

National Assembly

[Law No. 2](#)

(January 7, 2006)

Which regulates the concessions for tourism investment and the sale of island property for tourism development ends and other provisions

THE NATIONAL ASSEMBLY

DECREES:

Chapter I

Concessions for Tourism Investment

Article 1. The granting of administrative concessions for a term of up to forty years, prolonged for an additional term of up to thirty years, over the following areas located in the geographical territory which is destined for tourism development, according to the tourism policies approved by the Instituto Panameño de Turismo: island territories, coastal zones and lands which are property of the State, corresponds to the Ministerio de Economía y Finanzas, being the institution in charge of the administration, conservation and oversight of all assets which belong to the Republic of Panama.

In the areas destined for tourism development located in indigenous reserves, the due approval of the corresponding traditional reservation authorities shall be obtained.

Paragraph: The concessions which are granted on lands which are property of the State over continental or island property by virtue of this article, shall not affect pre-existing rights of possession which have been granted by the municipalities and the corresponding authorities, before this law came into effect.

Article 2. Irrespective of the provisions of the above article, concession contracts may be executed for a term of sixty years, prolonged for an additional thirty years, when it relates to projects whose investment amount, economic impact and potential for creation of employment, requires a contractual relationship of longer duration, in accordance with the parameters established by the Ministerio de Economía y Finanzas

For the granting of the concessions provided for in this Law, a public hearing shall be required in accordance with the regulations established by the Executive Branch, via the Ministerio de Economía y Finanzas, which guarantees the principles of transparency, economy of process and responsibility.

Article 3. The concessions granted according to the terms of this Law may only be revoked or cancelled in the following cases:

1. By the expiration of the period for which they were granted.
2. By the express request of the concession holder, requested formally in writing, which shall be addressed to the Ministerio de Economía y Finanzas.
3. By the express abandonment of the improvements and projects built by the concession holder.
4. By using the improvements and the concession for a different purpose for which they were built and granted.
5. By a serious breach of an obligation which was imposed on the concession holder or by the failure to pay the rates and charges required by Law.

6. By transferring the concession granted without the due registration required by law.
7. When the established investment is not undertaken according to the agreed terms and conditions.
8. By the assignment to third parties in the cases established by law.
9. By not substantially fulfilling with the generation of direct and indirect employment established by the contract.
10. By the bankruptcy or creditors meeting of the concession holder, or by being in a state of suspension or failure to make payments, without the corresponding declaration of bankruptcy.
11. By administrative rescue, insofar as there is public interest or national security.

Upon finalising the agreed upon term of the concession, if the concession holder is up to date with their contractual responsibilities, the concession holder will have the right to request an extension of the term as provided for in articles 1 and 2 of this Law and the State will have discretion to adjust the price. Upon termination of the period agreed in the concession or the revocation or cancellation of the concession, all improvements built thereon will become, as of right, property of the State at not cost thereto.

Article 4. The Ministerio de Economía y Finanzas shall establish the requirements for the granting of the concessions established in this Law, among which shall be: the presentation of the survey of the plot, an approved project plan, the budget for the project and the work program, as well as the timeline for implementation, the type of public services, proof of financial capacity and the proof of source of the applicant's funds, the certification from the Instituto Panameño de Turismo that the areas requested is within the tourism development zone; an approved environmental impact study, the certification that the applicant is duly registered in the Register of Tourism Companies and the presentation of bond in favour of the National Treasury, for no less than ten percent (10%) of the value of the projected venture, which shall expire on the date on which the registration of the improvements built is completed.

Article 5. The concession holder shall comply with the work program and the timeline for implementation agreed to until the project is finished, except in the case of Acts of God or force majeure which, in the latter case, are not caused by the concession holder. If the program is not kept to or the project is not completed according to the specifications agreed to, the Ministerio de Economía y Finanzas may declare the administrative revocation of the concession and order that the bond referred to in the above article, issued in favour of the State, and all rights of the concession be executed, without prejudice to the rights of subrogation which this Law concedes to financial entities which have granted funds for the undertaking of the project.

The Dirección de Catastro y Bienes Patrimoniales of the Ministerio de Economía y Finanzas and the Autoridad Nacional del Ambiente shall conduct a perpetual inspection of each of the stages of construction of the project, to ensure the fulfilment of the agreement. The same shall be done, as appropriate, by all institutions required by law to undertake the same.

In the case of breach of the resolution which authorises the environmental impact study provisional suspension of the project shall be ordered.

Article 6. Once the Ministerio de Economía y Finanzas has provisionally approved the granting of a concession according to the terms of this Law, the interested party shall present, to the Contraloría General de la República, the bond which is to be provided. Likewise, it shall pay, in the Ministerio de Economía y Finanzas the sum corresponding to two months of the concession, according to the amount which has been previously specified. After the deposit has been made, the Dirección de Catastro y Bienes Patrimoniales of the Ministerio de Economía y Finanzas shall publish, at the applicant's expense, an edict in a newspaper of national circulation, for the period of five calendar days.

Upon expiration of this period, the applicant shall appear to be personally notified of the resolution which grants the provisional concession, and begin the construction of the proposed project, with prior approval of the construction blueprints and according to the plan and the timeline of the project, presented together with the application.

This procedure that not apply for the concessions which require the public hearing, contemplated in article 2 of this Law.

Article 7. The expenses inherent to the determination of the site or parcel which interests the applicant within the area, as well as delimiting, in a clear and specific manner through surveys, the measurements, boundaries, surface area and other corresponding data for the parcel over which a concession is requested, shall be solely and exclusively at the expense of the applicant.

Likewise, all the expenses inherent to the physical access and roadways to the parcels over which the concession is granted, as well as those relative to the provision of drinking water, electricity, waste collection, water treatment plans and other basic services which are required in the area granted, shall be at the applicant's expense. All infrastructure or basic services which may cause an environmental impact, must be submitted according to the legal rules in effect regarding the matter.

Article 8. The area which is granted in concession on islands shall depend on the total surface area of the island. For this, the Ministerio de Economía y Finanzas shall establish the maximum areas which may be adjudicated to applicants, and shall distinguish the uses to which they will be destined, whether residential, tourism projects or economic development.

Article 9. The areas on islands requested in concession should have a right of way area for the access to those areas of public use. The Ministerio de Economía y Finanzas through the Dirección de Catastro y Bienes Patrimoniales, shall coordinate with the Ministerio de Vivienda the establishment of the dimensions of these easements and the distance between them. For new projects, the beach easement shall not be inferior to twenty two metres, counted from the high tide mark. In those cases in which the beach easement can not comply with the requirement of twenty two meters or in special cases, such as mangroves, port installations, river mouths and drainage, the Dirección de Catastro y Bienes Patrimoniales shall coordinate with the Ministerio de Vivienda and the Autoridad Nacional del Ambiente and the Autoridad Marítima de Panamá the establishment of the easements, according to the case.

Paragraph: Those natural or legal persons who have, for more than five years, occupied the beach easements referred to in this article, before the promulgation of this Law, shall be recognised a concession according to their situation.

Article 10. The Ventanilla Única y Especial in the Dirección de Catastro y Bienes Patrimoniales of the Ministerio de Economía y Finanzas is hereby created. This Ventanilla Única y Especial shall have a centralised system for the processing and approval of the petitions and applications for administrative concessions, for the acquisition of the rights defined in this Law, and shall oversee the compliance with all the corresponding rules.

The Ventanilla Única y Especial shall receive the applications corresponding to the granting of concessions and, once the details are verified, the Ministerio de Economía y Finanzas may grant provisional concessions. The effects of this concession shall be of a provisional nature, until the construction projects proposed over the parcel or parcels given in concession are completed.

Upon the fulfilment of the requirements provided in this Law, the Ministerio de Economía y Finanzas shall approve the definitive concession and order the preparation of the corresponding contract.

The Ventanilla Única y Especial shall be made up by the institutions which have jurisdiction in this area, according to the regulations of this Law.

Article 11. The improvements and buildings erected according to the concession contracts which are granted under this Law, shall be filed in the corresponding section of the Registro Público, according to the procedure prescribed in the Judicial Code regarding Buildings on Foreign Property

For the purposes of fixing the value of the improvements and the proof that these have been done at the expense of the concession holder, the court shall recognise the certification of the Dirección de Catastro y Bienes Patrimoniales in this respect.

Both in the registration of the lot of the State on which the concession is granted, as that which results from the registration of the improvements by the concession holder, the registrar shall make a marginal note establishing the limit of the ownership, as referred to in this Law.

Article 12. The contract in which the concession is formalised shall contain a description of the improvements and buildings which have been constructed by the concession holder according to the corresponding authorisations, specifying the location, the metes and bounds and surface area, as well as an indication of the bearing, the construction materials and the value of the improvements, among other things.

In the event that it has been agreed that the improvements shall be built in different stages, the concession holder shall request to the Ministerio de Economía y Finanzas, a certification regarding the termination of each of these stages, which must include the description of the improvements built thereon, for the purpose of registering these. This certification shall likewise be protocolised for the purpose of registration.

Article 13. In the event that the holder of a definitive concession breaches its obligations with third parties which have provided assets for the financing of the project, these may request, to the Ministerio de Economía y Finanzas, the subrogation with respect to the concession holder, for the purpose of recouping their balance due, as long as they agree to fulfil the agreement of the holder. The same procedure shall apply in the cases of provisional concessions.

Chapter II

Vacation or Permanent Residential Units

Article 14. The buildings and residential units for the purpose of vacation, permanent or retirement lodging, built on property of the State which has been granted in concession to natural or legal persons, whether nationals or foreigners, of a permanent or provisional nature, at one or more times of the year in accordance with this Law, shall be considered to be of tourism interest and therefore destined to tourism activities.

Article 15. The residential units dealt with in this Chapter may only be built in the areas specified as tourism development zones, declared by the Consejo de Gabinete. The determination of these specified areas shall correspond to the Instituto Panameño de Turismo, in coordination with the Dirección de Catastro y Bienes Patrimoniales, the Ministerio de Vivienda and the Autoridad Nacional del Ambiente.

Article 16. The granting of concessions for the construction of residential units in the specified areas established in accordance with the above article, shall be limited to one parcel of land per applicant. The size of the parcel, the cost of the construction of the improvements built thereof, as well as the area which said improvements must cover of the total surface area of the land given in concession, shall be established by regulations.

Article 17. In the event that a natural or legal person is interested in undertaking a development which requires the promotion and commercialisation of tourism residential projects, the Ministerio de Economía y Finanzas shall study the application and, if it considers it viable, shall grant the corresponding concession, in accordance with the provisions of this Law.

Article 18. For the effects of this Chapter, tourism lodging projects with purposes of vacation or permanent lodging which are built within the zones declared for tourism development shall also be considered of tourism interest.

These tourism lodging projects shall be granted the tax incentives established in Law 8 of 1994 during the phase of construction and sale.

Chapter III

Sale of Island Property for Tourism Development Purposes

Article 19. The Consejo de Gabinete, by recommendation of the Ministerio de Economía y Finanzas and the Instituto Panameño de Turismo, may declare as areas for special development for tourism improvement, the island areas which meet the special conditions for tourist attraction, according to the provisions of article 291 of the Constitution, insofar as the investment to be undertaken, in addition to the economic impact, will guarantee the creation of a significant number of jobs in the area. In their recommendations, the institutions should make emphasis on the ecotourism improvements.

For the purposes of this declaration, it shall be an essential requirement that the area in question is not built up.

Paragraph. The public infrastructure which the investor constructs shall pass, as of right, to be property of the State at no cost.

Article 20. The areas declared for special development for tourism improvement shall be subject to the following restrictions:

1. They shall not be less than ten kilometres from the border.
2. They shall not have been declared historical national domain or domains for humanity.
3. They shall not, by their characteristics, have been dedicated to the preservation of the environment or for forestry or scientific conservation ends.
4. They shall not form part of the indigenous reservations.

The sale of the areas declared to be special development according to this Law shall not exceed fifty percent (50%) of the total surface area of the territory of each island, nor shall it be transferred to the dominium of another State.

The tourism projects which are undertaken in areas declared for special development under this Law shall not exceed thirty percent (30%) of the total surface area of each island. In any case, the tourism projects must conserve thirty percent (30%) of the landscape view of the island beach front.

Article 21. The contracts which the State executes for the sale of island property within an area of special development shall be undertaken through the Ministerio de Economía y Finanzas, after holding a public hearing, whose regulation shall be issued by the Executive Branch, guaranteeing the principles of economy, responsibility and transparency.

Natural and legal persons interested in the development of tourism projects referred to in the above paragraph may participate in the sessions of public hearings.

Transitory paragraph. The island properties in which there are rights of possession or where projects which have been started or which have the corresponding permits for their commencement, and which satisfy the applicable laws before the entrance into effect of this Law, may be subject to direct sale, without meeting the requirement for holding the public hearing established in this Law.

Article 22. The sale and purchase contracts for island property which are executed according to this Law shall contain:

1. The description of the land sold, including the surface areas, metes and bounds.
2. The value of the land subject to the sale and purchase, which price shall not, at any time, be less than the mean of the appraisals done by the Ministerio de Economía y Finanzas and the Contraloría General de la República.
3. The estimated amount and details of the investments, including the amount of investment in public basic infrastructure which the buyer will need to develop, himself or through subcontractors, which must include

- physical access and roadways to the parcels sold, as well as provision of drinking water and electricity, waste collection, water treatment plants and other basic services, which the area requires, as well as the corresponding environmental impact study and the plan of environmental management, in accordance with Law 41 of 1998, Environmental Law of the Republic of Panama.
4. The integral description of the project in its final phase, including the amounts of the investment and the term for completion of the development of the project.
 5. The description of the beach rights of way, which shall never be less than twenty two metres, counted from the high tide mark, except for those special cases established in Article 9 of this Law.
 6. A clear and precise description of the inalienable assets located within the island territory which is subject to the sale, as well as other restrictions to full title in accordance with the law.
 7. The amount of the bond which the buyer must consign to guarantee the undertaking of the project which is to be developed, which shall not be less than ten percent (10%) of the value of the contract and which shall remain in place until the project is completed. This bond shall expire proportionally to the completion of the registration of the improvements built thereon.
 8. Any special terms of the contract.
 9. The reason (cause) for which the contract may be revoked.

These contracts shall not contain clauses which limit or exclude the right of the Municipality, of the area in which the project is undertaken, to charge the taxes, rates or excises which they have the right to receive according to the Constitution or law.

Article 23. The projects which are presented for an area declared to be for special development, shall be prepared in accordance with the urbanisation plan which has been prepared, for this effect, by the Dirección General de Desarrollo Urbano of the Ministerio de Vivienda, in coordination with the Instituto Panameño de Turismo, the Autoridad Nacional del Ambiente, the Autoridad Marítima de Panamá, together with the Ministerio de Obras Públicas and the Dirección de Catastro y Bienes Patrimoniales of the Ministerio de Economía y Finanzas.

Transitory Paragraph. The absence of an urbanisation plan shall not obstruct the presentation of projects which present their own urbanisation plan, which may be approved by the corresponding authorities through the Ventanilla Única, established according to Article 10 of this Law, to provisionally adopt them as regulatory plans for the area.

Article 24. The State may administratively revoke the contract, where the stipulated investment is not undertaken according to the terms and conditions agreed upon. The following shall also be grounds for the administrative revocation of the contract:

1. Where the buyer is declared bankrupt by a court, or where they are financially or technically incapable, clearly and evidently, to complete the purpose of the contract, even where there is no judicial declaration of bankruptcy.
2. The dissolution of the buyer, when it is a legal person, or of any of the partners making up a joint venture or de facto association, unless the rest of the partners of the joint venture or association can complete the contract.

In the event of revocation of the contract, the title of the property given in sale shall revert to being property of the State. Nevertheless, the revocation of the contract to the buyer shall not affect title to property acquired by third parties in good faith, in accordance with this Law.

Chapter IV

Final Provisions

Article 25. It corresponds to the Dirección de Catastro y Bienes Patrimoniales together with local government, to prepare the studies of the local tenure of the state properties which have been declared areas of national tourism interest and to delimit, specifically, the areas which may be subject to concession, respecting at all times the existing titles and rights of possession.

Article 26. Those natural persons domiciled in the area who have maintained a permanent and uninterrupted possession of the State lands on islands, for no less than a two year period before the entrance into effect of this Law, using said lands for a home or as the basis of their farming activity, shall be granted a concession over said lands for ninety years, without having to submit to a public hearing or having to consign a bond for the concessions, and being exempt from having to pay the corresponding charge.

Additionally, said persons shall fulfil the following requirements:

1. When it is a home for the applicant and his family, this shall have been built at least two years before the date on which the application is made, and must be the principal abode of the applicant's family.
2. When it is parcels for farming, they must be in production, which shall be evidenced, for at least two years beforehand, counted backwards from the date on which this Law came into effect.
3. The domicile may be demonstrated by the registration of the applicant in the Electoral Roll of the area, which is certified by the Electoral Tribunal, and which is the interested party and their families were held to have voted in the last elections, as well as by the corresponding administrative authorities.
4. There may not be any opposition by third parties presented evidencing a better right for adjudication.

The permanent and uninterrupted possession referred to in this article shall be accredited by a ocular inspection undertaken by the Dirección de Catastro y Bienes Patrimoniales, in coordination with the corresponding corregidor. The results of this inspection may be complemented, at the applicant's request, by the presentation of non-judicial testimony.

The concessions of this article shall be subject to the applicable rules of successions.

Article 27. The legal persons who have maintained a permanent and uninterrupted possession of the State lands on islands, for no less than two years before the entrance into effect of this law, shall evidence said possession through an ocular inspection undertaken by the Dirección de Catastro y Bienes Patrimoniales in coordination with the corresponding corregidor, an shall have the right to be granted a concession.

Those legal persons who have duly acquired the rights of possession from a natural person resident in the area, who can demonstrate that they are within the framework established in article 26 of this Law, shall be subrogated in the place of that person for the effects of the granting of the concession.

In both cases, the term of the concession granted shall be subject to the terms provided in article 1, as well as all those requirements established in Chapters I and II of this Law, as applicable.

Article 28. Any natural or legal person to whom a concession, which has been granted in accordance with article 26, has been transferred, maintaining the same use of personal residence or agricultural development as the original concession holder, shall be subject to the same conditions in terms of duration and payment of the corresponding charge. Where the concession is transferred and the same conditions are not maintained, the natural or legal person shall be subject, in terms of the duration of the concession, to the requirements established in Chapters I and II of this Law, as applicable.

When the transfer is only of rights of possession recognised under the provisions of this Law, the applicant shall be subject to the requirements established in in Chapters I and II of this Law as applicable.

Article 29. The natural or legal persons who allege that they have rights of possession over beach front or island property, by virtue of documents issued after the date of entry into effect of this Law, shall be subject to that established in articles 26, 27 or 28 in order to be held as opposition, for the purposes of opposing the occupation or the possession of an area which has been granted in concession to another person in accordance with this Law.

The concession holder shall have the right, where the opposition is decided in his favour, to request the immediate vacating of the concessioned area and the Dirección de Catastro y Bienes Patrimoniales may order the demolition of any improvements built thereon.

Article 30. The concession contracts celebrated in accordance with the terms of this Law shall not have any clauses which limit or exclude the rights of the city council, where the concession is located, to charge the taxes, rates or excises which, by mandate of the Constitution or the law, they have the right to receive from the concession holders.

Without prejudice to the foregoing, no municipal authority shall have the power to impede or delay the commencement of projects which have been authorised over lands granted in accordance with the terms of this Law, unless the interested party proposes to undertake construction or projects which are not described in the corresponding concession contract or which, having been so described, are being effected in a different way from that proposed. The concession holders shall always be obliged to pay the municipal taxes and rates, which the city councils regularly impose on buildings of a similar nature.

Article 31. The occupation and use of the areas declares of tourism interest without the express authorisation of the Ministerio de Economía y Finanzas or without the formalisation of the corresponding contract, shall be penalised with a fine equivalent to the amount up to five times the value of the area occupied, and not less than Five Thousand Balboas (B/.5,000.00). In order to apply these fines, the appraisal undertaken in accordance with applicable rules shall be used, without prejudice to any criminal sanctions which may apply.

Additionally, the Ministerio de Economía y Finanzas, through the Dirección de Catastro y Bienes Patrimoniales, may order the demolition of any buildings constructed thereon, restoring the land to its original condition, and the occupation shall cover the cost of such demotion and restoration. Nevertheless, the Ministerio de Economía y Finanzas may adjudicate, rent or grant a concession to the occupants, in accordance with public interest.

Article 32. Construction over coral formations is prohibited, as well as any activity which leads to the death, bleaching or destruction of the ecosystem of which it forms a part. The protection of the coastal-marine resources shall be regulated by provisions adopted for this purpose by the Autoridad Marítima de Panamá in coordination with the Autoridad Nacional del Ambiente

Article 33. The cutting, use and sale of mangrove forests, the products, parts or derivatives thereof is prohibited; except projects of tourism development who have prior approval of an environmental impact study and are in compliance with the applicable legislation.

Article 34. All natural or legal persons, whether concession or title holders of island properties, shall be subject to fulfilling the rules established by the Panamanian State with respect to national security.

Article 35. The concession holders or investors, contractors and subcontractors, shall hire, preferably from the area where the project is being undertaken, all manual labourers for the term of the construction.

Likewise, the concession holder or the project operator shall hire, preferably for the operation of the project, specialised personnel, if available, and non specialised personnel, from the area where the project is located.

The State shall train these residents in the different vocations required for these investments.

Article 36. The concession or sale contracts celebrated with the State in accordance with this Law, shall be countersigned by the Contraloría General de la República, without which they shall not be held to be valid.

Article 37. The Island Property Section of the Public Registry of Panama is hereby created, in which there shall be registered all titles relative to the sale of island property, the declaration, conveyance or transfer of the improvements build thereon which are given in concession, as well as other rights in rem which are arranged on these titles

Article 38. Article 121 of the Tax Code shall read as follows:

Article 121. No foreign natural or legal person and no national legal person of foreign capital, whether partial or total, may acquire land from the State or private persons, which are situated less than ten kilometres (10KM) from the borders. However, the rights acquired upon the entry into effect of the Constitution shall be respected, but the corresponding assets may be expropriated at any time, with the payment of an adequate indemnification.

Article 39. Subsection 8 of Article 27 of the Agrarian Code shall read as follows:

Article 27. The following lands are exempt from the provisions of the previous article:

...

8. Marine islands. The sale of the portions of land occupied and possessed in marine islands, shall be subject to the provisions of the Constitution and the law.

Article 40. This Law modified article 121 of the Tax Code, subsection 8 of article 27 of the Agrarian Code and repeals articles 34, 35, 36, 37, 38 and 39 of Law 8 of the 14th of June 1994 as well as Executive Decree 3 of the 19th of January of 1972 and any other provisions which may be contrary hereto.

May it be Published and Done.

Approved in its third debate in the Justo Arosemena Palace, Panama City, on the 13th of December 2005.

Chairman

{signature illegible}

Elias A. Castillo G.

Secretary General

{signature illegible}

Carlos Jose Smith S.

National Executive Branch, President of the Republic, Panama, Republic of Panama, January 7, 2006.

{signature illegible}

Martín Torrijos Espino

President of the Republic

{signature illegible}

Ricaurte Vásquez Morales Minister of Economy & Finance