entity existing in the country or, instead, the assignment will be assumed by someone appointed as provided under Article 232 of the Organic Court Code.

3.- Whenever the delay in compliance with partial or total term period is attributed to the State, the concession holder will be granted an extension equal to the one of the obstruction or stoppage, notwithstanding any applicable compensation.

4.- Waters as well as mines or materials found as a result of the execution of public works, will not be included in the concession, and their use will be governed by the appropriate regulations, and

5.- The construction of the works shall not interrupt existing road traffic. Should road traffic be indispensable, the concession holder shall provide an adequate provisional road alternatives.

**Article 23.** The legal regime during the exploitation stage will be as follows:

1.- The concession holder shall keep the works, accesses thereto, signage and utilities in regular operational conditions, and

2.- The continuity of the service provision will especially force it to:

   a) Provide it in fully regular conditions, eliminating any causes giving place to problems, troubles, inconveniences or dangers to works users or, unless the adoption of measures altering regular operation of the service are due to safety causes or of urgent repairs, and

   b) Provide it, on a continuous basis, except for exceptional situations arising from acts of god or force majeure, whose effects will be evaluated by the contracting parties, agreeing of any measures as required to achieve the fastest and most efficient service resumption. The cost of the works will be agreed by the contracting parties and, in the absence of said agreement, the parties may submit the matter to arbitration, which will determine, as indicated in the bidding conditions, the qualification, measures or evaluation, as the case may be. The parties will agree to pay the price as established in the concession contract.

**Article 24.** The concession holder shall watch over the perfect enforcement of regulations and rules on the use and conservation of the works under concession.

**CHAPTER VII**

**Durations, Suspension and Extinction of the Concession**

**Article 25.** The concessions this statutory decree refers to will remain in force as determined in the awarding decree, and under no circumstances may it remain in force for over fifty years.

The term period will be computed as provided in the bidding conditions. Its commencement, in any way, may be prior to the date of publication of the award decree in the Official Gazette.

Once expired the concessions’ period, the works shall again be granted by the Ministry of Public Works under concession for its conservation, repair, enlargement or exploitation, isolated, divided or jointly incorporated into other works. The appropriate bid shall take place will in advance in order not to affect the continuity of both concessions.
Ministry of Public Works

Should the works under concession have ceased to be used or, for technical reasons, their operation under a concession system becomes inapplicable, inconvenient or harmful to the State of Chile, the President of the Republic may so declare through a substantiated decree, and compliance with the preceding paragraph being exempted.

**Article 26.-** The concession will be temporarily suspended:

1.- In the event of external war, domestic commotion or force majeure preventing the provision of the service;

2.- In the event of partial destruction of the works or elements thereof, so that their use becomes unviable for a period of time, and

3.- For any other cause as established in the bidding conditions.

**Article 27.-** The concession will terminate due to the following causes:

1.- Expiration of the term period at which it was granted, including modifications thereto, if applicable,

2.- Mutual agreement between the Ministry of Public Works and the concession holder. The Ministry may only be a party to the agreement in the creditors having furnished a pledge in their favor as provided in Article 43 would give, in writing, their consent to release it, or would previously accept, in writing, said early termination;

3.- Concession holder’s gross non-compliance with its obligations;

4.- Those as provided in the bidding conditions.

**Article 28.-** The declaration of gross non-compliance with the concession contract shall be requested based on any of the causes established in the appropriate contract or bidding conditions, by the Ministry of Public Works to the Arbitration Commission as established in Article 36 bis.

Once the Arbitration Commission has declared the gross non-compliance with the contract, the Ministry of Public Works will proceed to appoint a receiver, who will only hold the necessary powers to watch over compliance with the concession contract, and will be subject to the regulations established in Article 207, numbers 1 to 5, Book IV, of the Commercial Code. This receiver will liable for slight negligence.

Within a 120-day period as of the declaration of gross non-compliance, the Ministry of Public Works, after the Ministry of Finance’s approval, will determine whether the concession contract is to be awarded through a public bid for the remainder of its period.

The bidding process, should it be adopted by it, shall take place within 90 days as of the decision to the contract bid, and the amount collected as a result thereof will be for the original concession holder, notwithstanding what is provided in the sixth paragraph of this article. The bidding conditions shall establish the requirements the new concession holder is to meet, which, in any way, may be more stringent than those imposed on the original concession holder, save that, through pronouncement by the Concessions Commission, and in light of new antecedents, said requirements prove to be insufficient to undertake the works. In the first call for the bid, the minimum bid may not be below two thirds of the debt assumed by the concession holder. In the absence of interested parties, a second bid will take place, without any minimum offer, within a 90 days as of the first bid was declared void.

Should not publicly bidding the concession contract for the remainder of the term period, the Ministry of Public Works, notwithstanding what is indicated in the sixth paragraph of this article, shall pay the concession holder the value of the necessary investments for providing the service that have been effectively made by the concession holder, and that have not been amortized, plus financial costs prevailing in the market as regards such investments, as duly evidenced, including adjustments and interest accrued at effective payment thereof. The amount of the payment will be set upon agreement between the Ministry of Public Works and the concession holder, after approval.
by the Ministry of Finance, within 60 days following the date at which not re-bidding the contract was decided. In the absence of a total or partial agreement, determination of the dispute amount of payment will be submitted to the opinion of the Technical Panel established in Article 36, within 10 days following expiration of the term period as established to set the amount upon mutual agreement. Should the recommendation be dismissed by the parties, the amount will be set by the Arbitration Commission, as provided in Article 36 bis, provided the concession holder requires, in writing, its intervention within a 10-day period following notification of the Technical Panel’s recommendation. Should a partial amount be agreed upon, payment procedure for this amount may be immediately determined in writing, following the Ministry of Finance’s approval, knowledge of what was disputed being reserved to the Arbitration Commission. In the absence of such agreement, if the concession holder does not resort to the Technical Panel, or to the Arbitration Commission, within the periods as established in this paragraph, the higher amount as the Ministry of Public Works would have offered as contemplated in the regulations during the course of the negotiations will be regarded as accepted by the concession holder.

The declaration of gross non-compliance will turn payable the loans being guaranteed through the pledge established in Article 43. Said loans will become payable on the bid’s proceeds or on the payment the Ministry of Public Works would have to make, as the case may be, with preference over any other loan.

Should, during the intervention, the concession holding company have subscribed loans with the consent of the creditors indicated in the foregoing paragraph, and had said loans become payable, said loans will be repaid with the bid’s proceeds or in the aforementioned payment, with preference to those guaranteed by way of the special pledge on public works. In either case, and after deducting the loans mentioned in this paragraph, also deducted from the proceeds on the bid will be any evidenced expenses the Ministry of Public Works would have incurred for the execution thereof.

**Article 28 bis.** Once gross non-compliance with the concession contract has been declared, as provided in the foregoing article, the appropriate concession holding and its related parties may not participate in any new bid. Parties related to the concession holding company will be those as referred Law 18.045 Article 100, except for relatives as indicated in letter c) thereof.

Also regarded as parties related to the concession holding company will be those who have had said capacity at any time during two years prior to the date of application for the declaration of gross non-compliance.

The concession holding company’s ineligibility or that of its related parties, will remain in force for 5 years as of the date the sentence declaring the gross non-compliance was issued, in which case any appeals filed against it will not suspend computation of the ineligibility period of effects thereof.

**Article 28 ter.** If so demanded by public interest, the President of the Republic, following the appropriate report of the Concessions Committee, and through a substantiated decree of the Ministry of Public Works, which shall also be signed by the Minister of Finance, may early terminate the concession when a change in circumstances would render the works or service unnecessary for meeting public needs, or would require its redesigning or supplementing so that any additional investments needed to adapt the works to the new conditions would exceed twenty-five percent of the official budget for the works. This power may only be exercised during the construction stage.

The supreme decree declaring the early termination will set the term period and conditions in which the concession holder shall deliver the works to the Ministry of Public Works.

The concession holder will have the right to a compensation equivalent to the value of the investments that have been effectively made for the provision of the service in accordance with the concession contract, excluding financial expenses, taken to their future value upon agreement of the payment; their formula, components and methodology of calculation will be set forth in the bidding conditions. Added to that will be a percentage of the present value of the net benefits expected from the business under concession, corresponding to the fraction of the investment in the project made by the concession holder until the date of the early termination.
Added to the total amount of the agreed upon payment will be any appropriate adjustments and interest at the date this payment is effectively made.

In determining the future value of the investments made, the interest rate to be considered as a discount rate will be that of the weighted capital cost weighted relevant to the business in accordance with the criteria defined to said purpose in the bidding conditions. In order to determine the present value of the net benefits expected from the business under concession, the adjusted discount rate will be used so that it may consider risk on future cash flows inherent to the concession and their distribution over time. The procedure to be applied, as well the appropriate calculation formula, will be established in the bidding conditions.

The amount of the indemnity will be set upon agreement between the Ministry of Public Works and the concession holder, and as approved by the Ministry of Finance, within 60 days following the date of publication of the appropriate decree.

In the absence of a total or partial agreement on the amount of indemnity or on any of its calculation factors, the controversy will be submitted to the Technical Panel’s opinion, as established in Article 36, within 10 days following expiration of the period established for the amount to be set upon mutual agreement. Should the mentioned recommendation not be accepted by the parties, the controversy will be settled by the Arbitration Commission, in accordance with the procedure contained in Article 36 bis, provided the concession holder requires, in writing, its involvement within a 10-day period as of notification of the Technical Panel’s notification. Should there be an agreement on a partial amount, the manner said amount shall be paid may be immediately agreed upon in writing, knowledge of the controversy being reserved to the Arbitration Commission. In the absence of any agreement, should the concession holder not resort to the Technical Panel, or to the Arbitration Commission within the term periods as established in this paragraph, the highest amount that the Ministry of Public Works would have offered to the concession holder as indicated in the regulations during the course of the negotiation will be deemed as accepted.

The early termination of the concession will turn payable the loans being guaranteed through the pledge established in Article 43, which will be deducted from the indemnity received by the concession holder, with preference over any other loan.

When appropriate, the Ministry of Public Works, following the report of the Concessions Commission, will determine whether the reformulated project is to be again granted under concession or executed as established in Article 86 of Ministry of Public Works statutory decree Nº 850, of 1998. Having the concession been early terminated due to a change in conditions demanding its redesign or completion through additional investments exceeding twenty-five percent of the official budget for the works, and provided that the Ministry of Public Works decides to execute it within three months following the early termination date, the reformulated project shall be granted under concession through a public bidding process.

**CHAPTER VIII**

**Inspection and Monitoring by the Administration**

**Article 29.** The bidding conditions shall explicitly indicate the levels of service demanded for the exploitation stage, its respective indicators and sanctions.

The Ministry of Public Works shall inspect and monitor the concession holder’s compliance with its obligations, at both the works’ construction and exploitation stages.

In the event of non-compliance, the Ministry may impose the sanctions and fines are established by the regulations and bidding conditions, notwithstanding the concession holder’s right to resort to the mechanisms Article 36 bis refers to.

**Article 30.** As provided in the foregoing article, the appropriate Department, after the favorable pronouncement of the Arbitration Commission Article 36 bis refers to, will be entitled to:
1.- Declare the concession as temporarily suspended in the presence of any of the causes set forth in Article 26°, and

2.- Request the concession extinction statement in the event of any of the causes as established in Article 27°.

**Article 30 bis.-** During the concession contract’s period, the Ministry of Public Works, in order to verify the proper operation of the concession and due compliance with the concession holder’s obligation, may require from the latter to submit information on the subcontracts it has subscribed for the execution of the works and provision of the service, as well as information about its accounting, business management and user service systems. The antecedents provided shall be kept confidential. The failure to provide the information as required or any unjustified delay in providing the requested antecedents or the provision of utterly inaccurate or incorrect information will be penalized as provided in the regulations.

In addition, the Ministry of Public Works, through substantiated resolution, may cause the concession holder, under penalty of fines, to conduct audits to verify the truthfulness and accuracy of the information provided to it. The auditor shall be approved by the Ministry of Public Works, and the hiring and financing thereof will on the concession holder’s account.

As soon as it has learned of its occurrence, the concession holder shall inform the Ministry of Public Works of any relevant event or circumstance affecting or that may affect the regular development of the works, at the construction stage, or about the correct provision of the service in accordance with the levels of service and technical standards as established in the appropriate bidding conditions, at the exploitation stage. Any infringement of this obligation will be penalized as provided in the regulations.

**CHAPTER IX**

**Concessions on National Assets for Public or Government use, destined to the Development of Agreed upon Service Areas**

**Article 31.-** The resolutions issued by the Minister of Public Works, as empowered under Article 5 of Ministry of Public Works supreme decree Nº 294, letter i), of 1984, shall contain, at least, the following:

a) Identity of the concession holder;

b) Identity of the asset that is the subject matter of the concession, indicating surface area, borders and services to which it will be subject to, and

c) Duration of the concession. These resolutions will be issued at the request of holders of exploitation concessions, in one or more acts, and a regards all or part of the agreed upon assets.

**Article 32.-** The concessions on assets of public use or state-owned, whose management has been transferred to other authorities, or about which current legislation requires the involvement of other entities, will be granted following a report prepared by the appropriate authority or entity, which shall be prepared and issued prior to the issuance of supreme decree whereby the contract is awarded.

**Article 33.-** The concessions this chapter refers to will be regarded as accessory to the exploitation of the appropriate works, and, consequently, will extinguish by the mere operation of law, upon expiration of the latter for any reason.

**Article 34.-** The resolution through which these concessions are granted will entitle the concession holder to use and usufruct from the respective asset, said resolution acting as sufficient capacity to enforce its right in front of third parties.

The concession holder will be entitled to exploit the asset or assets that is/are the subject matter
of the concession, by itself or by third parties, becoming, in any event, the only party being liable before the Ministry of Public Works.

CHAPTER X

Indemnities and Settlement of Controversies

Article 35.- The concession holder will be liable for any damages, of any kind that, as a result of the execution of the works or exploitation thereof would be caused on third parties, unless they are exclusively attributed to measures applied by the Ministry of Public Works, after having awarded the contract.

Article 36.- Any technical or economic discrepancies arising between the parties during the execution of the concession contract may be submitted to the consideration of a Technical Panel at the request of either of the parties.

The Technical Panel, which will have no jurisdiction, shall issue, in accordance with the public procedure established in the regulations, a duly substantiated technical recommendation, within a 30-consecutive day period, to be extended on a single occasion, as of the filing of the discrepancy. The recommendation will be notified to the parties and will not be binding upon them.

The Panel’s recommendation will not hinder the concession holder’s power to subsequently resort to the Arbitration Commission or the Santiago Court of Appeals, even if the controversy is about the same events. In such a case, the recommendation may be considered by the Arbitration Commission or the Court of Appeals as background information for ruling.

Submitted to the Technical Panel may be any discrepancies arising in relation to:

1.- Technical and economic evaluations of the investments made by the concession holder, their status of progress, of their costs and term periods, in accordance with the levels of service and technical standards established in the appropriate concession.

2.- Determination of the existence of additional costs and their economic, technical or managerial causes, or of other events or circumstances technically affecting, or that may technically affect, the regular development of the works during the construction stage.

3.- Verification that the value of the investments has surpassed some of the limits set in Articles 19, 20, and 28 ter.

4.- Determination of the economic effects the execution of additional works would have on the concession.

5.- Technical determination of the discount rate, financial costs and all other economic factors that must be established to determine the economic compensations corresponding the concession holder in the event of early termination of the concession contract, of the execution of additional works, or of any other vent as contemplated in the law and requiring those calculations.

6.- All other technical or economic discrepancies that the parties to a concession contract may have with each other as a result of the execution of the contract or of the technical or economic enforcement of regulations applicable to said contract and which, upon mutual agreement, are submitted to its consideration, as well as all other regulations as indicated by law.

The filing of a discrepancy to the Technical Panel referring to the issuance of a Ministry of Public Works resolution will not suspend its effects.

The Technical Panel may require concession holders and the Ministry of Public Works to provide any information as deemed necessary in connection with the technical and economic aspects of the concession contracts during the construction stage.

The Technical Panel will be made up of the following professionals, who shall show an outstanding
professional and academic track record, on technical, economic or legal matters in the infrastructure concession sector, as the case may be: two lawyers; two engineers, and a professional specialized in economics or finance. Said professionals may not be, or having been, within 12 months prior to their appointment, related to public works concession holding companies, either as directors, workers, independent advisors, shareholders, or holders of rights in them or in their head offices, subsidiaries, related companies or investees, or to construction or engineering companies being subcontractors of the concession holders; nor will they be, or have been, within twelve months prior to their appointment, related to the Ministry of Public Works, be employees thereof or of other public services or provide paid services to the Ministry of Public Works or to other public entities directly or indirectly related to the concession activity. The ineligibilities and incompatibilities established in this paragraph will remain in force, as for each member, for up to one year after termination of their tenure.

The members of the Technical Panel will be appointed by the Upper Public Management Council, as established in Law N°19.882, by way of a public selection process performed in objective, transparent and non-discriminatory conditions. Within the scope of the selection process, the Upper Public Management Council shall verify the suitability of the professionals selected and the absence of any ineligibilities and incompatibilities that may affect them. The selection process shall be conducted as provided in the regulations of this law, and take place within a maximum period of 60 consecutive days. The appointment of the members thus designated will be made through a Ministry of Public Works resolution.

The member of the Technical Panel will remain in office for six years, and may not be appointed for successive terms. The members of the panel will be partially renewed every three years, starting with the two lawyers. Appointments will be made on single lists by the Upper Public Management Council, with the favorable vote of four fifths of its members.

The Panel will have a full-time dedicated lawyer secretary whose duties will be those as set by the regulations, and who will be able to perform academic activities in State-accredited universities.

Once organized, the Technical Panel will elect, from among its members, that who will preside over it for the following three years. The president will operate on an full-time and exclusivity basis, being able to perform academic activities in State-accredited universities. The minimum quorum for the panel to convene will be that of three members, with at least two of them not being lawyers in the event of discrepancies arising during the construction period, and its resolutions will be adopted with simple majority, the president’s vote deciding any draw.

The Ministry of Public Works will pay for the administrative and operating expenses of the Technical Panel and half of its members’ fees, including them in the appropriate items of the Budget Law. The other half of the mentioned fees will be paid the concession holders governed by this law, in the proportion as indicated in the regulations. The president’s monthly fee will be the equivalent to one hundred fifty unidades tributarias mensuales (monthly inflation-indexed units), plus twenty-five unidades tributarias mensuales per session, with a maximum limit of three hundred unidades tributarias mensuales; those of the other members of the panel will be the equivalent to one hundred unidades tributarias mensuales, plus twenty unidades tributarias mensuales per session, with a maximum limit of two hundred unidades tributarias mensuales, and that of the secretary in the equivalent of one hundred fifty unidades tributarias mensuales a month.

The Technical Panel will convene and issue the regulations for its operation.

Article 36 bis.- Any controversies or complaints arising from the interpretation or application of the concession contract or from execution thereof, may be submitted by the parties to an Arbitration Commission or to the Santiago Court of Appeals. The Ministry of Public Works may only resort to the Arbitration Commission once the definitive commissioning of the works has been authorized, except for the declaration of gross non-compliance Article 28 refers to, which may be requested at any time. The technical or economic aspects of a controversy may be submitted...
to the Arbitration Commission, or to the Court of Appeals, only when they have been previously submitted to the Technical Panel’s knowledge and recommendation.

The Arbitration Commission will be made up of three university professionals, of which at least two shall be lawyers and one of them will preside over it. The Commission’s members will be appointed, upon mutual agreement, from two expert shortlists, the first one comprised on lawyers and prepared, to this effect, by the Supreme Court, and the other of professionals appointed by the Court of Free Competition, through a public selection process, based on objective and non-discriminatory conditions. Within the selection process framework, both the Supreme Court and the Court of Free Competition shall verify the suitability of the professionals selected and the absence of any ineligibilities and incompatibilities affecting them.

The selection shall follow the procedure established on this law’s regulations and carried out within a maximum 60-consecutive day period.

The first expert shortlist will contained twenty lawyers, and the second one ten university professionals related to the fields of economics, engineering or construction, and entitled to be included on these lists will be only those having an outstanding professional or academic track record in their respective specialties, evidencing at least ten years of professional practice and not being related to public works concession holding companies, in such capacities as directors, employees, independent advisors, shareholders or holders of rights in them or in their parent companies, subsidiaries, related companies or investees, or to construction or engineering companies being subcontractors of concession holders, nor having held such capacity over twelve months prior to their appointment. In addition, they shall not be related to the Ministry of Public Works, or employees thereof or of any other public services, or provide paid services to the Ministry of Public Works or other public services directly or indirectly related to the concession activity, nor holding such capacity over twelve months prior to their appointment.

The two expert shortlists will be partially renewed every five years by way of a new public selection process, no professional being able to be included on those shortlists for more than fifteen consecutive or non-consecutive years, notwithstanding what is provided in the paragraph above. In the absence of an agreement between the parties on one or more members, his/her appointment will be made through a draw before the clerk of the Court of Free Competition from among the candidates included on the shortlists.

The Commission members shall be appointed at the beginning of the appropriate concession and the Commission, in turn, shall be organized within 30 days following said appointment. Its members will remain in office for the duration of the appropriate concession contract. However, they may be replaced upon mutual agreement, whenever that is deemed as necessary or convenient, or at the request of any of the parties, only one time, provided three years as of the date of their appointment has elapsed, and they would not be dealing with a claim. That, notwithstanding any supervening ineligibilities and disabilities that might affect any of the members, in which case the appointment of a substitute shall follow the procedure set forth in the preceding paragraph.

The Commission members will be paid a fee by the respective concession holder and the Ministry of Public Works, on equal terms, in the manner and with the limits as established in the regulations.

The Commission, following the appointment of its members its constitution, shall determine the manner in which claims will be filed before it and the notification mechanism that it will use to inform the parties of its resolutions or decisions, and will issue all other procedural regulations deemed as convenient. Among the latter will be those governing the parties’ appearing and those related to the mechanisms to receive proofs and antecedents provided by the parties.

Except as provided otherwise herein, the parties shall file their claims before the Commission within a two-year period as of the definitive commissioning of the works, if the event or execution of the action giving rise to said claim would take place during the construction stage, and a two-year period as of the event since they would have learned thereof should it be certainly evidenced, if taken place during the exploitation stage.
Notwithstanding the above and what is provided in Articles 28 and 28 ter, the period available to file objections to resolutions of the Ministry of Public Works will be one year, period that will be shortened to 120 days in the case of resolutions imposing fines, a period that, nevertheless, will be suspended by the filing of appropriate motions to set aside or hierarchical, until resolution thereof. Once these periods have elapsed, the action will extinguish.

The plegees being a party to the pledge without conveyance as set forth in Article 43, will be entitled to participate in the proceedings arising from the operation of this Commission, in an independent third-party capacity.

Submitted to its jurisdiction and until the summons to hear ruling, the Commission may call to a conciliation, or its own initiative, or at the request of any of the parties, and propose, verbally or in writing, bases for settling the controversy within a period of 30 consecutive days following the date of notification of the resolution calling to a conciliation.

The Arbitration Commission will have the powers of arbitrating arbitrator as for the proceeding and will analyze proofs in accordance with rules of sound criticism, also accepting the means of proof indicated in Code of Civil Procedure Article 341, any other means, sign or antecedent that, in the Commission’s opinion, is suitable for establishing the substantial, pertinent and controversial facts. The Commission will have a 60-working day period, as of summoning the parties to the controversy to pronounce the final ruling in accordance with law, which shall be substantiated and shall include de facto, legal, technical and economic considerations upon which it has issued an opinion.

The final ruling will not be subject to any subsequent appeals

The final ruling and all writs, documents and actions of any kind submitted or verified during the course of the proceeding will be published as provided in the regulations.

Should the parties resort to the Court of Appeals, as indicated in the first paragraph of this article, the procedure established in Central bank of Chile Organic and Constitutional Law N° 18.840 Articles 69 to 71 will apply, and in accordance with the following provisions:

1.- No consignment record will be required.

2.- Notice of the appeal will be sent to the head of the Public Works Department.

What is provided in this article is notwithstanding the faculties of the Judicial Power and of the Office of the Comptroller.

Article 36 ter.- The concession holder may only petition the suspension of the effects of an administrative action as complained before the Arbitration Commission as of its constitution, in accordance with Article 36 bis, or before the Santiago Court of Appeals, as the case may be.

Said petition will be processed with the Ministry’s hearing and to resolve in favor thereof there shall be serious and justified reasons, evidence constituting at least the gross presumption of the right that is claimed shall be enclosed thereto.

Notwithstanding the above, the Arbitration Commission may not, in any event, authorize or instruct stoppage of the works construction or the provision of the service for a period exceeding sixty days, either directly or by suspending the effects of an action by the Ministry of Public Works, unless the parties would have agreed to keep said stoppage.

CHAPTER XI

Other provisions

Article 37.- Should the concession holder drop the works or unreasonably suspend the service, the Ministry shall ask the Arbitration Commission to so declare and to authorize it to proceed with the appointment of a receiver.
The Commission will review the issue in its capacity of Arbitration Commission, as provided in the preceding article, and shall resolve accordingly within a period of 3 working days as of the date of the petition. Said period may be, reasonably and only one time, extended for an identical term. Should said period elapse without any pronouncement, it will be understood that the Ministry is authorized to proceed with the appointment.

The appointment of the receiver authorized, the concession contract will be deemed as seriously infringed and what is provided in Article 28 first paragraph et seq., will apply.

If warranted by the seriousness of the case, the Commission may require the police to cause the immediate resumption of the service while the resolution relating to the receivership is still pending. In this case, user’s payment of the corresponding toll or rate may be suspended. The Commission may revoke this decision at any time.

**Article 38.**—Should the concession holder go bankrupt, the first regular creditors’ meeting shall pronounce, at the receiver’s proposal or that of one or more creditors, on the sale of the concession at auction or on the effective continuity of the concession holder’s business. In the absence of any agreement on either of these matters, the concession shall be sold at auction.

For the concession auction, its conditions shall observe the terms, benefits and conditions of the original concession contract. The minimum bids, at the first auction, shall not be lower than two thirds of the amount of the debt assumed. In lack of bidders, a second auction will be carried out, without any minimum bid.

The awarding of the concession will be as provided in Article 21.

In the event that the creditors’ meeting agreed on the effective continuity of the concession holder’s business, same continuity will not be subject to any termination period other than the remainder of the concession contract. In everything else, it will be regulated by Law N° 18.175 Articles 112 et seq.

In the event of bankruptcy, the Ministry will appoint a representative who, by acting in coordination with the receiver and the creditors’ meeting, watch over the maintenance or the concession’s service or services, notwithstanding the fact that the representation of the State interest will be performed by the entity or entities called for it.

**Article 39.**—For purposes of this law, state-owned public works will be understood as any real estate property built, repaired or conserved in exchange of a temporary concession for exploitation thereof or of national assets for public or government use destined to the development of service areas, to the provision of equipment or to the provision of related services.

The Ministry of Public Works is entitled to grant, under a concession system, any public works, the provision its equipment, or the provision of related services, except when such works have been assigned to the jurisdiction of another Ministry, public service, Municipality or state-owned company, or any other entity being part of the State’s Administration. In such cases, said public entities may delegate, through a mandate agreement subscribed with the Ministry of Public Works, the granting of such works under concession within its jurisdiction, for it to grant its concession, governed by this law. In these cases, the entire legal statutes regulating the concession of Public Works will be deemed as included in said agreement, that is, the bidding procedure, awarding and execution, conservation and exploitation, as well as powers, rights and obligations arising from the law.

In virtue of this law, included in the concession awarded may be, jointly or separately, the concession for the use of subsoil and of the rights of construction in the space over national assets for public or government use assigned to them. In addition, the Ministry may submit to concession or sell such rights establishing their physical connection and access to the works being bid or that have already been granted under concession.

**Article 40.**—The Ministry of Public Works will, exclusively and especially, be the only entity regulating the setting the minimum and maximum speed limits on the roads built, conserved
or repaired by the concession system, pursuant to this legal body, and no other entity will have jurisdiction thereon.

These limits may be higher than those set by traffic regulations, whenever the road standard and layout as set by the Ministry of Public Works so allow it. However, under no circumstances, as regards the works that are granted under concession, may speeds below those as considered in the law for same situations be set.

**Article 41.-** The bidding conditions will set the accesses and connection works that a works under concession shall have, including those allowing the use of existing accesses that would have been authorized pursuant to law.

The concession holder, as provided in the bidding conditions, or at its request, in cases not provided therein, with the previous authorization of the Ministry of Public Works, in both cases, entity that may not reject it unreasonably, will be empowered to authorize to third parties new accesses and connections to the works under concession, and may charge these third parties with payment for access, further to the cost of the works required for their up fitting. The amount of these payments will be agreed upon between the concession holder and the interested party or parties, as provided in the bidding conditions, or freely in cases not contemplated by them.

**Article 42.-** Whenever a user of a works operating under concession fails to pay for its rate or toll, the concession holder may collect it through a court order, adjusted in accordance with the variation of the Consumer Price Index, plus maximum conventional interest and collection costs. The local police court judge for the district where the user is domiciled will be in charge of the collection proceedings, as provided under Law Nº 18.287. A user will be any individual to whom the vehicle is registered and his/her domicile will be that as indicated in the Motorcar Registry. User's domicile will also be that as registered in the electronic rate or toll collection system mentioned in Ministry of Justice statutory decree Nº 1, Article 114, that sets the consolidated, coordinated and systematized version of Law Nº 18.290, which shall not be limited to any Region or borough throughout the country, nor may its be subject to any commercial incentive.

Upon sentencing payment as provided in the preceding paragraph, in addition to what is owed, the judge will sentence the offender to pay a fine amounting to five times said amount payable. In the event of recidivism, said fine will be increased by fifteen times the amount owed. In both cases, the fine shall not exceed twenty unidades tributarias mensuales (monthly tax units). For purposes of the recidivism, only the enforceable execution of sentences pronounced within the previous three-year period as of the date of commencement of the appropriate proceeding will be considered. Should the fines not be paid, they will be annotated in the unpaid Traffic Fine Registry, in the manner, term period and for all legal purposes as established in Law Nº 18.287. Under no circumstances may the fines applied be paid if payment of the amount owed plus interest and costs as determined in the respective enforceable sentence has not been evidenced.

However, the debtor may get exempted from the application of the fines provided in the foregoing paragraph if he/she effectively pays the concession holder what is owed, plus interest and costs, before writs are ready for verdict.

Fifty percent of these fines will be allocated to the Common Municipal Fund, the other fifty percent remaining in the municipality the local police court issuing the enforceable sentence is seated.

In prosecuting these infringements, means of proof will be photographs, recordings and any other technical means that would have been authorized by the Ministry of Public Works to control non-compliance with rate payments.

**Article 43°.-** A special pledge on public works concession, without conveyance on pledged rights and assets, is established. This pledge may be agreed upon by the concession holder and the parties financing the works or operation thereof, or on the issuance of debt certificates of the concession holding company. Said pledge may apply.
a) on the public works concession right arising from the contract in favor of the concession holder;

b) on any payment to the concession holding company as committed by the State in any capacity, in virtue of the concession contract, and

c) on the company’s revenues.

This pledge shall be furnished through a public deed and be registered in the Industrial Mortgage Registry of the Real Estate Registrar’s Office for Santiago, and at the domicile of the concession holding company, should it be different. In addition, it shall be annotated at the margin of the concession holding company’s registration in the appropriate registry of Commerce. Whenever this pledge applies upon shares of the concession holding company, it will be also annotated in the company’s appropriate records.

This pledge will be subject to the provisions contained in Industrial Mortgage Law Nº 5.687 Articles 25, first paragraph, 30; 31; 32; 33; 36; 37; 38; 40; 42; 43; 44; 46; 48; 49, and 50.

Competent to act on any litigation and in the enforcement of this special pledge on public works concessions, at the creditor’s choice, will be the Judge of the Region’s capital city where the concession holding company is registered or of the court district where the creditor is domiciled.

TRANSITORY ARTICLES

Article 1.- The concession holding companies whose public works concession contracts executed at the date of publication of this Law in the Official Gazette may, within the following three months, choose their contracts to be governed by the regulations hereof. Those not so requesting, will continue to be governed by the legal regulations in force at the bidding date and that of execution of said concession contract.

Those having been awarded works already bid at the date of publication of this law and whose contracts would not have been subscribed and the bidders becoming the awardees of works being bid may also exercise same right within a three-month period following the execution of their contracts.

When concession holding companies or awardees choose to operate under the regulations that modify this law, as provided in the foregoing paragraphs, the Ministry of Public Works will issue, without any further formalities, a decree modifying that of the award, leaving record of the change in the legal regime of said contract.

Article 2.- Taxpayers who, at the date this law came in force, would have subscribed construction, maintenance and repair contracts for public works which price consists of the granting under concession of the appropriate works, will continue to be subject to applicable tax regulations at the date of the awarding of such contracts. Notwithstanding the above, said taxpayers may choose, within a three months following the date of publication of this law, to operate under the taxation regime that is established, as regards their contracts, in the Income Tax Law and decree law Nº 825, of 1974. To this effect, they shall inform the appropriate Regional Internal Revenue Service Office, in writing, of said decision. The mentioned regime will be applied, as for taxes on sales and services, as of the month following the one when communication of the taxpayer’s income as received from that date is given, as of January 1st of the same year as the communication is delivered as regards the taxes established under the Income Tax Law on the income accrued or received by the taxpayer as of said date.

Article 3.- Notwithstanding what is provided in Transitory Article 1, the individuals indicated in the first and second paragraphs of said article failing to exercise the option mentioned therein, may choose what is applicable to them as provided in Article 41, second paragraph.

For registration, transmission and publication.-

EDUARDO FREI RUIZ-TAGLE, President of the Republic.
Ricardo Lagos Escobar, Minister of Public Works.

What I transcribed for your knowledge.-

Sincerely Yours, Guillermo Pickering de la Fuente, Undersecretary of Public Works.
LAW N° 20.410 TRANSITORY ARTICLES

Transitory Article 1.- The regulations of this law will not apply to concessions contracts resulting from bidding processes whose bids have been submitted prior to its coming into force, except for those concession holders that, within a three-month period following said date, choose the application of the provisions contained hereof on their contracts. To this effect, the concession holders and the Ministry of Public Works shall subscribe a supplementary contract setting the appropriate levels of service and the technical standards.

In addition, the concession holders also be subject within the same period, to the regulations contained in articles 36 and 36 bis, relating to numerals 17) and 18) of article 1 hereof.

However, as for concessions of those concession holders failing to exercise the option indicated above, all legal provisions currently in force at the date of subscription of the appropriate concession contracts will continue to operate, save for the following exceptions:

a) Only in connection with events occurred after this law’s coming into force, the modifications introduced by this legal body to Traffic Law Nº18.290; to Law Nº 18.287 on Proceedings before Local Police Courts; Ministry of the Interior statutory decree Nº 1, of 2006, which sets the consolidated, merged, coordinated and systematized text of Organic Constitutional Municipalities Law Nº 18.695, and Ministry of Justice Decree Nº 307, of 1978, that sets the merged, coordinated and systematized text of Law Nº15.231, on Local Police Court Organization and Powers.

b) The provisions contained in the ninth paragraph of article 36 bis, and in article 36 ter of Ministry of Public Works Decree Nº 900, of 1991, which sets the merged, coordinated and systematized text of Ministry of Public Works statutory decree Nº 164, of 1991, Public Works Concession Law, in its texts as hereby introduced. In the first case, as regards events taken place after this law’s coming into force; in the second case, only in connection with those requests or complaints heard by the Arbitration Commission after the date this law came into force.

c) In case of the subscription of supplementary agreements implying an increase in the levels of service, said agreements shall explicitly indicate the new levels of service, technical standards, or both, as the case may be, and the appropriate sanctions in the event of non-compliance.

Transitory article two.- During the first two years of this law’s operation, the Ministry of Public Works will pay all the Technical members’ fees, which cost will be lowered by two thirds during the third year of this law’s operation. In this latter case, the parties holding public works concession governed by this law shall account for the difference, prorated as provided in the regulations.

Having what is provided under article 93, Nº 1, of the Political Constitution of the Republic, and since I have approved and sanction it, be it approved and put into effect as a Law of the Republic.

Santiago, December 14, 2009.- MICHELLE BACHELET JERIA, President of the Republic.- Sergio Bitar Chacra, Minister of Public Works.- Andrés Velasco Brañas, Minister of Finance.- Edmundo Pérez Yoma, Minister of the Interior.

What I transcribed for your knowledge.- Sincerely Yours, Juan Eduardo Saldivia Medina, Undersecretary of Public Works.
Constitutional Court

Bill, as approved by Congress, modifying Ministry of Public Works Decree Nº 900, of 1996, which sets the merged, coordinated and systematized text of Ministry of Public Works Statutory Decree Nº 164, of 1991 – Public Works Concession Law. (Bulletin Nº 5172-09)

The undersigning Clerk of the Constitutional Court hereby certifies that the Senate sent the bill referred to above, as approved by Congress, in order for the Senate to exercise constitutional control of the regulations governing matters requiring organic constitutional laws; and that, as pronounced on November 26, 2009, in writ Nº 1.536-09-CPR;

I declare: That articles 36, third paragraph; article 36 bis, first and second paragraphs; article 36 ter, first paragraph, and article 42, first paragraph, the sentence reading “The local police court judge for the district where the user is domiciled will be in charge of the collection proceedings” and fourth paragraph, numerals 17), 18), 19), and 23) of article 1, articles 3, Nº 4; 4, Nº 2; and 5, respectively, refer to, all contained in the bill sent to preventive control thereof.-

Santiago, November 27, 2009.- Marta de la Fuente Olguín, Acting Clerk.
REPUBLIC OF CHILE
MINISTRY OF PUBLIC WORKS
PUBLIC WORKS DEPARTMENT


Number 956 - Santiago, October 06, 1997.

WHEREAS:

As provided under article 32, N° 8, of the Political Constitution of the Republic of Chile, MOP Statutory Decree N° 164, as modified by Laws N° 19.252, of 1993, and N° 19.460, of 1996, and

In view of the need of regulating the execution, repair and conservation of State-owned public works, through the concession, as established in MOP Supreme Decree N° 294, of 1984, Article 87, and the modifications to MOP Statutory Decree N° 164, Concession Law, through Laws N° 19.252, of 1993, and N° 19.460, of 1996.

I DECREED:

TITLE I

GENERAL PROVISIONS

ARTICLE 1

FIELD OF APPLICATION

1.- These regulations set the rules for the execution, repair or conservation of State-owned public works, through the system established in Ministry of Public Works Supreme Decree N° 294, Article 87, of 1984, the bids and concessions that are to be awarded, whether for the exploitation of public works and services or with respect to the use and usufruct of national assets for public or government use, intended to develop the works or service areas as agreed upon, in virtue of general regulations contained in MOP Statutory Decree N° 164, of 1991, as modified by Laws 19.252, of 1993, and 19.460, of 1996, Public Works Concession Law, which Consolidated, Coordinated and Systematized Version was set in MOP Supreme Decree N° 900, of 1996.

2.- These Concession Regulations will be an integral part of the concession contracts to be subscribed by the Ministry of Public Works in virtue of the regulations indicated in the first paragraph of this article.

3.- The concession will comprise:

a) Provision, in the concession area, of basic and supplementary services for which the works was built.

b) Conservation of the works in optimum operational conditions.

c) Charge of rates that will be paid by the users of the basic services and the supplementary services.

d) Making of investment and reinvestments comprising the project’s development plan.

e) Use and usufruct of national assets for public or government use intended to develop the works granted under concession.
f) Use and usufruct of national assets for public or government use intended to develop the agreed upon services.

ARTICLE 2

CONTRACT AND REGULATIONS THAT GOVERN IT

1.- The concession contracts the foregoing article refers to will be governed by:
   a) MOP Supreme Decree N° 294, of 1984, that sets the Consolidated, Coordinated and Systematized text of Ministry of Public Works Organic Law N° 15.840, and of Statutory Decree N° 206, of 1960;
   c) These Concession Regulations;
   d) The appropriate bidding conditions and clarifying form letters;
   e) The technical and economic bid, as submitted by the concession awardee, as approved by the MOP;
   f) The appropriate awarding decree.

2.- In the event of any discrepancies arising from the interpretation of the contract, what is provided in the bidding conditions and their clarifying form letters will prevail over what is established in the bid submitted by the concession awardee, save in case said bid contains aspects exceeding what is required in the bidding conditions and their clarifying form letters, which shall be evaluated by the DGOP.

ARTICLE 3

DEFINITIONS

For the correct interpretation of these Regulations, the following terms will have the meaning as ascribed below:

1) Awardee: The successful bidder.

2) Concession Area: The required area to execute the works and provide the services as defined in the concession contract which shall be located on national assets for public or government use.

3) Supplementary service area: The area comprising the land likely to be occupied by the facilities intended to provide the supplementary services as agreed upon in the concession contract. Said services may be installed on national assets for public or government use, State-owned land or on land purchased by the concession holding company to that effect.

4) Bidding conditions: A set of regulations and administrative, technical and economic specifications prepared by the Ministry of Public Works with which a call for a bid is made and which are an integral part of the concession contract.

5) Conservation or maintenance: This corresponds to the necessary repairs in the works or facilities built by the concession holder or pre-existing in the concession area, in order for them to be maintained or to recover the level of service for which they were designed, as regards their quantity and quality. Included in this concept are also any preventive measures necessary to prevent the works or facilities from deteriorating.

6) Total cost of the works: Any disbursement that, directly or indirectly, is required for the construction of the works.
7) Days: Consecutive days.
8) Director: The appropriate Service Director.
9) DGOP: Head of the Public Works Department or the Public Works Department, as appropriate.
10) Financier (s): An individual or a natural entity, or a group thereof allowing for and providing the concession holding company, either through direct loans or by way of bonds, avalors, collateral or any other guarantees, with the funds for some particular work of public infrastructure by way of the concession system.
11) Force majeure: As defined in Civil Code Article Nº 45.
12) Bidding group: A group of individuals or legal entities that participate in a bid submitting a single offer, each of them being indivisibly and jointly liable for it.
13) Private Initiative Idea: A set of documents that, as provided in Article 2 of MOP Supreme Decree Nº 900, of 1996, is submitted by a private individual, as provided in these Regulations.
14) Concession Law: MOP Statutory Decree Nº 164, of 1991, including the modifications contained in Law 19.252, of 1993, and 19.460, of 1996, which text Consolidated, Coordinated and Systematized text was set in MOP Supreme Decree Nº 900, of 1996. The referential articles of these Regulations are indicated in MOP Supreme Decree Nº 900, of 1996.
15) Bidder or offerer: An individual or legal entity, or a group thereof, submitting a bid, as established in these Regulations and the appropriate bidding conditions.
16) Ministry: The Ministry of Public Works, the MOP acronym also being usable.
17) Bid: The set of documents comprising the bidder’s economic and technical bids, including any supplementary documentation and background information or antecedents.
18) Applicant: Any individual or legal entity, or a group thereof, applying, before the Ministry of Public Works, for the execution of public works through the concession system.
19) Pre-evaluated: Any individual or legal entity, or a group thereof, interested in submitting a bid for a public works by way of the concession system, who has met the requirements as set forth by the pre-evaluation conditions.
20) Price: Payment to be made by the user for supplementary services or other services of similar nature provided by the concession holder in virtue of the concession contract.
21) bonus on bid evaluation: A bonus the applicant submitting a private initiative idea that is being bid through the concession system, is entitled to, and which is set as a percentage that will weight the score obtained by the bidding party’s economic bid or by that of the bidding group to which the former has expressly assigned the bonus.
22) Official budget for works: it is the total value of the works as estimated by the MOP, and indicated in the bidding conditions.
23) Investment Prospectus: A document prepared by the MOP that summarizes the technical characteristics of the works that will be granted under concession, as well as the conditions of the service that is to be provided, and the estimated amounts of the investment.
24) Basic services: All those as comprised in the specific purpose of the concession, as well as indispensable, and for which the concession holder is entitled to charge a rate.
25) Supplementary services: Additional, useful ad necessary services that the concession holder is entitled to provide and for which it may charge a price to the users, in virtue of the concession contract and of Article 7, letter j) of MOP Supreme Decree Nº 900, of 1996.
26) Special mandatory services: Any of the other services established in the bidding conditions as mandatory. They may be paid or cost-free, as determined in the bidding conditions.
27) Rate System or rate structure: A set of rates charged for the basic services provided by the concession holder.

28) Bid envelopes: An envelope, package, bundle or any other wrapping within which the technical and economic offers are submitted, as determined in the bidding conditions.

29) Concession holding company: The company organized by the awardee, with which the concession contract will be subscribed, and whose purpose will be that of the execution, repair, conservation and exploitation of State-owned public works, in the manner and conditions as determined in the bidding conditions. Also referred to as concession holder.

30) Rate: Payment for the basic service provided by the concession holder, and regulated in the concession contract.

TITLE II

BIDS SUBMITTED BY PRIVATE PARTIES

ARTICLE 4º

PRIVATE INITIATIVE PROJECTS

1.- As provided in Article 2, 2nd paragraph, of MOP Supreme Decree Nº 900, of 1996, both individuals and legal entities may submit bids to the Ministry of Public Works for the execution, repair or conservation of public works, instead of exploitation thereof, through the concession system, provided that, upon submittal thereof, the execution of the works through the same system is being analyzed by the MOP. To this effect, the MOP will to at the interested parties’ disposal, in January and July of each year, a list of projects selected for their exploitation through the concession system. Deleted from said list will be those projects that have not been bid within a 5-year period as of their entry, save that their remaining thereon is duly substantiated by the MOP.

2.- This application will be made in accordance with the procedure set forth in the following articles and will comprise two stages. Firstly, and hereinafter referred to as the “Presentation”, the applicant will submit the project for the MOP to decide whether it is of public interest or not. Should the project presented initially be of any public interest, a second stage, hereinafter referred to as the “Proposal” will take place where the applicant will submit the surveys required by the Ministry to evaluate the private initiative idea.

ARTICLE 5

FIRST STAGE, “PRESENTATION”

1.- The project’s Presentation shall contain, at least, and in the order as indicated, the following information:

   a) Name or registered name, domicile, telephone number, fax number, and legal representative. If the applicant is a legal entity, it shall enclose the antecedents evidencing its legal existence and the appropriate powers of representation of its attorneys.
   
   b) Taxpayer number, in the case of legal entities, or Identity Card number in the case of individuals.
   
   c) Name and kind of project.
   
   d) Geographic location and area of influence.
   
   e) Estimated demand and its annual growth rate, indicating expected variance percentage.
f) Land, ownership thereof, and need of expropriation.

g) Description of the works and of the service to be provided under concession.

h) Projected investment and operating costs, including expected variance percentage in each case.

i) Financial analysis at profile level.

j) Social evaluation, at profile level, including non-rated alternatives of the proposed service.

k) Initiative-related risk, this being understood as the initiative’s complementarity or competitiveness being currently reviewed or executed, by both the MOP and other public entities.

l) Economic conditions the concession contract might contain, such as payments to the State or subsidy level.

m) General environmental analysis intended to determine the need of evaluating Environmental Impact as provided under Law Nº 19.300, on General Environmental Conditions.

n) Applicant’s application, indicating whether it accepts that the MOP extend the term period for conducting the studies of its proposal or otherwise.

o) Schedules: Any other background information about the project whose evaluation is deemed by the applicant as useful or necessary.

2.- Each one of the aforementioned antecedents shall be duly backed up and substantiated, including sources thereof.

3.- Any communications or notifications made by the MOP at this stage as well as at that of the proposal, will be forwarded to the domicile indicated by the applicant, by way of certified mail, fax or any other means allowing to generate written evidence of their reception.

4.- The original of the Presentation, plus two copies thereof, will be submitted, as provided in the Instructions to Submit Private Initiative Projects, as prepared by the MOP, at the Reception Office of the Public Works Department, where date and time of reception thereof will be recorded. Submittals may also be made at offices of MOP Regional Secretary Offices, which shall send the antecedents to the DGOP within a five-day period.

5.- The MOP will verify, within a 10-day period, as of submittal, whether the antecedents provided are in accordance with what is provided herein, and will inform the applicant accordingly. Should it be verified that the information submitted is incomplete, the applicant shall submit the missing information at the DGPO’s reception office or at the MOP Regional Secretary Offices, for which the applicant will have an additional 5-day period following notice reception to do so. Said Secretary Offices will deliver the documents within the period indicated in the preceding paragraph. Should these new antecedents not be timely submitted, the Presentation will be deemed as unmade.

6.- Depending on the amount of the projected investment, the MOP will assign the presentations to any of the following categories:

A) Projects comprising an estimated investment of up to UF 300,000.

B) Projects comprising an estimated investment from UF 300,000 to UF 800,000.

C) Projects comprising an estimated investment in excess of UF 800,000.
ARTICLE 6

PRESENTATION EVALUATION AND ANSWER

1.- In order to evaluate whether there is any initial interest in the project submitted, the MOP may review the antecedents with the Ministry of Finance, MIDEPLAN (Ministry of Planning) and other ministries or other competent public entities. However, should the public works be one of those the second paragraph of Article 39 of MOP Supreme Decree N° 900, of 1996, refers to, following the applicant’s answer, a report from the ministry, public service, municipality, State-owned company or State entity on whose jurisdiction the works the project refers to depends on will be required.

2.- Within a 45-day period, as of reception of the Presentation at the DGOP, or as of reception of the missing information, if any, the DGOP will send, to the applicant’s address, an official letter indicating the existence of public interest in the idea presented, or otherwise. If yes, said official letter will not imply any recognition of any right of the applicant on the presentation, nor approval thereof, but only the interest in reviewing it at length, without any subsequent responsibility on the MOP. Notwithstanding the above, this answer may be extended in the case of public works as referred to in the second paragraph of Article 39° of MOP Supreme Decree N° 900, of 1996.

3.- The answer contained in official letter, through which the MOP informs the applicant of the initial public interest in the idea presented, will at least contain the following:

a) Minimum studies to be submitted at the Proposal Stage, its format and specifications;

b) Delivery period for the partial report and the final report. The delivery period for the latter may not exceed 180 days;

c) Designation of a fiscal inspector for the project, who will represent the Ministry before the applicant during this stage.

d) Format, amount and conditions for the performance bond N° 3 of Article 0 hereof refers to.

4.- Both individuals and legal entities may again present the same idea, even if it were rejected by the MOP, however, the MOP will have a one-year period to resolve on the subsequent presentations.

ARTICLE 7

PROPOSAL STAGE

1.- Within a 5-day period, as of reception of the official letter with the answer, the applicant may request an extension of the term period to submit the studies proposed by the MOP, by either requesting the 180-day maximum term period, when shorter, or a longer period of up to 2 years, by way of a written communication to the Head of the Public Works Department, provided the extension has been requested in the Presentation. The MOP will inform the applicant, within 10 days following reception of the applicant’s request, whether it will extend, or otherwise, through an official letter forwarded to the applicant’s address or to the fax number as indicated by the applicant in its Presentation. This decision will not be subject to any subsequent appeal.

2.- During this stage, the MOP may require the applicant to conduct further studies.

3.- Within a 30-day period as of reception of the official letter containing the MOP’s answer, the applicant shall provide a bid bond guaranteeing the obligation to complete the studies within the period as indicated and adequacy thereof. The amount of the bond will be UF 1,000 in Category A projects, UF 3,000 UF in Category B projects, and UF 5,000 in Category C projects. The validity period thereof shall be to that set for the submittal of the studies,
plus 60 days. Said bond will be returned within a 30-day period following the date set for the submittal of the appropriate studies. The MOP will cash said bond in the studies are not be timely submitted or if they fail to comply with the format and specifications as established in the official letter the 3rd paragraph of the preceding article refers to. In this case, the decision to cash it will be substantiated and timely communicated to the applicant.

4.- The applicant shall submit the Proposal to the DGOP reception office within the set term period, enclosing a copy of the MOP’s official letter mentioned in the third paragraph of Article 6 above. Should this period elapse without the Proposition having been submitted, the interested party will be regarded as abandoning its application, which may be undertaken by the MOP or will be open to new presentations.

5.- The Proposal shall contain the studies conducted as well as all the antecedents as indicated in Article N° 5, first paragraph, of these Regulations, as duly updated.

ARTICLE 8

REIMBURSEMENT OF STUDIES

1.- The MOP may offer the applicant reimbursement of all or part of the costs of the studies as incurred as a result of its proposal.

2.- Once completed the studies, the applicant may request reimbursement of all or part thereof. The MOP will determine the costs that may be reimbursed, for which effect the applicant shall submit to the MOP, within a 30-day period as of reception of the official letter containing the MOP’s answer as indicated in the preceding article, a budget with the value of the minimum studies.

As regards any additional studies, the applicant shall submit to the MOP, within a 30-day period as of said studies were requested, an estimate of their cost.

3.- The MOP will assess both the minimum and the additional studies at market value, and will resolve on each, without any subsequent appeal on the amount it might reimburse, within a 20-day period as of the date the appropriate estimate would have been submitted. As regards additional studies required by the MOP during the proposal stage, the percentage of their reimbursement will be 100%.

4.- The reimbursement, if any, will be made within a maximum period of 120 days as of said studies are submitted and received as provided, save that the MOP approves the Proposal and decides to call of for a bid on the project, either through the concession system, in which case what is indicated in number 5 of this article will apply, or through a system other than the concession one, in which case it shall pay for the studies carried out within a 120-day period as of the effective call for a bid. In any event, once the reimbursement or payment of the cost of the studies, same will be deemed as transferred to the MOP.

5.- The MOP will reimburse the total cost of the minimum and additional studies that the applicant has to conduct for its proposal, when the project is awarded in accordance with the procedure established in these Regulations. When the project is bid through the concession system, reimbursement shall be made by the concession’s awardee. The manner, procedure and term period of this reimbursement will be set forth in the bidding conditions. Reimbursement will be directly made by the MOP, as indicated in the third paragraph, if the bid is called not executed for lack of awarding, or for any other reasons, in one or two calls, within a 90-day period as of resolution of the concession contract non-execution.

6.- The reimbursement, if any, will be understood notwithstanding the bonus the applicant might be entitled to for a private initiative idea when this idea is bid through the concession system, as provided in Article 10 hereof.
ARTICLE 9

ANSWER TO THE PROPOSAL

1.- The MOP’s well-founded answer to the proposal shall be produced within the legal term as set forth in Article 2, 2nd paragraph, of MOP Supreme Decree Nº 900, of 1996, once it has sent the appropriate antecedents to the Ministry of Finance for their knowledge.

2.- At the Proposal stage, the project proposal will continue to belong to the applicant until the MOP’s answer accepting or rejecting it. If the Proposal is accepted, same will be deemed as transferred to the Ministry of Public Works in exchange of the bonus contemplated in the bid evaluation, even if the applicant does not participate in the respective bid. The identity of the applicant as well as the bonus the applicant is entitled to in the bid’s evaluation will be indicated in the bidding conditions.

3.- Within a one-year period as of approval of the Proposal, the MOP will call for a public bid for the project to be executed under concession. The bidding process will be regarded as started once the MOP calls for a pre-evaluation of the project, as provided in Article 13 hereof, or when the call for the bid has been made.

4.- Should the Proposal be rejected, the initiative will remain in possession of the applicant for a period of up to 3 years, and may not bid for a concession without the prior notification to the applicant of the situation, in order for the applicant to participate in the bid and be entitled to the bonus resulting from the evaluation of its bid. The applicant’s not participating in the bid, as duly notified through official letter sent to the address indicated in the presentation, will imply its waiver of all its rights as the promoter of the initiative.

ARTICLE 10

BONUS ON BID EVALUATION

1.- The applicant whose proposal has been accepted, may participate in the bid submitting all the documents required in the bidding conditions, as well as copy of the official letter evidencing acceptance thereof. For determining the bonus the applicant will be entitled to the categories indicated in Article 5 hereof will be used. However, the final assignment of the project to a category will be made by the MOP once the Proposal has been accepted, based on the official budget for the works, including the updated value of the potential payments to the State for any pre-existing infrastructure, if contemplated in the conditions. Said budget shall be indicated in the bidding conditions.

2.- The percentage of the bonus the applicant will be entitled to will be 3% in Category C projects; 6% in Category B projects; and 8% in Category A projects.

3.- The applicant’s score on the economic bid will be raised by the quantity resulting from weighting said score with the percentage of the bonus, following the procedure established in the bidding conditions.

4.- The applicant may also participate in the bid as part of a bidding group, expressly assigning the bonus mentioned in this article to said bidding group.

ARTICLE 11

POWERS OF THE DIRECTOR OF THE PUBLIC WORKS DEPARTMENT

1.- The Director of the Public Works Department will be the authority to determine, when appropriate, whether a project submitted is identical to or different from another already submitted or that is included in the MOP’s investment plans.

2.- Applicants may appeal to the Minister of Public Works, within a 10-day period as of their being notified of the decision on this matter, who shall settle the controversy within a 90-day period.
ARTICLE 12

BIDDING PRIVATE INITIATIVE PROJECTS. SPECIAL CHARACTERISTICS

1.- The bidding of private initiative projects will take place as provided in Title III hereof.

2.- However, the MOP may modify said procedure as follows:

   a) Once a bid has been called, the MOP may require the applicant or a group the applicant is part of, within the term period as set forth in the bidding conditions, to submit an economic bid pursuant to the procedure as indicated therein. In any event, the applicant shall include, in its presentation, the bid bond.

   b) The Bid Opening Commission will receive and open, on a single occasion, the economic bid submitted.

   c) With at least 60 days prior to the opening of the bids Article 21 hereof refers to, the MOP will inform of the content of the economic bid to all bidders interested in the project, through a publication in a newspaper with national circulation or through certified mail addressed to the short-listed bidders, should the procedure would have been started with the pre-evaluation of bidders, as indicated in Article 13 hereof, or to all those who have purchased the bidding conditions in the absence of any pre-evaluation.

   d) The applicant’s economic bid will be regarded as the minimum offer in the subsequent bid, which will take place following the procedure established in Title III of these Regulations and as indicated in the bidding conditions.

   e) All bidders, meeting the requirements established in the Concession Law, in these Regulations, and in the bidding conditions may participate in any public deed, including the applicant. The latter shall then submit the same economic bid or a bid having a higher score in accordance with the formula established in the bidding conditions. Should it fail to submit said bid, the MOP may cash the bid bond letter a) of same numeral refers to. All other bidders may only submit economic bids overcoming that as published by the MOP.

TITLE III

BIDDING AND AWARDING

ARTICLE 13

PROJECT PRE-EVALUATION

1.- Prior to calling for a national or international bid on a project or a group of projects, the MOP may call for a bidder pre-evaluation process, whenever, in its opinion, the works to be executed have special characteristics as to complexity, magnitude or cost. Said pre-evaluation may be used in public initiative projects as well as in those of private initiative Title II of these Regulations refers to. Once the pre-evaluation has been carried out, the MOP may abandon the project’s bidding without any indemnity to the pre-evaluated bidders.

2.- The Ministry of Public Works will send the pre-evaluation conditions to the Ministry of Finance, entity that may issue an opinion within a 30-day period.

3.- The call for the pre-evaluation shall, at least, contain the term period and venue from where to withdraw the pre-evaluation conditions, the subject matter or purpose of the concession project and the period within which antecedents shall be submitted. The pre-evaluation calls will be published, at least on one occasion, in the Official Gazette, and on another in a newspaper with national circulation.
4.- Interested parties may inquire about the pre-evaluation conditions within the term period established therein. Questions will be answered in communications referred to as explanatory circular letters, addressed to all those who have purchased pre-evaluation conditions. The MOP may, either on its own initiative, or in response to a question, clarify, amend, or add the pre-evaluation conditions by way of explanatory circular letters.

5.- The MOP will pre-evaluate the interested parties meeting the requirements established in the pre-evaluation conditions, which may refer to requirements relating to legal, aspects, economic, financial or technical capacity, competence or experience, and may reject, on a well-founded basis, those turning unsuitable, under these criteria, for a particular concession.

ARTICLE 14

CALL FOR A BID

1.- A call for a bid is an event whereby the Director of the Public Works Department, by himself or by delegating in the Service Director or in Regional Ministry Secretary Offices in the regions where the project is carried out, invites those interested for them, in accordance with the bidding conditions, to submit bids.

2.- The call for a bid will contain, at least, the subject matter or purpose of the concession, term period and venue from where to withdraw the bidding conditions, as well as the date and time and venue where to submit the technical and economic bids. Calls for bids will be published at least on one occasion in the Official Gazette and, on another, in a newspaper with national circulation. However, only when a project has been pre-evaluated and when only pre-evaluated bidders may submit bids, the public call will be deemed as made.

3.- Nevertheless, the MOP shall meet the provisions contained in Article 13, letter g) of MOP Supreme Decree Nº294, of 1984, and in Article 5 of MOP Supreme Decree Nº 900. To this effect, the MOP will send:

a) the bidding conditions and the Investment Prospectus to the Ministry of Finance for it to formally approve its terms. Should no objections, within the 30-day period as of delivery to the reception office of the Ministry of Finance, be received at the reception office of the Public Works Department, the bid documents will be regarded as approved by that Ministry. The aforementioned term period will be put off each time the Ministry of Finance makes an objection or requires information from the MOP.

In order for the Ministry of Finance’s approval, the MOP shall enclose to the conditions any studies and other documents supporting or substantiating the content of the bidding conditions

b) To the President of the Republic, a document summarizing the general characteristics of the concession and a blueprint showing the geographic location thereof, for his/her approval. In case the works under concession is to be executed in border areas, the President of the Republic will send all the antecedents to the National Security Council.

ARTICLE 15

BIDDERS

Any individuals and legal entities, both national and foreign, as considered individually or within a bidding group, will be regarded as eligible, provided they meet the following requirements:

a) They are not affected by any legal impediments or any of the ineligibilities as indicated in Article 16 hereof, to subscribe contracts of this nature;

b) They meet current general requirements and demands on the matter contained in MOP Supreme Decree Nº 294, of 1984, in the Concessions Law, in these Regulations, and in the appropriate bidding conditions.
ARTICLE 16

INCAPACITIES

1.- Individuals convicted of or tried for a crime or an offense punished with imprisonment will not be able to be bidders or form part of a bidding group, nor for those sentenced and not rehabilitated. These grounds will not be applicable once 2 years have passed as of serving of imprisonment or of the rehabilitation, as applicable.

2.- The rule in the above section will be applicable to legal entities when one or more of their directors or partners that have faculties of administration are affected by any of the grounds of incapacity indicated above.

3.- Natural persons or legal entities that have formed a part, at the time of the respective declaration of serious non-compliance to which article 28 of the DS MOP Nº 900 of 1996 refers, of the controlling group of a concession holder, in the terms established in articles 97 and 98 of Law 18.045 of the Securities Market, to which the termination of the concession has been declared due to serious non-compliance with the obligations of the concession contract, cannot be bidders or form part of a bidding group. These grounds will not be applicable once 5 years have passed since the end of the contract.

ARTICLE 17

BIDDING CONDITIONS

The bidding conditions will include at least the following subjects:

a) Description of the public government works that are being bid out through the concession system.

b) Determination of the regulations that govern the contract.

c) Form, date, time and place of the presentation of the bids, requirements to be fulfilled by the bidders, and information that must be included in the technical and economic bids.

d) Official works quote.

e) System of guarantees, their nature and amount, indicating the periods in which they must be constituted. Bid bonds and guarantees for construction and operation of the works will be considered.

f) Time periods for questions and clarifications regarding the bidding conditions.

g) Systems of evaluation of the bids and award procedure.

h) Economic conditions of the concession.

i) Fines and sanctions due to non-compliance with the concession contract.

j) If it deals with a private initiative project, the identity of the bidders and the bonus to which he has a right in the evaluation of the bid and reimbursement of the costs of the studies if applicable.

k) Specification of the works that are given in concession as well as the additional works included in the bidding conditions, for its operability, and the minimum technical requirements for its design, execution and maintenance, and for the exploitation of the service, as applicable, as well as the environmental requirements that affect the project.

l) Payments that the concession holder must make the Government, if any.

m) Payments that the Government must make the concession holder, if any.

n) If the investment and the construction are done in one or several stages during the term of
the concession contract, in accordance with compliance with the levels of service previously established. If the bidding conditions established nothing in this regard, it will be understood that they will be done in one sole stage.

c) All other stipulations necessary or appropriate to include in virtue of that established in the Law of Concessions and in these Regulations.

ARTICLE 18

QUESTIONS AND CLARIFICATIONS REGARDING THE BIDDING CONDITIONS

1.- Questions will be put to the Director General of Public Works or to whomsoever made the call for bids. The corresponding document must be presented at reception office the Public Works Department, Service or Ministerial Regional Secretary offices with jurisdictions in the term period as indicated in the bidding conditions.

2.- The replies as well as the questions made by the bidders, as well as the clarifications, rectifications, amendments or additions that the MOP wishes to make to the bidding conditions, will be included in communications named clarifying circulars, directed to all the bidders, with a minimum advance notice of 10 days prior to the date of the opening of the technical bid. If the MOP makes modifications in a time period of less than 10 days, it must change the date of reception and opening of the technical bid to a date at least 10 days after the last modification. The clarifying circulars must be put at the disposal of the bidders in the place indicated in the bidding conditions.

3.- The clarifying circulars that imply modifications to the Bidding conditions must be approved by the Ministry of Finance.

ARTICLE 19

THE BID

1.- The bid will be comprised of the "Technical Bid", which will contain the general and technical information required by the bidding conditions, and of the "Economic Bid".

2.- The bidders will pay for the direct and indirect costs associated with the preparation and presentation of its bid, and the MOP will in no case be responsible for these costs.

3.- The bids and all the appendices delivered by the bidders must be written in Spanish. The bids must be delivered in Bid Envelopes indicating which is the technical bid and which is the economic bid, and each must indicate the name of the bidder.

ARTICLE 20

CONTENT OF THE BIDS

The bid must contain at least the following information and requirements, unless they were required in the preliminary assessment:

I TECHNICAL BID

A.- GENERAL BACKGROUND

a) Identification of the bidder

1.- Natural persons must attach a notarized photocopy of their identification card and indicate their domicile.

2.- Legal entities must attach the following information in original or a notarized copy or a legalized photocopy:

   a) Public deed of incorporation and its subsequent modifications or current compiled text;
registration of the summary in the respective Commerce Registry and publication of the summary in the Official Gazette.

b) Public deed which contains the power of attorney of the legal representative of the company and the certification that it is current.

c) Certificate that the company is current.

d) Domicile of the company.

3.- Foreign legal entities must present the deeds and other documents that accredit their incorporation in accordance with the legislation of the country of origin and the document that contains the power of attorney of the legal representative, all of which must be duly legalized in accordance with Article 345 of the Civil Proceedings Code. Furthermore, they must be accompanied by a legal report that summarizes the life of the company, indicating the date of incorporation, modifications, purpose, capital, administration and the legal representative, where it concludes that it has been legally incorporated.

4.- The bidding conditions may require other types of documents.

b) Sworn statement

The Sworn Statement, signed before a notary public, must contain at least the following:

- The non-existence of impediments or incapacities to enter into contracts of this nature or to be bidders.

- Compliance with all the provisions inherent to the bidding process and award of the concession and the regulations established in the Law of Concessions, in these Regulations and in the respective bidding conditions.

- That those natural persons or legal entities that form part of a bidding group do not form a direct part of some other group that is competing in the same call for bids.

c) Bid Bond

The bidders must include in their documentation a bid bond, in the manner, amount and conditions specified in the bidding conditions.

B.- TECHNICAL BACKGROUND

Given the diverse nature of the works that can be given in concession, the MOP will specify the contents, aspects and considerations of the technical bid in the bidding conditions.

II ECONOMIC BID

The economic bid will contain the proposal and the documentation under which conditions the bidder is willing to take the concession of the works, as a function of the factor or factors established in Article 7 of the DS MOP Nº 900 of 1996, as indicated in the bidding conditions.

ARTICLE 21

OPENING THE BIDS

1.- The bids will be received in a public act by the Opening Commission on the date, time and place indicated for these effects in the bidding conditions.

2.- If the date of the reception and opening of the bids is postponed, all the rights and obligations of the DGOP and of the bidders will be understood to be extended until the new date of reception and opening of the bids, and the corresponding guarantees must be constituted at that time.

3.- The Opening Commission will be formed of, at least, the Director of the Public Works Department or his/her representative, the Head of the MOP Department related to the
works to be carried out or his/her representative, and the Regional Ministerial Secretaries of the region or regions in which the project will be carried out, or the person that he or they designated. The bidding conditions may include additional members.

4.- The technical and economic bids will be received in the act of opening, and only the envelope with the technical bid of each bidder will be opened to verify if all the information required has been included.

5.- Under no circumstances will it be accepted that the bidders submit documents that were missing from those requested in the bidding conditions or exchange those rejected after the beginning of the act of opening.

6.- The envelopes of the economic bid will be sealed and signed by all the members of the Opening Commission. They will remain stored, unopened, until the time when the acceptable technical bids have been selected, on the date indicated in the bidding conditions.

7.- In the opening ceremony, minutes will be drawn up in which record is made of who presented bids, the information received and the observations made by the bidders and the Opening Commission.

8.- No new bid or counter-bid will be accepted after the act of opening the technical bid.

ARTICLE 22

BID EVALUATION COMMISSION

1.- The Bid Evaluation Commission will be formed of, at least, a professional representing the Director of the Public Works Department, one from the Head of Service related to the Works, one from the Ministry of Public Works, and one appointed by the Minister of Finance. The bidding conditions may include the appointment of additional members.

2.- The Commission members will judge the bids independently and will have a fixed period, established in the bidding conditions, in accordance with the magnitude of the works, their complexity or the documentation required for the bid.

ARTICLE 23

STUDY AND EVALUATION OF THE TECHNICAL BIDS

1.- The technical aspects on which the Evaluation Commission must report will be indicated in the bidding conditions. For these effects, each one of its members will assign a score between 1 and 7, without decimals, to the aspects to be evaluated, according to his own criteria and based on a special form drawn up by the DGOP.

2.- The final score obtained by the bidders will correspond to the weighted average of all the scores assigned to each one of the aspects, according to the considerations indicated in the bidding conditions, calculated with one sole decimal.

3.- The meaning of the scores will be the following:

7 Excellent
6 Very good
5 Good
4 Regular
3 Less than Regular
2 Insufficient
1 Unacceptable
ARTICLE 24

CLARIFICATIONS REGARDING THE BID

The DGOP, on its own initiative or at the request of the Evaluation Commission, and with the approval of the Minister of Public Works, may request the bidders, up until before the opening of the economic bid, clarifications, rectifications due to error in form or omissions, and the delivery of documents, in order to clarify and specify the correct meaning and scope of the bid, avoiding any being disqualified due to formal aspects in their technical evaluation, and always watching for the principle of transparency of the process and of equality of the bidders. The Director, with the approval of the Minister of Public Works, will determine if the errors or omissions can be amended through this procedure and may, if deemed necessary by him, postpone the date of opening of the economic bid.

ARTICLE 25

TECHNICAL SELECTION

1.- The following bids will not be technically acceptable:
   a) Where one or more of the aspects presented does not comply with that provided in these Regulations and in the bidding conditions;
   b) One or more of the aspects evaluated has obtained a final score of less than 3.0 in accordance with that established in the bidding conditions, or
   c) The final average score of the technical bid has been less than 4.0.

2.- The bids will be declared to be technically acceptable or unacceptable, according to that established in the previous paragraph by the Evaluation Commission without there being appeals or any claims regarding this decision before the MOP. All the documents accompanying their technical bid will be at the disposal of the non-selected bidders, and the corresponding guarantees will be returned within 15 days of the date of opening of the economic bids. The technically acceptable bids will pass to the next stage of evaluation.

ARTICLE 26

OPENING OF THE ECONOMIC BIDS

1.- The opening of the economic bids will be done on the date, time and place established in the bidding conditions, without prejudice to that indicated in Article 24, and this may be attended by the bidders that so wish.

2.- The Opening Commission will be comprised as indicated in Article 21 of these Regulations. The Commission will disclose the result of the technical evaluation of the bids, and will proceed to open only the envelopes of the economic bids of the bidders whose bids were declared to be technically acceptable. The envelopes of the bidders whose bids were not accepted in the technical evaluation stage will be returned, unopened, a record of this being left in the corresponding minutes.

3.- The economic bids not including all the documents required in the bidding conditions or that contain amendments or conditioning notes will be rejected.

4.- At the opening ceremony, minutes where evidence of those who submitted bids, of the documents received and of the observations made by the bidders and the members of the Opening Commission, will be drawn up.

ARTICLE 27

EVALUATION OF THE ECONOMIC BID

1.- The Evaluation Commission will verify if the documents presented in the economic bid are in line with the bidding conditions, and will assign them a score, taking into account the
factors indicated in Article 7 of the DS MOP N° 900 of 1996, evaluated according to the system established in the bidding conditions.

2.- In the case of limitations arising from private initiatives, the bonus the applicant is entitled to will be applied to the results of the evaluation, if it would have submitted a bid.

3.- The Evaluation Commission will draw up a Score Record, which shall be signed by all of its members, in which the order of the bidders will be established based on the final score obtained. This record will be delivered to the DGOP within the maximum period of 30 days as of the opening of the economic bids.

ARTICLE 28

AWARD

1.- Within the period of validity of the bid, the Director of the Public Works Department will communicate, in writing and by certified mail, to the bidder having obtained the highest score, the intention to award it the concession, attaching a copy of the award act, signed by the DGOP and with the approval of the Ministry of Finance, and will also inform it if supplementary services to the concession were accepted and the conditions that would be applicable to them. This communication will officially confirm to the winning bidder the intent of the DGOP to award him the contract; without prejudice to the fact that the concession contract will be understood to have been awarded with the publication of the corresponding supreme decree in the Official Gazette. The successful bidder must, in the period indicated in that letter, renew the bid bond for the time period determined and keep it current until the construction or operation guarantee is delivered, as applicable. If there is non-compliance with this obligation, the award winner cannot become the concession holder, and the MOP will make the guarantee effective and that provided in Article 32 of these Regulations will be applied.

2.- The DGOP, with the approval of the Minister of Finance, will be able to disregard with justification all the bids presented, without there being an appeal or claim regarding this decision and without any indemnity for the bidders.

TITLE IV

AWARD DEGREE AND CONTRACT

ARTICLE 29

CONTENTS OF AWARD DEGREE

The Public Works Ministry supreme decree, through which the Concession Contract is awarded, shall also bear the Minister of Finance’s signature and, also, shall include at least the following:

a) Individualization of the successful bidder.

b) Bidding conditions and the accepted financial and technical bid.

c) Individualization of the regulation that is regarded as incorporated to the contract.

d) Individualization of annexes that are an integral part of the contract.

e) Description of the service to be provided by the concession holder and its geographical location.

f) Term of the concession.

g) Rate structure.
h) Concession holder’s obligations and rights.

i) Pertinent guarantees and penalties.

j) Benefits included as compensation for the services rendered.

k) Commitments assumed by the State.

l) MOP’s unit to supervise the contract.

m) National Assets of Public Use to be assigned to service areas as provided in article 32 of MOP SD Nº 900 of 1996.

n) Any other clause in accordance with the bidding conditions.

ARTICLE 30

CONCESSION HOLDING COMPANY, ITS ORGANIZATION AND REQUIREMENTS

1. - Within the dead line stipulated by the bidding conditions, which in any case shall not be lower than 60 days, computed from publication of the awarding of the Contract awarding in the Official Gazette, the successful bidder shall legally organize a Concession Holding Company, of Chilean nationality, or an agency of the foreign one, with which the Concession Contract will be regarded as executed. Its name shall include the words “Concession Holding Company”. Its purpose will be established in the bidding conditions in accordance with the characteristics of the bid works. The company’s duration will be, at least, the concession period, plus 2 years.

2.- Unless otherwise agreed by the bidding conditions, the Concession Holding Company will be subject to the regulations governing open stock companies, as provided in article 2 of S.D. Nº587, of 1982, Regulation of Law 18.046, on Stock Companies, for which purpose it shall be registered in the corresponding registry. The bidding conditions may establish other characteristics and requirements to be met by said corporation.

3.- The Concession Holding Company’s subscribed and paid-in capital upon its organization shall be, at least, equivalent to 20% of the official budget estimated by MOP for the works, unless the bidding conditions set forth a different minimum percentage, that without prejudice of legal requirements on the matter. The paid-in capital shall be evidenced by a bank certificate or another general system and purpose to be established by the bidding conditions.

4. - Notwithstanding the general regulations on the accounting applicable to corporations, MOP may demand the concession holding corporations, through the bidding conditions, the accounting information records that area deemed necessary for supervising the Concession Contract and the Concession Holding Company.

5.- The concession successful bidder shall have at least 51% of the Concession Holding Company’s rights and undertakes not to transfer them, during the construction period, without the authorization of the Ministry of Public Works, without prejudice of what is provided by article 21 of MOP SD Nº 900 of 1996. Likewise, all throughout the concession period, the Concession Holding Company shall previously report to MOP, any change in the Concession Holding Company’s ownership rights, involving changes in the management’s control.

ARTICLE 31

REGISTRATION AND PROTOCOLIZATION

Within the dead line set forth by the bidding conditions, that in any case shall not be lower than 60 days, computed from the publication in the Official Gazette of the Concession Contract award supreme decree, the successful bidder will proceed to register in the presence of a notary three counterparts of the award supreme decree of the concession, as evidence of acceptance of its content, having one of the counterparts to be officially recorded in the presence of the same notary. One of said counterparts will be given to the Public Works Bureau’s Concessions Department for
filing within the additional 15 day term, computed from its official recording, and the other to the Legal Department of Ministry of Public Works jointly with an authorized copy. The bidding conditions may establish additional counterparts and their receivers. The counterparts subscribed as indicated will certify with respect to every person and will have right to execution without the necessity of being previously acknowledged.

ARTICLE 32

PENALTIES IN CASE OF NON-COMPLIANCE

1. - The terms set forth in the bidding conditions for complying with the obligations referred to articles 30 and 31 of the present Regulation will be set forth on a dead line term basis. Failing to comply with any of the obligations indicated in said articles will be stated by supreme decree of the Ministry of Public Works, which shall bear the signature of the Ministry of Finance, in which the concession award will be invalidated. MOP will cash the successful bidder’s guarantees that are effective and the latter will not be entitled to any indemnification whatsoever.

2. - Once the supreme decree in which the concession award is invalidated has been published, the Ministry of Public Works may choose to:

   a) Call for a new public bid in accordance with the present Regulation and conditions to be established to that effect.

   b) Call for a private bid among the bidders that submitted their bids in the original bid, except for the successful bidder whose awarding was invalidated. Said bid will be called by the head of the Public Works Department, or by the MOP Regional Director or Secretary office, on which the former has delegated, by certified letter or by that means he chooses himself, addressed to the bidder’s representative, within the 15 days following the publication of the supreme decree which invalidates the awarding made. In said bid, only the bidders whose bids have been technically accepted in the original bid will be entitled to participate, which will be able to submit a new financial offer that improves their previous offer. The offer submittal, their contents, the appropriate guarantees, as well as the opening and evaluation of them, will be governed by the present Regulation and the respective call, being able to establish in it the clarifications, modifications or explanations that are deemed convenient.

3.- The DGOP, with the approval of the Ministry of Finance, in both options, will be able to discard on a ground basis all the offers submitted, with no appeal or complaint against this decision and with no indemnification to the bidders.

ARTICLE 33

GUARANTEES OF THE CONTRACT

1.- The Concession Holding Company shall establish the construction and exploitation guarantees on the periods set forth in the bidding conditions, being the parties that establish the guarantees the successful bidder of the concession or the Concession Holding Company. The manner and amount of them will be established in the bidding conditions.

2. - MOP will be able to cash, either totally or partially, said guarantees in the cases of breach of contract and particularly, in the cases as follows:

   a) Execution, by the Concession Holding Company, of any kind of action or contract without MOP’s authorization when demanded by the Concession Law, the present Regulation, or the bidding conditions.

   b) Failing to comply with the sanctions or penalties applied during the concession.

   c) Failing to establish or re-establish the guarantees and insurance policies established in the bidding conditions, within the provided periods in them.
d) Payment delays the Concession Holding Company must make to the State, established in the Concession Contract.

e) Any non-compliance of the concession holder’s obligations with third parties, when MOP is declared additionally responsible.

f) Any other breach of contract, as established in the bidding conditions.

3. - In case MOP cashes any guarantee, it shall be reestablished or supplemented, as the case may be, within a 15 day period, computed from the date it was executed.

ARTICLE 34

CONSTRUCTION GUARANTEE

1. - The purpose of the construction guarantee is to secure the compliance of the concession holder’s obligations during the construction stage. This guarantee will replace the guarantee of seriousness of the offer, and the term, manner and amount of it will be stipulated in the bidding conditions; in any case, the guarantee term shall not be lower to that indicated in the bidding conditions for construction stage of the works, plus 3 months.

2. - The works construction guarantee will be returned to the Concession Holding Company once the works have been completely done, and the documents demanded by the contract to finish this stage have been delivered, provided the exploitation guarantee has been delivered at full satisfaction of MOP and in accordance with the present Regulation.

ARTICLE 35

EXPLOITATION GUARANTEE

1. - The Concession Holding Company shall deliver the exploitation guarantee to MOP, within the period, manner and amount set forth in the bidding conditions. In any event, the guarantee will have a validity period equal to the exploitation period, plus as least 12 months. However, the Concession Holding Company may choose to submit guarantee documents which validity is lower, provided it is accepted by the DGOP and each document is submitted before the expiration of the previous one; the DGOP is empowered to collect the guarantee in effect, in case it has not been renewed at least 10 days in advance. The period of the last document will be what it is left of the exploitation stage plus 12 months, as a minimum.

2. - MOP will not grant the provisional start up authorization of works, if the obligation of submitting the exploitation guarantee is not fulfilled.

3. - The bidding conditions may demand that new guarantees be established to carry out new investments or to guarantee the fulfillment of the conditions in which the State will receive the works given on concession, among others. The establishment period, validity, manner and amount will be set forth in the bidding conditions.

4. - The exploitation guarantee will be returned within the term indicated in the bidding conditions, provided, however the concession holder has fulfilled the obligations assumed with MOP.

ARTICLE 36

INSURANCE

1. - The Concession Holding Company shall take out insurance policies that cover civil liability for damage to third parties and catastrophic risks that may occur during the concession period. The amounts obtained for catastrophic coverage insurance will be assigned to the works reconstruction, unless the parties agree to assign them to other purposes or works associated to the Concession Contract.
2. - The bidding conditions will establish the periods, manner, conditions, modalities and the rest of the clauses that said policies must include, as well as the approval procedure of them.

3. - The bidding conditions may demand other types of insurance policies.

ARTICLE 37

PAYMENTS PROVIDED IN THE CONTRACT

1. - The State will make the corresponding payments pursuant to the Concession Contract, in accordance with the procedure and terms provided for that purposes in the bidding conditions and in the Decree Law N° 1.263, of 1975, of the Ministry of Finance, Entity of Finance Administration of the State. The Concession Holding Company will make the corresponding payments pursuant to the Concession Contract in accordance with the procedure and terms provided for that purpose in the bidding conditions.

2. - To that effect, the Concession Holding Company shall submit, during the month of October of the previous year, the list of all the payment the State is to make to the Concession Holding Company, indicating the reason, estimated amount and term in which they shall be made, as well as all the payments the Concession Holding Company is to make to the State. Likewise, it shall repeat the corresponding payment with a month before the payment date.

3. - The delivery of the payment list or the repetition in writing will be done without prejudice of the Concession Holding Company's and MOP's obligation to make the corresponding payments pursuant to the Concession Contract, in spite of the appropriate sanctions with respect to the Concession Holding Company in case of delay or non-compliance.

4. - The payments to be made by the State, will be made by Sight Note or Order Check, drawn to the order of the Concession Holding Company or whom legally corresponds.

5. - The payments to be made by the Concession Holding Company to the State, will be made by Sight Note to the order of DGOP.

6. - When the State must pay the VAT to the Concession Holding Company, no adjustment will be contemplated between the invoicing date to the State and the payment date of invoices established in the bidding conditions.

TITLE V

SUPERVISION OF THE CONCESSION CONTRACT

ARTICLE 38  FISCAL INSPECTOR

1. - MOP will appoint a fiscal inspector within a 15 day period computed from the publication of the award decree in the Official Gazette.

2. - All communication and relationship between the concession holder and the Ministry of Public Works will be carried out through the fiscal inspector, without prejudice of the appeal instances established in the Concession Law, the present Regulation or in the corresponding bidding conditions.

ARTICLE 39

DUTIES AND FACULTIES OF THE FISCAL INSPECTOR DURING THE CONSTRUCTION STAGE

During the construction stage, the fiscal inspector will supervise the progress of the Concession Contract and will have all the duties and faculties indicated in the bidding conditions, at least the following ones:
a) Supervise and approve the designs, plans, studies and specifications of the project;
b) Supervise the compliance with the specifications and technical regulations of the works construction;
c) Supervise the compliance with the work plan proposed by the Concession Holding Company;
d) Supervise the compliance with the safety regulations;
e) Supervise the compliance with the quality regulations;
f) Provide DGOP with any reports as requested by that department regarding the concession management during the construction stage;
g) Review the statistic information submitted by the Concession Holding Company;
h) Propose to the respective Director compensations or the execution of additional works in the manner indicated in article 68 of the present Regulation.
i) Deliver the necessary land pieces for the construction of the works, provided in the bidding conditions, duly annotated in the Works Log.
j) Propose the application of penalties that are appropriate, pursuant to the Concession Contract.
k) Supervise and watch for the compliance with legal, accounting and administrative aspects and, in general, any others arising from the documents of the contract.
l) Give orders and instructions for the compliance with the Concession Contract.
m) Review and propose to the corresponding Director the approval of the Service Regulation of the Works.
n) Any other established in the bidding conditions.

ARTICLE 40

DUTIES AND FACULTIES OF THE FISCAL INSPECTOR DURING THE EXPLOITATION STAGE

During the exploitation stage, the fiscal inspector will supervise the Concession Contract and will have all the duties and faculties indicated in the bidding conditions, at least the following ones:
a) Provide DGOP with any reports as requested by said department regarding the concession management;
b) Carry out the pertinent analyses of the antecedents to be provided by the Concession Holding Company;
c) Supervise the compliance with the technical regulations on the works preservation;
d) Supervise the compliance with the work plan;
e) Supervise the compliance with technical regulations on the works operation;
f) Supervise the compliance with the service regulation of the works;
g) Supervise the compliance with the collection of rates;
h) Supervise the compliance with the economic conditions of the bid;
i) Propose the application of penalties;
j) Supervise and watch for the compliance with legal, accounting and administrative aspects and, in general, any others arising from the documents of the contract.
k) All those corresponding to the fiscal inspector during the construction stage dealing with the project engineering and the construction when carrying out the works during the exploitation stage.
l) Supervise the compliance with the project's environmental requirements.
m) Give orders and instructions for the compliance with the Concession Contract.
n) Any other set forth by the bidding conditions.

ARTICLE 41

WORKS LOG AND ADVISORS

1.- The fiscal inspectors, in the construction as well as in the operations stage, in order to carry out their tasks, must have, among other documents, a book known as the Works Log, which will individualize the works under concession, the concession holder and the fiscal inspector, mentioning the pertinent resolutions. The works log must record the most important facts that occur during the execution of the works and its operation, especially compliance by the concession holder with the technical specifications, observations made during construction, communications and notification of the concession holder, etc. and the obligations contracted in accordance with the bidding conditions and the bid presented.

2.- Notwithstanding what is established in the previous section, with the authorization of the respective Director, the fiscal inspector may be ordered to be advised by civil engineers, architects, construction technicians, and other professionals. The activities and obligations of the latter advisors will be established in the agreements entered into with them for these effects.

ARTICLE 42

RESOURCES

1.- The written orders or resolutions issued by the fiscal inspector during the period of the concession, whether regarding the works, or other aspects related to the concession contract, may be reinstated, in writing, within 5 working days of receipt of the notification, before the same fiscal inspector that made them. For these effects, it will be understood to have been received when it is recorded in the Works Log, or has been sent by any method that gives evidence of its reception. He will state his opinion within 5 working days on the reinstatement requested, maintain the order or resolution, modify it or leave it without effect.

2.- Once the reinstatement has been resolved, the concession holder may appeal to the head of the Public Works Department, within 3 working days of the date on which the notification was received. For these effects it will be understood to have been received when it is noted in the Works Log, or when sent by any means that gives evidence of its reception. The Director will resolve the appeal within 10 working days of the receipt at the reception office, and may decree an injunction.

3.- In no case will the notice of reinstatement or of the appeal suspend the effects of the resolution or order claimed, when this compromises the safety of the user, the continuity of provision of the service or the quality of the works affected.

ARTICLE 43

INFORMATION OBLIGATIONS

1.- The concession holder shall:

• Grant free access to the fiscal inspector to the project documents, plans, calculation reports, specifications, etc., related to the engineering project and in general, all the documents necessary for the work of supervising and monitoring compliance with the obligations arising from this concession contract.

• Deliver the quarterly and annual financial statements of the concession holder, presented
in the format (FECU) required by the Superintendence of Securities and Insurance.

- Inform the organization and upper management of the company when this is incorporated and every time a change occurs.

- Report on the guarantees given by the concession holder in relation to the concession contract, and in particular the special public works concession pledge indicating the name and domicile of the creditors and guarantors.

- Report regarding the special public works concession pledge on the payments committed by the Government to the concession holder at any title, in virtue of the concession contract, indicating the name and domicile of the creditors and guarantors.

- Deliver the information regarding work-related accidents and professional illnesses, delivering, when applicable, the reports of those that occurred.

- Supply monthly information on complaints presented by users, identifying the user and the claim made.

2.- Despite the above, the bidding conditions may establish any other information that the concession holder shall deliver to the fiscal inspector.

ARTICLE 44

POWERS OF THE RESPECTIVE DIRECTOR DURING THE CONTRACT

During the term of the contract, the respective Director will have all the faculties and powers that correspond to him in accordance with the legal regulations, and will have at least the following functions and powers:

a) Recommend the applicable authorizations for the applications presented by the concession holder to the Minister of Public Works.

b) Grant the concession holder express authorization to modify company statutes, to dispose of and encumber property and rights, according to that established in article 15 of MOP Supreme Decree Nº 900 of 1996, and for other actions established in the bidding conditions.

c) Propose modifications to the contract that are necessary for reasons of public interest to the Ministry of Public Works, in accordance with the first section of article 19 of MOP Supreme Decree Nº 900 of 1996, as well as the indemnities or compensations that are applicable in the case of damages.

d) Propose the acceptance or rejection of the review of system of charges, its adjustment formula or the term period of the concession due to supervening causes that so justify this to the Minister of Public Works.

e) Propose the agreements to which article 20 of MOP Supreme Decree Nº 900 of 1996 refers, to Minister of Public Works.

f) Authorize the temporary and final review of the commissioning.

g) End the temporary commissioning when applicable.

h) Report regarding the disputes that have been submitted to the Conciliation Commission to the creditors that so request and that have the special public works concession pledge constituted in their favor.

i) In general, he will have all the faculties and powers that correspond to him as part of the concession contract.
TITLE VI

INFRASTRUCTURE IN WHICH THE WORKS UNDER CONCESSIONS WILL BE CARRIED OUT AND ASSETS AND RIGHTS SUBJECT THERETO.

ARTICLE 45

INFRASTRUCTURE DELIVERED TO THE CONCESSION HOLDER

1.- If the MOP provides pre-existing infrastructure to the concession holder, this will be understood to be delivered on a as is basis at the time of the delivery of the land or of the facilities, and it will be the responsibility of the concession holder to comply with the obligations that are indicated in the bidding conditions regarding them.

2.- The handing over of land or facilities will be understood to be done through the signing and authorization of the award decree before a notary public, save that the bidding conditions provide a different date which cannot be previous to the date of publication of the awarding supreme decree.

3.- National assets of public or government use, for the development of the works delivered in concession and that is included within the concession area, will be subject to it from when the concession contract is completed, notwithstanding what is indicated in the bidding conditions.

ARTICLE 46

PURCHASES AND EXPROPRIATIONS

1.- The concession holder may acquire for the Government the land necessary to carry out the works in accordance with the plans established in the approved projects, applying that provided in section one of article 15 of MOP Supreme Decree Nº 900 of 1996. In any case, the bidding conditions will indicate the procedure for purchasing the property.

2.- The fiscal inspector will keep an updated record of all the property and rights subject to the concession. Property that is subject to the concession is all that property and rights acquired by the concession holder, at any title, during the concession, and that will be evaluated as such by the MOP. The replacement or renewal of property will be submitted to the authorization of the Public Works Department, which will state an opinion regarding the request presented by the concession holder within 30 days of the date of receipt of the pertinent request at the reception office of the DGOP.

3.- The MOP, through the fiscal inspector, will keep the concession holder updated regarding the status of the expropriation process.

TITLE VII

SANCTIONS AND FINES

ARTICLE 47

INFRINGEMENTS AND SANCTIONS

1.- Non-compliance or infringement, by the concession holder, of any of the obligations in the concession contract, will be grounds for sanctions and fines.

2.- The concession holder will not be exempt from liability even in the cases where the non-compliances are the consequence of contracts that it entered into with third parties.
ARTICLE 48

PROCEDURE AND PAYMENT OF FINES

1.- When the concession holder does not comply with its obligations or incurs any of the infringements established in the bidding conditions, the fiscal inspector will propose the corresponding fine to the respective Director. Once it has been approved, the fiscal inspector will notify the concession holder in writing of:

   a) The type of infringement incurred;
   b) The characteristics of the infringement, such as the number of days of non-compliance with the obligation at the date of notification, or other elements indicated in the bidding conditions;
   c) The amount of the fine.

2.- The fines or sanctions applied by the MOP shall be paid by the concession holder within 30 days following the date of their notification in writing. If the concession holder does not comply with the sanction imposed within the term period set, the MOP will make the guarantees effective, notwithstanding other applicable actions.

3.- The expression notification in writing will include among others, annotations in the works log, registered mail, telegram or any other medium that allows evidence to be left of the notification.

TITLE VIII

DEVELOPMENT OF THE CONCESSION CONTRACT

ARTICLE 49

CONSTRUCTION STAGE

The construction stage, if there is one, will begin with the engineering studies, if applicable, and with the beginning of the execution of the works in accordance with that stipulated in the concession contract, and will end with the temporary commissioning of the works in accordance with that defined in the bidding conditions. This stage will be governed by that provided in these Regulations and by the respective bidding conditions, and will include:

   a) Carrying out the studies as provided in the bidding conditions.
   b) Construction of the works indicated in the bidding conditions.
   c) Maintenance and repair of the pre-existing works to the standards provided in the bidding conditions, from the beginning of the contract.
   d) Use and possession of national assets of public or government use destined to carry out the works granted under concession.
   e) Use and possession of national assets of public or government use destined to areas of service as provided Article 32 of MOP Supreme Decree Nº 900 of 1996.

ARTICLE 50

EXECUTION OF THE WORKS

1.- The works will be executed in accordance with that provided in the bidding conditions and the bid by the successful bidder. For these effects, the concession holder shall present all the documents required in them for the approval of the fiscal inspector.
2.- When the works are done on national assets of public use, the concession holder shall guarantee its uninterrupted use. For these effects, it may request the fiscal inspector, under the exclusive responsibility of the concession holder, the operation of the works executed, who may authorize this without this implying in any case an authorization to begin charging users. The concession holder shall maintain operational for all types of users, at its cost, the national assets of public use or its variants for which a detour is necessary due to the execution of the contracted works.

ARTICLE 51
WORKS CONSTRUCTION COMMENCEMENT AND PROGRESS STATEMENTS

The bidding conditions may establish maximum periods for the beginning of the construction and progress of the works, and may determine the sanctions that are applicable in case of delay.

ARTICLE 52
COMPLIANCE WITH TERM PERIOD

1. The concession holder shall complete the works and have them operational on the dates and in the total or partial term periods that are indicated in the bidding conditions or in those determined in their bid, as applicable. The bidding conditions will indicate sanctions and/or fines to the benefit of the MOP for the non-compliances, as applicable.

2.- If delays are produced during the construction of the works caused by acts of god or force majeure, the concession holder shall present the fiscal inspector its justification in writing, within 30 days of when they occurred, and in all cases, within the current period; once this period finishes, no justifications whatsoever will be accepted. The DGOP, after receiving a report from the fiscal inspector, will analyze the reasons invoked by the concession holder to justify the delay, and will decide on the acceptance or rejection of the extension of the term period.

3.- When the delay in compliance with the partial or total term periods is imputable to the Government, the concession holder will be given an extension in the term period of construction equal to the period of interruption or stoppage, notwithstanding the applicable compensations.

ARTICLE 53
BY-STAGE INVESTMENT OR CONSTRUCTION

1.- The bidding conditions shall establish if the investment and construction is to be carried out in one or several stages, during the term of the concession contract, in accordance with compliance with the levels of service previously established, as well as the term periods and conditions to which these are related.

2.- The bidding conditions shall clearly state the term periods and conditions that may give rise to carrying out construction or investments and if these give rise or not to the modification of the economic system of the contract, clearly establishing which condition it would affect and how this modification would be quantified. If the bidding conditions do not state anything in this regard, it will be understood that the investments or constructions will not give rise to the review of the economic system.

ARTICLE 54
E EXPLOITATION STAGE

The exploitation stage will begin with the temporary commissioning of the works, and this stage will include the following:

a) Provision in the concession area of the basic service, supplementary services and other services for which the works were carried out;
b) Preservation of the works in optimal use conditions, according to that required by the bidding conditions;

c) Charging the users of the basic services fees and the prices for the other services that the concession holder is authorized to provide in virtue of the concession contract.

d) The execution of the works that shall be built once the works have been commissioned.

e) The use and possession of national assets of public or government use on which the works given in concession will be developed.

f) The use and possession of national assets of public or government use, used as service areas in accordance with that stipulated in article 32 of MOP Supreme Decree Nº 900 of 1996.

ARTICLE 55

AUTHORIZATION FOR TEMPORARY COMMISSIONING

1.- The concession holder may request the temporary, total or partial commissioning of the works, if this is so stipulated in the bidding bases. The DGOP shall approve or reject the temporary commissioning in a maximum time period of 30 days from the date on which the request is submitted.

2.- For these purposes, the concession holder shall present an application in the reception office de la DGOP, attaching all the documents required in the bidding conditions for commissioning, such as the operating guarantee, insurance that corresponds to this stage, and the Works Service Regulations, among others.

3.- If the above conditions are complied with, and if the works are approved, the DGOP, through a resolution, will authorize the temporary commissioning of all or part of the works, if this is so established in the bidding conditions, and the operations stage will begin.

ARTICLE 56

FINAL COMMISSIONING

1.- The concession holder shall request the acceptance of the final commissioning of the works within the time period established in the bidding conditions, which cannot be more than 1 year, from the authorization of the temporary commissioning of the works. The bidding conditions may establish requirements and conditions for the authorization of this commissioning.

2.- Once the concession holder has requested the authorization for final commissioning, a Commission will be designated, integrated by three people: one representative from the Director General of Public Works, another from the corresponding Service, and a last one designated by the Ministry of Public Works.

3.- Within 10 calendar days of the receipt of the request for final commissioning, the concession holder will be summoned for the inspection of the works. Once the satisfactory condition of the works and facilities and their relationship with the project and the other approved technical specifications has been verified, the corresponding minutes will be drawn up. If the works are incomplete or defective, this will be noted in the minutes, which will contain a detailed description of the omissions or defects observed, and will proceed in accordance with that stipulated in articles 47 and 48 of these Regulations. These minutes will be signed by the Commission members and the representative of the concession holder and will be issued in triplicate, with one copy remaining in the possession of the concession holder.

4.- The concession holder cannot put the works into final operation until the omissions or defects have been rectified to the satisfaction of the Commission in the time periods established in the minutes. In the case of serious defects, the Director General of Public Works may stop the
temporary commissioning authorized, and therefore the charging of fees, without prejudice to the other applicable sanctions.

5.- In the case of less serious defects, the DGOP may extend the works’ commissioning period. The authorization will indicate the time periods granted to rectify or complete the works or facilities, without prejudice to the sanctions that may be applied.

6.- Final commissioning will be authorized through a DGOP resolution, and it shall state the total amount of the investment made by the concession holder.

**ARTICLE 57º**

**WORKS’ SERVICE REGULATIONS**

1.- The use of the works and the services that the concession holder will provide will be governed by internal regulations, which, in all cases, shall include all the regulations derived from the bidding conditions and the technical bid. The concession holder shall deliver the rough draft of this to the fiscal inspector for review and approval in the time period provided in the bidding conditions, and if these state nothing in this regard, within 90 days of the request for temporary commissioning.

2.- The regulations, in accordance with the diverse nature of the concessions granted, will contain, among other matters:

   a) Measures for the care, safety and vigilance of the works.
   b) Measures for the maintenance and cleaning of the different facilities.
   c) Measures oriented to detect and solve problems regarding accidents, congestion or problems of any other nature that occur on the road, regarding the road concessions.
   d) List of the rights and obligations of the users regarding the services provided.
   e) Measures for the maintenance and protection of the replanted areas.
   f) Rules of use for the obligatory services established in the bidding conditions and for the supplementary services.
   g) Operating, quality and management standards for the provision of the services.
   h) Regulations regarding user complaints.
   i) Mechanisms for the evaluation and monitoring of the services.
   j) Procedures.

3.- Within 60 days of having received the regulations, the fiscal inspector shall notify the concession holder of the approval or of observations on this document. If the fiscal inspector does not respond in the time period indicated above, the Regulations will be understood to have been approved when this time period expires. If the fiscal inspector makes objections to the text, the concession holder will have a period of 30 days to rectify them. Within 15 days of the presentation of these corrections, the fiscal inspector shall state an opinion approving or rejecting them. If the fiscal inspector rejects this document, the concession holder shall present a new works’ service regulation in the same manner and procedure established for its original presentation.

4.- The MOP will not authorize the concession’s temporary commissioning if it has not previously approved the Works’ Service Regulations.

5.- Once the regulations have been approved by the fiscal inspector, the concession holder shall publish a summary of them in a nationally circulating newspaper and in newspaper that circulates locally in the county or counties in which the concession operates. This summary will be available, cost-free, to users at the offices of the Concession Holder. The approved Works’ Service Regulations can also be consulted by users at the offices of the Concession Holder.
ARTICLE 58

CHANGES IN THE PROVISION OF THE SERVICE

1.- When as a consequence of carrying out the works, the concession holder foresees a temporary change in the level of service provided, it shall communicate this to the fiscal inspector with at least 15 days advance notice.

2.- The fiscal inspector may require measures to be taken by the concession holder in order to achieve minimum interference with the normal use of the works. These measures may refer to setting timetables, signage, safety precautions, a maximum period for the execution of works, or others necessary.

ARTICLE 59

STATISTICS, MEASUREMENTS AND CONTROLS

1.- The concession holder shall monitor, measure and keep the statistics required of it by the bidding conditions, answering for the veracity of the information. It will allow access by authorized MOP inspectors to the property where the statistical monitoring systems are located in order to inform themselves of them, and to verify and monitor the results.

2.- Without prejudice to the above, the MOP reserves the right to independently carry out any measurement that it considers appropriate, and may use the concession holder’s facilities that are related to the monitoring systems, without affecting the concession holder’s operations.

ARTICLE 60

SECURITY

1.- When there is material occupation of one or more of the properties corresponding to the concession, the concession holder shall fence it under the supervision of the MOP in the manner indicated in the bidding conditions, in the time period provided in the bidding conditions,

2.- From the moment of occupation, until the termination of the concession, the concession holder shall maintain the land and property under the concession under surveillance. It will take special care to keep them free of occupants, to not permit alterations to their boundaries and to not allow material foreign to the concession to be dumped on them.

ARTICLE 61

NON-DISCRIMINATORY SERVICE OBLIGATION

1.- The works under concession are a public service, for which the concession holder is obligated to provide this service without interruption, save in exceptional situations, due to acts of god or force majeure, and without discrimination of any kind towards the users, as long as they comply with the service conditions and the payment of the rates authorized in the concession contract.

2.- The concession holder may establish fees and agreements for differentiated rates in favor of the users, given the intensity of use of the works, or the system of payment of the rates, or a commitment for a minimum use for a given period of time, or others of a similar nature, in accordance with that indicated in the bidding conditions. These special rates, agreements or rates shall be non-discriminatory in the sense that any user that meets the conditions necessary for these rates or agreements regarding rates, will have the right to access them. In short, under no circumstances may the concession holder charge any user a rate higher than that authorized in the concession contract.
ARTICLE 62

DAMAGES TO THIRD PARTIES

1.- During the concession, the concession holder shall adopt all measures to avoid damages to third parties and to personnel that work there. Likewise, it shall take all precautions to avoid damages to third party property and to the environment during the concession.

2.- The concession holder will be the sole party liable for all damages, of any nature, that are caused to third parties, to works personnel, to third party property or to the environment, due to the execution of the works and their operation, unless the damage is exclusively imputable to measures imposed by the MOP after the supreme decree awarding the concession was published in the Official Gazette.

ARTICLE 63

CONCESSION HOLDER’S RESPONSIBILITY

The concession holder will always be responsible for the full, total and timely compliance with the concession contract, for the correct execution of the project and of the works, and for compliance with all obligations established in the concession contract, without prejudice to the functions of management and control that correspond to the Ministry of Public Works.

TITLE IX

RELATIONSHIPS WITH THIRD PARTIES

ARTICLE 64

SUBCONTRACTS

The concession holder may subcontract any type of activity included in the concession contract, unless this is expressly prohibited by the bidding conditions. In all cases, the concession holder will always be the party liable to the MOP for the correct execution of the contract. The bidding conditions may establish requirements for subcontracts.

ARTICLE 65

TRANSFER OF SHARES AND OTHER MODIFICATIONS

1.- In accordance with that provided in section five of article 30 of these Regulations, the concession holder shall request authorization from the MOP during the construction period to transfer their shares or rights.

2.- In those cases in which authorization is required, the Ministry of Public Works will always consent to the transfer in favor of the pledgee when this is a consequence of obligations guaranteed through the pledge of shares in the favor of any financial entity subject to the supervision of the Superintendency of Banks and Financial Institutions, of the Superintendency of Securities and Insurance, or of the Investment Funds regulated by Law Nº 18.815, or of the Pension Fund Managing Companies, established in accordance with the regulations of Law Decree Nº3500, of 1980, and in favor of any other individual or legal entity that complies with the requirements established in the bidding conditions.

3.- The Ministry of Public Works will authorize the successful bidder the voluntary transfers of shares in the concession holder, as long as the following requirements are met:
a) that they are sold or transferred to one sole individual or legal entity in one sole, total and indivisible share package that is greater than or equal to 51% of the share capital;

b) that the buyers comply with the requirements to be bidders in the bid process that gave rise to the concession contract, save that the bidding conditions establish another procedure. The MOP will authorize or deny the transfer within 30 days from when it was requested. If does not reply in this period, the transfer will be understood to have been authorized, as long as it is legal.

4.- The concession holder shall also request express authorization for the following actions from the General Authority of Public Works:

a) Modification of the Statues of the concession holder.

b) All legal and contractual actions regulated by article 15 of MOP Supreme Decree Nº900 of 1996, in which case the consent of the Ministry of Public Works will be required for their authorization.

c) Other actions that may be established in the bidding conditions.

5.- The General Authority of Public Works will state its decision, through a resolution, regarding the request for authorization within 60 days of the date of receipt of the pertinent request at the reception office de la DGOP. If it does not respond in this time period, the authorization will be understood to have been given, as long as the action that is authorized is legal.

ARTICLE 66

TRANSFER OF THE CONCESSION

1.- The concession holder may transfer the concession in accordance with that provided in article 21 of DS MOP Nº 900 of 1996.

2.- For these purposes, the concession holder shall present a request to the MOP through the reception office de la DGOP, individualizing the assignee and the circumstances of the transfer.

3.- For purposes of what is provided in the last section of article 21 of MOP Supreme Decree Nº 900 of 1996, the requirements established in the bidding conditions will be understood to be complied with by those people that, having bid on the public works with a previous preliminary classification, comply with the requirements of the corresponding preliminary conditions, even when they would not been registered in the preliminary registry.

4.- The MOP will request a performance bond from the assignee the same as the one that would have been established in the bidding conditions as a performance bond for the contract, and this shall be attached to the request for transfer. The assignee will deliver the construction and operation guarantees of the contract, according to the stage of construction or operation and according to the provisions of articles 33, 34 and 35 of these Regulations, once the supreme degree that authorizes the transfer is completed, retuning the performance bond in the period of 30 days after completion.

5.- Authorization to transfer the concession will be granted through a resolution issued within the maximum period of 60 days of when the request is presented at the reception office of the DGOP and is formalized through a supreme decree that authorizes the transfer, which will contain the characteristics of the new concession holder. This will be issued in compliance with the requirements contained in article 21 of MOP Supreme Decree Nº900 of 1996 being accredited.
ARTICLE 67

GUARANTEE FURNISHING

1.- The special public works concession pledge included in article 43 of MOP Supreme Decree Nº 900 of 1996, may be agreed to by the concession holder with the financiers of the works or of its operation or through the emission of debt titles of the concession holder.

2.- Those individuals or legal entities that have the special public works concession pledge furnished in their favor will be notified of the disputes submitted to the Conciliating Commission in which they have an interest, in accordance with article 44 of these Regulations, so that they can exercise the right established in section three of article 36 of MOP Supreme Decree Nº 900 of 1996.

TITLE X

MODIFICATIONS TO THE WORKS AND SERVICES AND OTHER CONTRACTUAL ASPECTS

ARTICLE 68

MOP’S POWERS

1.- During the construction stage, the MOP, at the request of the DGOP or of the concession holder, may substitute works or carry out additional works, as long as they do not imply a modification of the economic conditions of the contract. For this, one of the following procedures will be used:

a) Substitute works included in the contract by other different works that have equivalent values. The bidding conditions will determine a maximum percentage of 5% of the official works estimate that may be compensated.

b) Carry out additional works of a lesser nature, in the benefit of the users and community, for a maximum value determined in the bidding conditions. In all cases, these works may not affect the collection of rates by the concession holder. The amount of these works will be approved and paid for directly by the MOP in the manner indicated in the bidding conditions.

2.- The manner in which the works will be valued will be established in the bidding conditions.

3.- For these purposes, the corrections, repairs or observations made by the fiscal inspector in order to solve deficiencies in the project underway will not be considered new or additional works, according to the bidding conditions.

ARTICLE 69

MODIFICATION OF THE WORKS AND SERVICES FOR PUBLIC INTEREST

1.- The Ministry of Public Works may modify, for reasons of public interest, the characteristics of the works and services contracted from the moment when the contract is completed, and as a consequence, shall make compensation with the necessary indemnities in the case of detriments.

2.- For this, the DGOP, through the fiscal inspector, will communicate to the concession holder the works and services that shall be modified, which shall be valued in accordance with the procedure indicated in the bidding conditions.

3.- It will not be necessary to compensate these works when modifications are compensated by decreasing other works included in the bidding conditions.
4.- The Director General of Public Works, with the approval of the Ministry of Public Works and the Minister of Finance, for reasons of urgency, may request the modification of the works and services from the moment when he considers it appropriate, although the determination regarding indemnity may be pending.

5.- The Ministry of Public Works may request new guarantees for the construction of these works.

6.- The bidding conditions will establish the maximum amount of the investment that the concession holder could be obligated to make in virtue of that set out in the above sections, as well as the maximum time period within which the Ministry may order the modification of the works in concession. If the conditions do not state anything in this regard, the maximum amount of these new investments cannot exceed 15% of the total amount of the initial investment made by the concession holder, including the successive stages, in the event that the bidding conditions had stated that the investment in construction would be done in stages. If the modification is requested during the construction period and it is not possible to determine the investment that the concession holder will make, the official works estimate will be used to determine the maximum amount, save expressly agreed otherwise in writing by the concession holder, in which case this sum may be exceeded. The MOP may not request the modifications on a date subsequent to half of the total period of the concession, save that the bidding conditions so stipulate, or in cases of express agreement in writing by the concession holder.

7.- The modifications to the works and services as well as the economic conditions of the concession contract will be done through justified supreme decree, issued by the Ministry of Public Works, which shall also be signed by the Minister of Finance.

ARTICLE 70

MODIFICATIONS TO THE WORKS BY AGREEMENT BETWEEN THE CONTRACTING PARTIES

1.- If during the term of the concession, the works are insufficient to provide the service and it is considered appropriate to expand or improve them, by the initiative of the State or at the request of the concession holder, a supplementary agreement to the concession contract will be signed.

2.- This supplementary agreement will include the individual conditions which the works carried out shall comply with and their repercussion on the rate system or on any other factor of the economic system or on the term of the concession, and the Ministry of Public Works is authorized to include one or several of these factors at one time as compensation in this agreement.

3.- The bidding conditions may establish mechanisms for the execution and compensation of these works.

4.- The approval of the respective supplementary agreement will be done through a report from the respective Authority, through a supreme decree of the Ministry of Public Works, which shall also be signed by the Minister of Finance.

ARTICLE 71

REVISION OF RATE SYSTEM

1.- The bidding conditions will establish the manner and the time period in which the concession holder may request the review of the rate system, its formal readjustment or the review of the time period of the concession, for supervening causes that so justify, and one or several of these factors may be modified at the same time. In the cases in which the bidding conditions do not include these matters, disputes arising between the parties will be subject to that that provided in article 36 of MOP Supreme Decree № 900 of 1996.

2.- The modifications will be done through a justified supreme decree issued by the Ministry of Public Works, which shall also be signed by the Minister of Finance.
ARTICLE 72

FORMALITIES TO COMPLY WITH IN THE MODIFICATIONS TO THE CONCESSION CONTRACT

1.- The modifications made to the concession contract in accordance with that provided in articles 69 or 70 of these Regulations shall hold to the following formalities

   a) Written record will be made of the meetings that are carried out to this effect between the concession holder and the MOP in minutes drawn up for these purposes.

   b) A copy of the minutes to which section a) refers shall be sent to the President of the Conciliation Committee for his information or for its intervention, if applicable, and another copy shall be sent to the MOP supervisor for filing.

2.- If the Conciliation Commission intervenes in the modification procedure, a record will be made in the minutes regarding the deliberations of the Commission and of the hearings involving the parties, and the parties will be given copies of them.

3.- When the Arbitration Commission intervenes in contract modifications, its decisions will be public and will be available for those interested parties from the MOP.

TITLE XI

DURATION, SUSPENSION, EXTINCTION AND FORCED TRANSFER OF THE CONCESSION

ARTICLE 73

DURATION OF THE CONCESSION

1.- The duration of the concessions to which these Regulations refer will be determined in the award decree, but in no case will it be over 50 years.

2.- The time period will be computed in accordance with that established in the bidding conditions. In no case may it begin previous to the date of publication of the supreme decree awarding the concession in the Daily Gazette. However, the concession holder may begin construction once the above-mentioned publication is done, as provided in the bidding conditions, before beginning the calculation of the concession period.

3.- Once the concession period has ended, the works shall be again awarded in concession by the MOP for their maintenance, repair, expansion or operation, alone, divided or integrated along with other works, notwithstanding what is provided in section four of article 25 of MOP Supreme Decree Nº 900 of 1996. The corresponding bid shall be made with the necessary advance notice so that there no solution of continuity between both concessions is necessary.

ARTICLE 74

SUSPENSION OF THE CONCESSION

1.- The concession will be suspended in the cases provided in article 26 of MOP Supreme Decree Nº 900 of 1996, with all the rights and obligations of the concession holder and the state derived from the concession contract being suspended. For purposes of the re-implementation of the service, the damages if any will be evaluated, and the manner in which the parties will rectify them will be determined. If there is no agreement between the parties, the Conciliation Commission will be recurred to.

2.- The indemnities applicable to compensate the concession holder, if it suffered detriments, may be expressed in an increase in the concession period, State contributions, rate increases or any other factor of the economic system of the contract. Any modification of the contract
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clauses that affect its economic conditions, will be done through supreme decree of the Ministry of Public Works, which shall also be signed by the Minister of Finance.

ARTICLE 75

EFFECTS FROM DESTRUCTION OF THE WORKS
1.- Notwithstanding what is provided in the above article, if the works are destroyed during construction, the concession holder is obligated to repair them in their entirety, without the right to reimbursement, notwithstanding what is provided in article 36 of these Regulations, regarding catastrophe insurance.

2.- Nonetheless, the bidding conditions may establish the participation of the Government in the repair of the damages, as long as they were produced by an act of god or force majeure.

3.- The classification as an act of god or the force majeure invoked will be done by the Director General of Public Works, who will state an opinion through a justified resolution.

ARTICLE 76

COMPLIANCE WITH THE CONTRACT PERIOD
1.- The concession will end when the time period for which it was granted, with its modifications, has ended.

2.- The concession holder will give the MOP the totality of the works, facilities, property or rights subject to the concession, according to that stipulated in the bidding conditions. The guarantees in force will only be returned to the concession holder once it complies with all the obligations contracted with the MOP, as established in the concession contract.

3.- Without prejudice to the routine inspection to ensure the maintenance of the works, at least 1 year previous to the date of termination of the contract, the MOP will require the concession holder to take the measures necessary to deliver the facilities in the conditions established in the contract, to allow the appropriate continuity of the service.

4.- The MOP may apply the guarantees in force to the repair of deteriorated property or to the purchase of that unduly removed, reimbursing the difference, if any, in the period of 1 year from the delivery of the totality of the works, facilities and property or rights subject to the concession.

ARTICLE 77

EXTINCTION DUE TO MUTUAL CONSENT BETWEEN THE CONTRACTING PARTIES
1.- The agreement between the MOP and the concession holder extinguishes the concession in accordance with the conditions of the agreement signed by both parties. The MOP may only participate in this agreement of extinction of the concession with the favorable previous written agreement and from the creditors that have the special public works concession pledge constituted in their favor. This agreement will hold to the formalities established in article 72 of these Regulations.

2.- This agreement will be approved by supreme decree of the Ministry of Public Works, which shall also be signed by the Minister of Finance.

ARTICLE 78

OTHER GROUNDS FOR EXTINCTION
The bidding conditions may establish other grounds to terminate the concession contract, indicating the procedure that shall be followed, as well as the compensation that shall be made to the concession holder.
ARTICLE 79

GROSS NON-COMPLIANCE WITH THE CONCESSION HOLDER'S OBLIGATIONS

1.- The bidding conditions will establish the grounds on which the MOP may request the declaration of serious non-compliance with the obligations of the concession contract, and the application of the procedure to which article 28 of MOP Supreme Decree Nº 900 of 1996 refers.

2.- When the Concession holder incurs in some grounds for termination due to serious non-compliance and as long as there is no detriment to the public interest, the MOP may use the following procedure prior to the request for a declaration of termination of the concession:

a) The MOP will notify the concession holder and the creditors that have the special public works concession pledge constituted in their favor regarding serious non-compliances with the contract and other relevant information.

b) The concession holder, in the time period that the bidding conditions establish, shall deliver a report containing the measures to rectify the errors or avoid their occurrence in the future, to the MOP. The report shall have the approval of the creditors to which the previous numeral refers.

c) The report may deal with the following matters, among others: management measures, changes in the administration of the company and voluntary transfer of the concession contract. Also, a chronogram for implementation of the actions proposed shall be specified.

d) The MOP, on the basis of the report, will establish a period to implement the measures under the supervision of the fiscal inspector.

3.- Within three days of the declaration of non-compliance, the MOP will name appoint a receiver, who will only have the necessary powers to watch over compliance with the concession contract and who will be obligated in particular to continue to apply the authorized rates, and if the work is in the operations stage, to make the payments derived from the concession contract to the Government and to request from it the payments or contributions that the Government shall make.

4.- During the period of intervention, all the rights and obligations of the State derived from the concession contract will remain current.

5.- Previous to the first call for bids referred to in article 28 of MOP Supreme Decree Nº 900 of 1996, the MOP will consult with the creditors regarding the minimum of bids with which the call for bids may be done, which in all cases cannot be less than two thirds of the debt contracted by the previous concession holder. If there are no bidders, a second call will be made, whose minimum may not be less than half the debt contracted by the concession holder, and if there are no parties interested, a third and last call will be made, without a minimum of bids. The time period between the calls for bids will not be more than 30 days.

6.- The payment of the concession shall be done in the maximum time period of 180 days from the finalization of the procedure referred to in article 28 of MOP Supreme Decree Nº 900 of 1996 by the new concession holder, and the bidding conditions may establish a shorter period.

ARTICLE 80

RECEIVERSHIP

The Ministry of Public Works will declare the receivership status of the concession in the cases referred to in articles 28 and 37 of MOP Supreme Decree Nº 900 dated 1996, and will name the Receiver. This person shall be a university graduate with at least five years of professional experience. The fees of the auditor will be established by the MOP and will have the character of expenses of the concession holder. The receiver shall accept the position in writing within 5 days of his designation.
ARTICLE 81

POWERS OF THE RECEIVER

The Receiver will hold the necessary faculties to watch for compliance with the obligations contained in the concession contract, with the provision of article 200 Nos. 1 to 5 of Bankruptcy Law No. 18.175 being applicable, for the case of article 28 of MOP Supreme Decree No. 900 of 1996. This receiver will be responsible up to minor negligence for his actions.

2.- For the case of article 37 of the same legal text, the receiver will only have the necessary managing power to watch over compliance with the concession contract. This receiver will be responsible up to minor negligence for his actions.

3.- The Receiver, as of his/her appointment, shall keep a record of the income and expenses of the concession, for purposes of a good administration, and may, when carrying out his tasks, inform himself of all the books, papers and documentation of the concession holder related to the concession.

ARTICLE 82

RENDERING OF ACCOUNTS

The concession holder, or its legal successor, may request a rendering of accounts for the period of the intervention. The Government, through the Ministry of Public Works, will remit at its end a report to the concession holder or to its legal successor, of the activities carried out by the Receiver, in order to inform it of what occurred during that period. This report will be prepared by the Public Works Department.

ARTICLE 83

CONCESSION HOLDER’S BANKRUPTCY

1.- In case of the concession holder’s bankruptcy, the first ordinary meeting of creditors shall be held, as provided in article 38 of MOP Supreme Decree No. 900 of 1996, to put the concession up for tender or for the effective continuance of the concession holder’s business, which will not be subject to another termination period other than what remains of the concession contract.

2.- In the case of putting the concession up for tender, the conditions shall respect the terms, benefits and conditions of the prior concession contract.

3.- Putting the concession out for tender will imply the forced transfer of the concession for the remainder of the prior contract, for purposes of that is provided in article 21 of MOP Supreme Decree No. 900 of 1996.

4.- If the concession holder is declared to be bankrupt, the Ministry will make the construction or operations guarantee, as applicable, effective, in order to answer for all that it owes the MOP. When the creditors continue with the business of the concession holder, they shall replace the respective guarantee within 5 days of the declaration of the continuance of the business.

5.- In the case of bankruptcy, the MOP will name a representative so that, acting in coordination with the union and the creditors’ meeting, it watches for the maintenance of the service or services that are the object of the concession, without prejudice to the fact that the representation of the government interest will be done by whomever corresponds.
TITLE XII

CONCILIATION COMMISSION

ARTICLE 84

JURISDICTION

There will be a Conciliation Commission that may act as an Arbitration Commission in the terms provided in article 36 of MOP Supreme Decree No 900 of 1996, which will hear all disputes or complaints that occur due to the interpretation or application of the concession contract, or which arise due to its execution.

ARTICLE 85

COMPOSITION AND CONSTITUTION

1.- The Commission will be comprised of:
   - One university graduate designated by the Ministry of Public Works.
   - One university graduate designated by the concession holder, and
   - One university graduate named by the mutual consent of the parties, who will preside.
     If there is no agreement, the latter will be designated by the President of the Santiago Court of Appeals.

2.- The bidding conditions may establish the procedure to be used to designate the Commission members. If these say nothing, the Concession Holding Company shall deliver a public deed which contains the name, domicile and profession of the person designated by it and of the member with which it agrees with the MOP if this exists; for both cases a substitute shall be designated. The MOP will issue a Decree with the naming of the Commission. In all cases, the members shall be designated within 3 months of the beginning of the concession. If in this time period the MOP or the Concession Holder has not designated the member names in mutual consent, they will be designated by the President of the Santiago Court of Appeals.

3.- Each party shall designate a regular member and a substitute in the Commission, with the latter acting if the regular member is absent or unavailable, and this condition does not have to be accredited to third parties.

4.- The State and the Concession Holder may replace the professional designated by each, and, upon mutual consent, may replace the President of the Commission.

5.- The Conciliation Commission shall be constituted with all its members within the period of 1 month of their designation. In the deed of incorporation, the titular and the substitutes, as applicable, shall accept the designation and commit to faithfully carry out their functions.

6.- In the act of incorporation, or in a time period not greater than 30 days, the Conciliation Commission will establish the rules for its functioning, which shall include in all cases:
   a) The hearings of the parties and of the third party creditors, when applicable.
   b) The mechanisms to receive the evidence and documents supplied by the parties.
   c) The manner in which the requests or complaints are submitted formulated.
   d) The time periods for response
   e) The mechanism for notification which will be used to inform the parties of the resolutions or decisions made.
7.- Las partes establecerán, con mutuo consentimiento, los derechos a pagar a los miembros de la Comisión. Estos derechos serán pagados por la parte que solicitó la intervención de la Comisión, salvo que otro acuerdo se alcance en la documentación de conciliación. Cuando la Comisión actúe como Comisión Arbitral, declarará el pago de costos.

8.- Los gastos administrativos generales que incurre la Comisión serán aprobados en la Declaración de Incorporación y serán pagados en partes iguales. Cualquier otro gasto hecho por la Comisión será pagado por la parte que lo solicitó salvo que otro acuerdo se alcance en la documentación de conciliación. Cuando la Comisión actúe como Comisión Arbitral, declarará el pago de costos.

ARTÍCULO 86
INTERVENCIÓN DE LA COMISIÓN, DISPOSICIONES GENERALES

1.- La Comisión de Conciliación intervendrá en los siguientes casos:
   a) Cuando sea solicitado por MOP según lo previsto en el siguiente artículo.
   b) Cuando se produzca un conflicto por la interpretación o aplicación del contrato de concesión o quejas sobre su cumplimiento.

2.- La Comisión de Conciliación podrá solicitar al MOP o al Concesionario todos los documentos que considere oportunos, relacionados con el contrato de concesión, y tendrá acceso al libro de obra salvo que no haga ninguna anotación en él.

3.- Las propuestas de conciliación hechas por la Comisión de Conciliación serán aceptadas o rechazadas por quien tenga la autorización para hacerlo para el Concesionario y por el Ministerio de Obras Publicas por la persona que designe en nombre del MOP, previo a la declaración del Ministerio de Finanzas.

ARTÍCULO 87
INTERVENCIÓN DE LA COMISIÓN A PETICIÓN DEL MINISTERIO DE OBRAS PÚBLICAS

1.- El MOP solicitará la intervención de la Comisión de Conciliación en los siguientes casos:
   a) Cuando la aplicación de una multa mayor o igual a 500 unidades tributarias mensuales es aplicable;
   b) Cuando se solicite la suspensión de la concesión, en virtud de cualquier de los hechos establecidos en el artículo 26 del Decreto Supremo N° 900 de 1996.
   c) Cuando se produzcan hechos que justifiquen el cese del contrato por motivos de serias malas prácticas por parte del concesionario.
   d) Cuando el concesionario abandone el trabajo o interrumpa el servicio sin justificación.
   e) En aquellos casos considerados en el contrato de concesión o en los que el MOP considere la intervención de la Comisión apropiada.

2.- El DGOP solicitará al Presidente de la Comisión de Conciliación para la intervención, dándole toda la información sobre la que basa su solicitud, y indicando los hechos de los que se suscita la intervención.

ARTÍCULO 88
INTERVENCIÓN DE LA COMISIÓN CUANDO SE SOLICITA REHABILITACIÓN O COMPENSACIÓN

1.- La Comisión de Conciliación expresará una opinión cada vez que no se alcance un acuerdo entre MOP y la empresa concesionaria respecto al origen o cantidad de alguna indemnización o compensación por los hechos establecidos en la Ley de Concesiones. Se expresará especialmente una opinión en los siguientes casos:
a) In the cases of modifications to the works and services provided in article 19 of MOP Supreme Decree Nº 900 of 1996.

b) In the cases in which circumstances arise that survive entering into the contract and the concession holder requests the review referred to in section 3 of article 19 of MOP Supreme Decree Nº 900 of 1996.

c) In the cases in which the concession has been suspended and the presence of the Fiscal inspector is requested to rectify the damages.

d) When delays imputable to the Government have occurred during the construction period, according to that provided in article 22 section three of MOP Supreme Decree Nº 900 of 1996.

e) In any other situation established in the bidding conditions.

2.- The Commission will intervene at the request of the MOP or of the concession holder and will act in accordance with the procedure regulated in article 36 of MOP Supreme Decree Nº 900 of 1996.

ARTICLE 89

CONTROVERSIES IN THE APPLICATION OF THE CONTRACT

At any time during the term of the contract, the concession holder may inform the Conciliation Commission regarding disputes with the MOP referring to the interpretation or application of the concession contract, or those related to its execution, in accordance with that provided in article 36 of MOP Supreme Decree Nº 900 of 1996.

ARTICLE 90

RULES OF PROCEDURE

1.- Once the intervention of the Conciliation Commission has been requested, it will seek conciliation between the parties. If this does not occur within 30 days, the concession holder may request the Commission, within the period of 5 days, to constitute the Arbitration Commission, or it may recur, in the same period, to the Santiago Court of Appeals.

2.- When the Commission acts as an Arbitration Commission, the rules of the Civil Proceedings Code corresponding to arbitrators will be applied.

TITLE XIII

SPECIAL RULES FOR ROADS UNDER CONCESSION

ARTICLE 91

PRIVATE ACCESSES

The bidding conditions will establish the accesses and connection works that a work in concession shall have, including those which allow the use of the existing accesses that were authorized in accordance with the law, in accordance with the following rules:

a) The concession holder, in accordance with that provided in article 41 of MOP Supreme Decree Nº 900 of 1996, may authorize new accesses and connections to the work under concession for interested third parties and charge them a payment that is additional to the cost of the works necessary to enable them, as long as the access to the lanes is direct and does not correspond to service roads.

When a third party requests access to an existing service road, the concession holder may only charge the cost of the works necessary to enable it.
b) When the concession holder requests prior information from the MOP in order to establish new accesses and connections to the works, it shall individualize the interested third party, attaching the documents that accredit ownership of the land, including the location of the access, the total estimate of the works necessary to enable it and the amount of the additional payment that will be charged to the third party for this access or connection.

c) The access and connection to the works shall comply with the current regulations on the matter, in particular regarding the technical and road safety aspects, and shall also maintain the standards defined in the bidding conditions.

ARTICLE 92

OCCUPATION, FENCING, OBSTRUCTION OR DEVIATION OF THE ROAD UNDER CONCESSION

1.- In the case that the Highway Administration Authority grants permits to municipalities, companies or individuals that request works to be done on roads under concession and that demand their occupation or breakage, this Authority will request the concession holder to give its opinion in the period of 30 days, regarding when is the best time to carry out the works within a predetermined period of time. The authorization will be granted by the Highway Administration Authority, which shall keep in mind the recommendations of the concession holder in this regard. Nonetheless, the Highway Administration Authority may directly authorize the cases that it classifies as urgent.

2.- The costs of the works will be paid by these third parties, who shall ensure the replacement of the road in the conditions it was in before these works were carried out. Also, the third party shall compensate the concession holder for any loss of income caused to the concession. To guarantee these obligations, the third party shall deliver to the Highway Administration Authority, before the works begin, a performance bond for the amount established by this Authority. The amount of the indemnity to be paid will be established by the Highway Administration Authority, which shall keep in mind the information supplied by the concession holder and by the third party in relation to the detriments that may have occurred.

3.- The MOP may do the installation itself or through third parties, of ducts or multi-ducts in the government portion of the road, without this implying any compensation or indemnity for the concession holder.

ARTICLE 93

SPEED ON ROADS UNDER CONCESSION

1.- The bidding conditions may establish the maximum and minimum speed limits on the roads built, maintained, repaired and operated by the concession system, whether for the total or for sectors of them. Likewise, the conditions may define these speeds for the opportunity in which the works reach a determined Standard of design and conservation. The speeds established in the bidding conditions may only be modified by the Ministry, in the cases in which they cannot be maintained due to transit safety reasons, originating in the stage of conservation of the road under concession. Having re-established the conditions of the road, the speeds defined in the bidding conditions shall enter into effect again.

2.- If the speeds were not established in the bidding conditions, they may be established by a Decree of the Ministry of Public Works.

3.- The MOP, by decree and at the request of the concession holder, may authorize speeds greater than those defined in the concession project, when the improvement of the conditions of the layout and of the maintenance of the roads under concession so allow.
ARTICLE 94

MAXIMUM WEIGHTS AND DIMENSIONS OF VEHICLES

1.- The rules established for public roads regarding maximum weights and dimensions of vehicles will govern on roads under concession through the MOP and the Ministry of Transport and Telecommunications. The bidding conditions may establish special regulations on the matter.

2.- The MOP will grant, as a benefit to the concession holder, the sums that the Government would have collected in the section, when the Highway Administration Authority expressly authorizes the circulation of vehicles with excess weight, in direct proportion of the kilometers of the section in concession regarding the total kilometers covered by the user of the vehicle with excess weight. These sums will be calculated annually by the fiscal inspector and will be paid on the date and in the manner indicated in the bidding conditions.

3.- In order to verify the weight of the vehicles, as well as the weighbridges that the MOP may install, the concession holder may install weighing systems under its exclusive responsibility, for which it may request the participation of employees of the Highway Administration Authority in monitoring weights.

ARTICLE 95

PUBLICITY IN WORKS UNDER CONCESSION

Publicity that could be done in works under concession will be governed by the regulations in force that regulate this matter according to the work it deals with. If there is no special regulation in this regard, the bidding conditions may establish the rules and procedures to regulate publicity on the works under concession.

TITLE XIV

SPECIAL CONCESSIONS

ARTICLE 96°

CONCESSIONS GRANTED AT THE REQUEST OF OTHER STATE ORGANIZATIONS

1.- The Ministry of Public Works has jurisdiction to grant all public works in concession, save the case of such works or property that are under the purview of another Ministry, public service, Municipality, state-owned company or other organization that is part of the administration of the State.

2.- In these cases, said public entities may delegate through a mandate agreement signed with the Ministry of Public Works, the delivery in concession of such works or property under its jurisdiction, so that it delivers its concession, governed by the Concession Law. In these cases the totality of the judicial statutes regarding concessions of public works will be understood to be included in this agreement, that is, the bidding and award procedures and the execution, maintenance and operation as well as the faculties, rights and obligations that arise under the referred-to law.

3.- The agreement shall be signed before the call for bids, and it may establish who shall pay the expenses of the bid and award as well as assuming the economic conditions derived from the concession contract.

4.- In any case, the public entity that signed the agreement shall approve the bidding conditions previous to the call for bids. If, within 30 calendar days as of the presentation of the conditions at the offices of said, no objections have been received at the reception office of the Public
ARTICLE 97

CONCESSIONS REGARDING THE USE OF SUBSOIL AND THE RIGHT OF CONSTRUCTION IN SPACE

1.- The MOP may include jointly or separately in the concession the use of the subsoil and the rights of construction in the space above national assets of public or government use, destined to Works that are given in concession, in virtue of that established in the Concession Law, as long as their use is specified in the bidding conditions.

2.- If the bidding conditions do not expressly set out their inclusion in the concession, the MOP may concession them separately through the procedure established in these Regulations, or sell these rights setting their physical connection and accesses with the work or works that are bid on or were previously under concession.

TITLE XV

SPECIAL RULES REGARDING WORKS’ USERS

ARTICLE 98

INFORMATION TO THE USERS

1.- Once the decree awarding the concession contract has been authorized, all the relevant documentation for the execution of this contract will be public, that is, the bidding conditions, the drafts, projects and other studies and reports supplied by the MOP to the bidders, the bid made by the successful bidder and the acts of evaluation. The MOP shall make this information available to whomsoever is interested in it, and shall give the necessary facilities for its reproduction, which will be paid by the interested parties. The same procedure will be applied in the case of supplementary agreements, modifications of the rate system and other modifications to the concession contracts.

2.- The bidding conditions may require the concession holder to maintain, during the construction period, one or more offices for user information, for purposes of making available to those users interested in the project, the highlighted information of the works, such as its characteristics, the project chronogram, collection system, among others. All of this in accordance with that established in the bidding conditions. In exceptional cases and as a function of the characteristics of the works, this obligation may be established for the operations stage.

3.- The bidding conditions may establish special obligations on the concession holder regarding the diffusion of the rates and the collection system or its modifications. These obligations of diffusion can be complied with through the distribution of printed leaflets, signs or panels along the works, publications in the press or others. The conditions may also indicate the time when these diffusion activities should be carried out.

ARTICLE 99

USER COMPLAINTS

1.- The bidding conditions may establish the procedures that the concession holder shall follow to deal with user questions or complaints. Among these can be indicated the way that they are received, the manner and time period for their presentation, the manner, time period and
manner for the reply by the concession holder and the sanctions in the case of non-compliance. These sanctions may consist of payments or compensation in favor of those affected.

2.- The MOP may establish, in a general manner or for each work under concession, manners for the receipt of questions or complaints by the users, directly at its offices. Non-compliance with the concession contract that the MOP can know and prove through these manners will be sanctioned with the corresponding fines established in the bidding conditions.

TRANSITORY ARTICLES

ARTICLE 1
Repeal MOP Supreme Decree Nº240 of 1991, Public Works Concessions Regulations, excepting the cases indicated in this article.

The concession holders with their public works concession contract completed on the date of publication of this regulation in the Official Gazette may, within the following three months, opt for the application of the rules of this Regulation to their respective contracts. Those who do not request this will continue to be governed by the rules in force on the date of bidding and of the completion of said concession contract.

Those awarded the works already bid out at the date of publication of this Regulation whose contract has not been completed and the bidders on works in the bidding process that are successful, may exercise the same right in the period of three months following the completion of their contract.

When the concession companies or those awarded the bids opt to apply the rules in this Regulation according to that provided in the previous sections, the Ministry of Public Works will proceed, without further ado, to sign the corresponding administrative document, which will produce effects from the date it is issued and which record the change of this contract’s legal system.

ARTICLE 2
1.- The applicants that have presented private initiative projects before this Regulation is in force, in accordance with that provided in article 2 of MOP Supreme Decree Nº 900 of 1996, will be governed by that provided in the D.S. Nº 240 of 1991. In the case of projects that are in the presentation stage, and the MOP declares that there is no public interest in the project, the applicant may make a new presentation based on the regulations contained in this Regulation, and the time periods and rules established herein in this regard will govern. In the case of projects that are in the stage of proposal, that have not been accepted by the MOP, the applicant will continue to conserve the initiative as its property. However, if in the period of 3 days the MOP decides to put the project out to tender through the concession system, the applicant will have the rights recognized in these regulations.

2.- In all cases, the applicants that have presented private initiative projects, in accordance with that provided in article 2 of MOP Supreme Decree Nº 900 of 1996, may have recourse to the provisions of these Regulations through a letter addressed to the Director General of Public Works.

ARTICLE 3
In the case in which a delay is produced in the payments that shall be made by the MOP and the concession holder, they will accrue the interest established in the bidding conditions in accordance with the current regulations, and if not expressly stipulated, the current interest rate will be that used for readjustable operations in national currency in force at the date of the effective payment. Without prejudice to this, any delay payments that the concession holding company shall make the Government will give the rise to the right to charge the corresponding guarantee, without prejudice to the other actions that are applicable.

FOR REGISTRATION, TRANSMISSION AND INSERTION INTO THE OFFICIAL COMPILATION OF THE OFFICE OF THE COMPTROLLER.
EDUARDO FREI RUIZ-TAGLE, PRESIDENT OF THE REPUBLIC,
RICARDO LAGOS ESCOBAR, MINISTER OF PUBLIC WORKS,
EDUARDO ANINAT URETA, MINISTER OF FINANCE
SUPREME DECREE N°215

MINISTRY OF PUBLIC WORKS
(published Wednesday 29 April 2010)

INTRODUCES MODIFICATIONS TO MINISTRY OF PUBLIC WORKS SUPREME DECREE N°956, OF 1997, REGULATIONS OF THE PUBLIC WORKS CONCESSION LAW.


WHEREAS:


WHEREAS:

a.- That the recent modifications to the Public Works Concession Laws enter into effect immediately, from the date of their publication in the Official Gazette.

b.- That the referred-to modifications refer to the legal rulemaking authority of his Excellency the President of the Republic the regulation of the items expressly indicated.

c.- That the exercise of the legal rulemaking authority affects the current Regulations of the Public Works Concession Laws, contained in the D.S. N° 956 of the MOP of 1997, requiring its modification for the due execution of the legal regulations of the concession system.

I DECREE:


1. Add, following article 99, the following Title XVI to MOP Supreme Decree N° 956 of 1997, which will contain articles 100 to 110, as indicated below:

“TITLE XVI

RULES MADE IN VIRTUE OF LAW 20.410”

2. Add the following article 100:

“ARTICLE 100

PUBLIC WORKS CONCESSIONS COMMISSION

The designation of the commission members will be done through a resolution of the Ministry of Public Works. Within 10 days of notification, they shall formalize their acceptance through a written communication presented at the Reception Office of the Ministry of Public Works, which shall also indicate their domicile and e-mail address, for purposes of notifying the Commission of invitations to meetings.”
3. **Add the following article 101:**

**“ARTICLE 101**

**OPERATION OF THE CONCESSIONS COMMISSION**

1. The Commission will be constituted once the people who integrate it have been appointed to their positions.

2. The Ministry of Public Works will grant the necessary administrative aid for the operation of the Commission.

3. The Ministry of Public Works will make available an attorney to the Concessions Commission to carry out the functions of the secretary attorney of the Commission. The secretary attorney of the Commission will have the following functions:
   a) Keep a record of the presentations made to the Commission.
   b) Keep the respective ledgers of minutes and publish them, duly signed, within a period of 125 days on the website of the Ministry of Public Works, save the Executive Minutes, which shall be published the following working day.
   c) Keep a record of the reports issued by the Commission.
   d) Invite the commission members, at the request of the President, to the Commission sessions, and publicly notify the dates and times they will be held.
   e) Notify the Commission of the matters to be dealt with by it within 24 hours of their submission.
   f) Take true and complete minutes of the Commission’s meetings.
   g) Assist the Commission in its internal administration and represent it before the Ministry of Public Works in administrative matters.
   h) Others charged to the Commission for the fulfillment of its functions.

4. The Concessions Commission will meet periodically, in ordinary meetings, within the first five working days of each month, save absence or impediment of its President, in which case the meeting shall be held within 5 days following the end of the absence or impediment. The other meetings will have the character extra-ordinary and will be convened at the petition of the President. The minimum quorum to meet will be with the attendance of four of its members, including the President. The Commission shall be invited with a minimum advance notice of 5 days, through a communication sent to the domicile or the e-mail of the commission members. This advance notice will not be required if the commission members expressly commit to their attendance through the secretary attorney.

5. It will be understood that those members who, despite not being present, are communicated simultaneously and constantly through technological means that the Commission itself has authorized, will be understood to participate in the session. In this case, the secretary attorney will note their attendance and participation in the meeting in the respective minutes.

6. For purposes of what is provided in sections three and four of article 1 bis of the Concession Law, the notification of the hearing in which Ministers or other government authorities or State Administration authorities will be heard, will be sent by official communication from the President of the Commission, with a minimum advance notice of 10 working days from the date of the respective meeting. This advance notice will not be required if the corresponding Ministers or authorities expressly confirm their attendance through the secretary attorney.

7. The agreements adopted by the Commission will be decided by the simple majority of the members present. If there is a tie in any meeting regarding some matter that is being decided, the Commission President will have the deciding vote.
8. Record will be made of the deliberations and agreements of the Commission in the respective minutes ledgers and in the reports issued. Without prejudice to the above, the secretary attorney shall also draw up Executive Minutes at the end of each session, which report in a concise manner on the matters dealt with and on the favorable or unfavorable report, which shall be immediately signed by those attending and be published on the website of the Ministry of Public Works the following working day.

9. Exceptionally, when the matters being decided on by the Commission are complex, or the redaction of the justifications for the decision is more extended, this Commission shall issue a report in this regard that will be incorporated into the minutes of the following session. The report will be redacted by any of the members who was in agreement and was designated by the President, and if there is a dissident vote, by one who supported the position.

10. The Commission will establish the internal regulations that are necessary and are not defined in these regulations, which shall be reported to the Ministry of Public Works the following working day.”

4. Add the following article 102:

“ARTICLE 102

CRITERIA FOR THE ASSESSMENT OF PROPOSALS

For the assessment of private initiative project applications, the Ministry of Public Works will consider the preliminary social profitability associated with the Project, its agreement with the county, inter-county and metropolitan urban planning, and the contribution to the territorial development, or the correction and/mitigation measures proposed if they do not agree. The application will be considered if it constitutes an original contribution to public infrastructure, in relation to other projects that have been drawn up by the State or presented by individuals for their realization through the concession system, or an innovative construction from the point of view of the design, technology or project management. The implications of the use of the bidding factors indicated in letters d), i) and k) of article 7 of the Concession Law may also be considered, and in general, the absence or need of subsidizing the project.”

5. Add the following article 103:

“ARTICLE 103

BIDDING OUT THE EXECUTION OF WORKS IN THE OPERATION STAGE

If the concession holder shall make additional investments during the operations stage, whose execution shall be bid out under the supervision of the MOP, in accordance with that indicated in articles 19 and 20 of the Concession Law, the respective bid process shall be done in the following manner:

1. The concession holder shall call for a public bid within the time period set by the Ministry of Public Works for these purposes, through a procedure that guarantees the free participation of the bidders that comply with objective requirements of suitability, experience and capacity, previously established in the bidding conditions issued for these purposes. The concession holder shall adopt the necessary measures for the appropriate publicity of the call for bids and all the actions included in the process up until the respective award.

2. The public bid will be governed by the principles of unconditional observance of the conditions and of equality of the bidders. The concession holder will keep to all the conditions implied by the additional investments to be made and not just their price. In the determination of the conditions of participation imposed by the conditions, the concession holder shall tend towards the efficacy and the efficient quality of the additional investments to be made, and the saving of administrative costs of the contract process.
3. The process of the public call for bids will be integrated by at least the following stages and elements: preparation of the Bidding Conditions; publication of the call for bids; sale or delivery of the Conditions; previous review and verification of the documentation presented, if any; questions, replies, clarifications, rectifications due to errors in manner or omissions, and delivery of documents with the purpose of clarifying and providing the correct meaning and scope of the bid; the act of handing over and opening technical bids and handing in of economic bids; period of evaluation of technical bids; notification to bidders whose technical bid has qualified for the opening of the economic bid; the act of opening economic bids; the final technical and economic evaluation, according to the award mechanism defined in the Conditions; and the entering into the contract.

4. The Bidding Guidelines shall include timely and sufficient periods for all the stages of the bid and will avoid making merely formal requirements that hinder or unjustifiably lengthen the process.

5. The Ministry of Public Works may deliver some standard bidding conditions to the concession holder, that contain the minimum aspects required in accordance with the preceding numerals, and in this case the concession holder shall fill in the pertinent fields and on good grounds make objections to clauses warranting them.

6. The Bidding Conditions shall be notified in writing to the Ministry of Public Works, through the respective Fiscal inspector. The Ministry will have 60 days to approve them or manifest its observations, save that the concession holder used the standard conditions, in which case the time period will 10 days. Once the corresponding time period has expired without the Ministry having stated an opinion, the conditions proposed by the concession holder will be understood to have been approved and it will carry on with the bidding procedure. If the Ministry makes observations, they shall be rectified by the concession holder within the period established by the Ministry of Public Works.

7. The call for bids will contain, at least, a succinct description of the modifications concerned, the time period and location for withdrawal of the conditions and the date, time and place of delivery of the technical and economic bids. The call for bids shall be published at least once in the Official Gazette and another in a newspaper that circulates nationwide, without prejudice to also be able to use the public information system established in the MOP’s web site.

8. There shall be an adequate time period between the publication of the call for bids and the reception of the bids, due to the complexity of the modifications to be implemented, which cannot be in any case less than 30 calendar days.

All clarifications, rectifications or modifications that are introduced into the Bidding Conditions shall be reported by the concession holder to each and every one of the interested parties that acquired the Conditions.

9. The evaluation of the bids will be done through a technical and economic analysis of the costs and benefits of the modifications to be implemented contained in each one of the bids, for which the concession holder shall remit to the evaluation criteria defined in the Bidding Conditions. Those evaluating the bids may not have conflicts of interest with the bidders involved in the bid.

10. The concession holder may not award the contract to an applicant whose bid does not comply with the conditions and requirements established in the Bidding Conditions, and may reject all bids on the grounds established in the Bidding Conditions. The successful bid shall be notified in writing to the MOP through the respective Fiscal inspector.

11. If, once the contract has been awarded, increases or decreases in the amounts contracted are required, a new bid will not be necessary, as long as it does not alter the object of the contract and the specific objectives of the bid process, which would have been allowed by the conditions, and there is a practical impossibility of separating the execution from the
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responsibility for the works or services contracted, all of which shall be previously reported to the MOP and approved by this Ministry through the Director General of Public Works.

12. The concession holders shall maintain available to the MOP, for the purposes of supervision, all the information regarding the public bid procedures to which this article refers.

13. If some error in the procedure or non-compliance with any of the obligations provided in this article and/or the concession contract relating to this same matter is verified, the Director General of Public Works will order that the bid process shall be left without effect and will apply the fines established in the bidding conditions of the concession contract to the concession holder.

14. If it leaves the bidding procedure without effect, the concession holder shall begin a new one, in accordance with that established in this article.

15. Without prejudice to the procedure contained in the previous numerals, after the bidding conditions have been approved by the Ministry of Public Works, the concession holder may request authorization from it to make an economic bid for the implementation of the modification of the characteristics of the works and services, in the same conditions established in the conditions approved for the other bidders. In this case, the economic bid by the concession holder will be considered to be the maximum value of the subsequent bidding process and shall be communicated in the call for bids, and the other bidders may present only economic bids that overcome the concession holder's bid. If other bidders present a bid that better the concession holder's bid, it may, one sole time, better the best bid presented by the bidders. If the concession holder betters the lowest bid made by the bidders, the bidder that presented that lower bid may present a last bid, bettering the second bid by the concession holder. The Ministry of Public Works may accept this system, in the bidding conditions proposed by the concession holder, when in its judgment the nature and characteristics of the works so allow."

6. Add the following article 104:

"ARTICLE 104

ON PAYMENT TO THE CONCESSION HOLDER IN CASE OF GROSS NON-COMPLIANCE

1. If gross non-compliance has been declared, the Ministry of Public Works may determine to not publicly bid out the concession contract for the remaining period, and will issue a resolution, after approval by the Ministry of Finance, where the non-bidding out of the contract is determined, which shall be published in the Official Gazette.

2. Within 20 days following the publication of the resolution, the concession holder will present an offer to negotiate, in writing, to the Ministry of Public Works, which indicates the value of the investments or works necessary to provide the services that have effectively been provided by it and have not been financially amortized, plus the normal financial costs in the pertinent market of these investments, duly accredited, including the readjustments and interest accrued, attaching all the justifying documents.

3. The following shall be taken into account for the preparation of this bid:
   a) Official works estimate.
   b) Percentage of progress on the works approved by the Fiscal inspector.
   c) The financing contracts signed by the concession holder.
   d) The average financing costs in sectors with a similar risk.
   e) The value of the investments effectively made that have not been financially amortized.
   f) The payments that the concession holder would have made to the Ministry of Public Works, in accordance with that established in the bidding conditions.
g) Other engineering studies and other information that form part of the concession contract.

4. Within 20 days of the presentation of the concession holder’s bid, the Ministry of Public Works, subsequent to approval from the Ministry of Finance, may accept it or formulate a counter-proposal, and for these purposes may request additional information or clarifications within that time period. The acceptance or counterproposal shall include the manner and time period of payment of the amounts involved.

5. Within 5 days of the communication of the counter-proposal made by the Ministry of Public Works, the concession holder may accept it or object to it. The objection shall indicate its justifications and contain the documents that support it.

6. The Ministry of Public Works, after approval by the Ministry of Finance, may formulate a new counter-proposal within 5 days of the presentation of the objection by the concession holder.

7. If there is total or partial agreement, the MOP will issue a supreme decree approving it, which shall be signed by the Minister of Finance.

8. If in the period of sixty days counted from the publication of the resolution referred to in numeral 1 above, there is no total or partial agreement, they will proceed in accordance with that indicated in section five of article 28 of the law.

9. If no agreement is reached, and the concession holder does not recur within the legal time periods to the Technical Panel or the Arbitration Commission, the higher amount that the Ministry of Public Works had offered it in the manner considered in this article will be understood to have been accepted.

10. Once the recommendation by the Technical Panel has been accepted, or the amount of compensation by the Arbitration Commission, or the situation described in the previous numeral occurs, the MOP will issue the respective Supreme Decree which shall be signed by the Minister of Finance.”

11. The Supreme Decree issued in the case referred to in numerals seven and ten will establish the conditions of delivery of the facilities, the time periods and the payments involved.

7. **Add the following article 105:**

**“ARTICLE 105**

SANCTIONS FOR NON-COMPLIANCE WITH OBLIGATIONS CONTAINED IN ARTICLE 30 BIS OF THE CONCESSIONS LAW

The concession holders that infringe the obligations established in sections one and three of article 30 bis of the Concessions Law will be sanctioned with a fine of between 20 to 3,500 unidades tributarias mensuales, in accordance with the scale established in the respective bidding conditions; without prejudice to the other effects that the infraction or non-compliance generate.”

8. **Add the following article 106:**

**“ARTICLE 106**

ON THE PAYMENT TO THE CONCESSION HOLDER IN THE CASE OF EARLY TERMINATION OF THE CONCESSION

1. For purposes of what is provided in section one of article 28 ter of the Concession Law, the stage of construction will be understood to extend from the publication of the Supreme Decree awarding the contract in the Official Gazette until the date of the result ion issued by the Director General of Public Works that authorizes the temporary commissioning of the totality of the works.
2. Within 20 days following the publication of the decree that terminates the concession early, the concession holder will present a written offer of negotiation to the Ministry of Public Works, in accordance with that established in the bidding conditions, which in all cases shall include that established in article 28 ter of the Concession Law.

3. Within 20 days of the presentation of the offer by the concession holder, the Ministry of Public Works, with the approval of the Ministry of Finance, may accept or formulate a counter-proposal, and for these purposes may request additional information or clarifications within that period. The acceptance or counter-proposal shall include the manner and period of the payment of the amounts involved.

4. The concession holder shall accept or reject the counter-proposal by the Ministry of Public Works within 5 days of the communication. The objection shall indicate its justifications and attach the documentation supporting it.

5. The Ministry of Public Works, with the approval of the Ministry of Finance, may formulate a new counter-proposal within 5 days of the presentation of the concession holder’s objection.

6. If total or partial agreement is reached, the MOP will issue a Supreme Decree approving it, which shall be signed by the Minister of Finance.

7. If once the time period of sixty days from the date of publication of the decree that declares the early termination of the concession has expired and there is no total or partial agreement, they will proceed in accordance with that indicated in section seven of article 28 ter of the law.

8. If no agreement has been reached, and the concession holder does not recur in the legal time periods to the Technical Panel or the Arbitration Commission, the highest amount that the Ministry of Public Works offered in the manner indicated in this article will be understood to have been accepted.

9. Once the recommendation of the Technical Panel has been accepted, and the amount of the indemnity determined by the Arbitration Commission, or the situation described in the previous numeral occurs, the Ministry of Public Works will issue the corresponding Supreme Decree which establishes the amount of the indemnity, which shall be signed by the Minister of Finance.”

9. **Add the following article 107:**

**ARTICLE 107

THE TECHNICAL PANEL

1. The members of the Technical Panel will be appointed by the Upper Public Management Council (Consejo de Alta Dirección Pública), through a public selection process, in accordance with the following procedure:

   a. The description of the position will be defined by the Upper Public Management Council.

   b. This will be convened by the National Civil Service Authority.

   c. Application will be done through the On-line Application System.

   d. The evaluation process will be done in accordance with the procedures of the Upper Public Management Council.

   e. The selection will be a technical process of evaluation of the candidates that have accredited the requirements to carry out the position and that fit the defined profile.

   f. If there are less than three candidates that have accredited the requirements for the position, the process shall be declared null and void and shall be repeated.
g. The Ministry of Public Works will inform the Upper Public Management Council of the need to proceed to its partial renewal with at least ninety days advance notice, which shall be done in accordance with the procedure established in this article. If a vacancy is produced that is not in line with the period of renewal, the Ministry shall inform the Upper Public Management Council within five days of the notification of the vacancy by the Panel of Experts.

2. The Upper Public Management Council, having appointed the members of the Technical Panel, will communicate this to the Ministry of Public Works, for the respective resolution to be issued, which shall be done within the period of 10 days following said communication.

3. Once the Panel has been constituted, it will designate its secretary attorney, who will have the functions indicated in the law, especially the following:
   a. Receive, record and certify the entry of the discrepancies and other presentations made to the Technical Panel.
   b. Inform the members of the Technical Panel within twenty-four hours of the submission of the discrepancies that are submitted for their ruling.
   c. Inform the members of the Technical Panel of other presentations made.
   d. Certify the actions of the Panel and exercise the custody of its files.
   e. Take true and complete minutes of the Panel’s meetings.
   f. Aid the Panel with its internal administration and represent it in administrative matters before the parties.
   g. Others requested of him by the Technical Panel within the scope of his powers.

4. Half of the amount of the fees of the members of the Technical Panel will be paid by the concession holders that are the parties to the contracts to which the regulations of law 20.410 are applicable, in the proportion of the official works estimate, which will be established for the calendar year following by the Ministry of Public Works through a resolution, at the latest in the month of December of each year. This apportionment will be updated through a resolution by the Ministry of Public Works, each time that a new supreme decree of award or each time that a concession is ended is published in the Official Gazette, and this resolution shall be issued within ten days of publication. The updating of the proportion will be applicable from the month following when the respective resolution is issued. The resolution of the Ministry of Public Works that establishes the proportion will also indicate the dates or time periods of its payment.

10. Add the following article 108:

“ARTICLE 108
PROCEDURE BEFORE THE TECHNICAL PANEL

1. The presentation of discrepancies shall be done in writing, clearly setting out the points or items that support it, attaching the totality of the documentation that asserts this, individualizing the name and domicile of the applicant to which the corresponding notifications shall be made, and of the interested concession holder. The documents and fundamentals of the discrepancy may not be added, rectified or amended subsequent to their presentation, without prejudice to the faculty of the Panel to request reports, information and additional documents to illustrate its recommendation.

2. Once a discrepancy has been presented to the Technical Panel, the secretary attorney will inform its members of this within twenty-four hours.

In addition, once a discrepancy is presented, the secretary attorney will inform the Director General of Public Works of the Ministry of Public Works, or the respective concession holder as
applicable, within the following three days, in order for the latter to individualize the person and domicile, within the city of Santiago, to whom the corresponding notification shall be made.

3. Having reported the receipt of the discrepancy, the President of the Panel will call a special meeting, which shall be held within five working days of the submission of the discrepancy.

In this meeting, the Technical Panel will agree on a work program that shall include a public hearing of the parties, the mechanism to receive information, the manner that will be used to inform the parties of the resolutions or decisions it makes and the other formalities and activities it determines.

4. The Panel will make its recommendation within 30 calendar days of the presentation of the discrepancy, which may be extended with justification, for one sole time, for the same period, on its own initiative or at the request of any party.

5. The recommendation shall be justified and will not be binding on the parties.

6. The resolution that establishes the public hearing and the technical recommendation of the Panel, shall be notified to the parties by registered mail sent to the domicile indicated by them, without prejudice to the additional mechanisms of communication determined by the Panel, in accordance with that indicated in numeral 3 above.

In these cases, the notification will be understood to have been made the third day after the date the registered mail is sent.

7. The parties may request the Panel, within thirty days of the notification of the recommendation issued, to clarify points that are unclear or doubtful, adjust omissions and rectify copy errors, reference errors or errors in numerical calculations that appear clearly in the recommendation.”

11. Add the following article 109:

“ARTICLE 109

THE ARBITRATION COMMISSION

1. The members of the Commission will be appointed by mutual consent of the parties from two lists of experts referred to in the second section of article 36 bis of the law, drawn up by the Supreme Court and the Tribunal for the Defense of Free Competition, as applicable, through a public selection process, carried out in accordance with the following procedure:

a. The profile to integrate the respective list will be defined by the Supreme Court or the Tribunal for the Defense of Free Competition, as applicable.

b. The application conditions will be published by the Ministry of Public Works through its website, large-scale communication media or the written press and Official Gazette.

c. Applications will be made to the Ministry of Public Works, in accordance with the profiles established in accordance with letter a) above, in the manner and period defined in the application conditions, which cannot be more than ten calendar days.

d. The Ministry of Public Works shall keep a public record of the applications made.

e. Once the period to present applications has expired, the Ministry of Public Works will remit the information of the applicants to the Supreme Court and to the Tribunal for the Defense of Free Competition, as applicable.

f. The evaluation process will be done by the Supreme Court and the Tribunal for the Defense of Free Competition, as applicable, and the suitability of the professional shall be verified, as well as the absence of incapacities and incompatibilities that affect them, not more than 45 calendar days from the remission of the background by the Ministry of Public Works.

g. Having made the selection, the Supreme Court and the Tribunal for the Defense of Free
Competition will draw up the respective lists, which will be made known to the Ministry of Public Works, who shall report them through the media indicated in letter b) above.

h. For the renewal of the lists, a new public selection process shall be held, in accordance with the procedure in this article.

2. If the Bidding Conditions state nothing regarding the manner of designation of the members of the Arbitration Commission, the Concession Holder shall give the Ministry of Public Works a copy of the public deed in which the name of the people it proposes to integrate it is contained, from among the candidates included in the lists indicated above. If there is agreement, the Ministry of Public Works will issue the Decree naming the Commission.

If there is no agreement between the parties within 60 days of the date of the supreme decree awarding the concession contract, the naming of the members of the Arbitration Commission may be requested by any of them to the Tribunal for the Defense of Free Competition. In this case, the designation will be done by drawing lots before the secretary of the Tribunal for the Defense of Free Competition, from among the candidates included in the lists. This designation will be formalized through a decree by the Ministry of Public Works.

3. The members of the Commission will be remunerated monthly only during the hearing and settling of disputes set forth by the parties. The fee will be established by mutual agreement of the parties, and shall not be higher than one hundred and fifty unidades tributarias mensuales, as for the President, or one hundred unidades tributarias mensuales, as for the other members. The maximum amount indicated will be lowered by fifty percent once one year has passed from when the dispute was presented.

4. In the act of constitution of the Commission, the parties will state the fees agreed and the members shall accept the designation, agreeing to faithfully carry out their duties.

In the same act of constitution, the Commission will designate the attorney that will preside. Likewise, it will designate a secretary attorney and the monthly fee payable to him during the hearing and decision on the disputes presented by the parties, which may not be more than fifty unidades tributarias mensuales.

5. The expenses incurred by the Commission for administration and operation will be paid in equal shares. Any additional expense shall be paid by the party that requested the measure or the formality carried out. The above is without prejudice to that resolved by the Commission regarding the costs, or that agreed by the parties in the case a conciliation is produced.

6. The secretary shall report, within the first five days of each month, on the total to be paid by each one of the parties for the concept of the fee of the Commission members, administration expenses and the corresponding expenses for functioning and other additional expenses.”

12. Add the following article 110:

“ARTICLE 110

ADVERTISING

The final ruling and all the deeds, documents and proceedings of any type that were presented or verified in the course of the proceedings will be public.

For these purposes, the Arbitration Commission will send the Supervising Office of the Ministry of Public Works, in electronic format, the corresponding deeds, documents, resolutions and certificates of proceedings, within fifteen days of the notification of the final sentence.

The Supervising Office shall proceed to publish this information on the website of the Ministry of Public Works within 5 days of its receipt.”
13. Add the following Transitory Articles:

"Article 4: The concession contracts resulting from bidding processes whose bids have been presented subsequent to the entry into effect of law 20.410, as well as those concession holders that opt for their application in accordance with sections one and two of the first transitory article of the cited law, will be governed by the regulations contained in Titles I to XV of these Regulations, as long as they are not contrary to that law or to Title XVI of the Regulation."

"Article 5: For purposes of what is indicated in transitory article 2 of law 20.410, the apportionment referred to in numeral 4 of article 107 of the Regulations, will apply."

FOR REGISTRATION, TRANSMISSION AND PUBLICATION
SEBASTIAN PIÑERA ECHENIQUE
PRESIDENT OF THE REPUBLIC
HERNÁN DE SOLMINIHAC TAMPIER
MINISTER OF PUBLIC WORKS
FELIPE LARRAÍN BASCUÑAN
MINISTER OF FINANCE