

Legal Department, Costa Rica Tourist Board

BYLAW OF THE REGULATORY LAW OF THE TOURIST POLE OF GULF OF PAPAGAYO

No. 25439-MP-TUR of August 27 of 1996, published in La Gaceta No. 173 of September 11 of 1996, amended by Executive Decree No. 29794-MP-TUR of August 30 of 2001, published in La Gaceta No. 180 of September 19 of 2001 and amended by Executive Decree No. 30259-MP-TUR of February 21 of 2002, published in Alcance No.28 of La Gaceta No. 67 of April 8 of 2002.

THE PRESIDENT OF THE REPUBLIC AND THE MINISTERS OF THE PRESIDENCY AND OF TOURISM

In use of the faculties conferred in clauses 3) and 18) of article 140 of the Political Constitution

Whereas:

- 1.-That Law 6758 of June 22 of 1982, articles 12 and 13 clause b) confer ICT the power of establishing the conditions and terms in which concessions to Tourist Project Gulf of Papagayo are granted.
- 2.-Given the need to regulate those aspects of greater relevance for a better clarity in the granting of concessions and for the development of each of the projects proposed by the grantees, has determined the importance to regulate the mentioned Law.
- 3.-That it is timely, due to the above mentioned, to regulate some aspects preferentially, as are the concession systems and the disciplinary system, **therefore,**

RESOLVE:

The following Bylaw to Law 6758, Law for the Development and Execution of the Tourist Project Gulf of Papagayo.

**CHAPTER I
General Dispositions**

Article 1.-This Regulation is issued to regulate concessions granted in conformity to Law 6758 of May 6 of 1982.

Article 2.-For all effects when the law or this Regulation use the following terms, they should be understood as follows:

- a) Tourist Board: Costa Rican Tourist Board
- b) Board of Directors: Board of Directors of the Costa Rican Tourist Board
- c) Directive Council: Directive Council of the Gulf of Papagayo Tourist Project
- d) Executive Office: Executive Office of the Gulf of Papagayo Tourist Project
- e) Project: Gulf of Papagayo Tourist Project

- f) Grantee: Natural or legal person, holder of a title or real right over the land conceded.
- g) Master Plan: Development Plan of the Gulf of Papagayo Tourist Project

Article 3.-Of the Directive Council:

The Project will be directed and managed by the Executive Office, as an entity of the maximum administrative independence, depending directly of the Tourist Board's Board of Directors.

A Directive Council, an Executive Department and the staff that is strictly necessary, will integrate the Executive Office.

The Directive Council will be formed by five members: Executive President of the Tourist Board, who shall preside it and will be substituted in his absence by the Vice-president of the Board of Directors; two representatives of the Tourist Board and two representatives of private companies. All members should have experience in tourist activities and will be freely appointed by the Board of Directors. They will remain in their positions for five years, which are renewable, and their appointment may be revoked at any moment. For such reason they will be considered as servants of the worthy trust system.

The position of the Directive Council members will not be remunerated.

Transitory: For the objective of this article the current members of the Directive Council will remain in their positions until the last day of the month of May of 1998.

CHAPTER II Of the Concessions

Article 4.-Concessions in the areas of the project will only be granted to entities constituted and resident in the country.

Grantees and natural persons and the directors and agents of the entities shall prove their moral and financial solvency before the Directive Council.

Those aspiring to a concession must also comply with the requirements established in the cartel of the respective bid.

Article 5.-Concessions will be granted with a previous bid, whose cartel should be published in "La Gaceta" and a newspaper of local circulation

Article 6.- The Concession requests will be studied by the technical staff of the Executive Office, whose reports will be known by the Directive Council. The Directive Council will make its recommendation before the Board of Directors of the Tourist Board, which will make its final decision

Article 7.- The Tourist Board's Board of Directors will grant concessions in accordance to projects presented, and will select the ones which are most convenient to the country's interests and comply with the legal and regulatory requirements established by a reasoned resolution.

Article 8.-Once adjudicated the concession or concessions, the resolution will be published in the official newspaper "La Gaceta".

Article 9.-The term of the concessions will be of at least for 10 years and for a maximum of 50 years. Extensions for equal periods may be given, provided that the grantee entity or the third grantees with definitive contracts of cession, have complied with their obligations, exacted in each contract, and with the laws and regulations that rule the Project of Tourist Development Gulf of Papagayo, guarding the requirements to be such, if the area and its buildings and premises are kept in good upkeep, and they are up to date in compliance of their contractual and normative obligations. All the mentioned above, will not proceed if public interest justifies rescue of the concession.¹

Article 10.-For each extension the grantee shall pay the Tourist Board the same amount paid for the initial payment of the concession, adjusted in conformity to the LIBOR rate, at six months annually, using the average of the last twelve months in compound form.

Article 11.-Rescue of concessions, for reasons of evident public interest; will proceed, with previous payment of the indemnification that corresponds, in conformity to the appraisal done by the General Direction of Direct Taxation and issued to that effect.

Article 12.-It corresponds to the Board of Directors to authorize the total or partial transfers, the mortgage and trusts of concessions, with a prior report to the Directive Council. The purchasers shall comply with all of the requirements to be grantees, save in the case of cessions for individual habitation use and on behalf of natural persons, as well as in the case of grantees for closings of concessions granted in guarantee.²

Partial or total transfer operations of concessions at the Project of Tourist Development Gulf of Papagayo, will pay to the Tourist Board one dollar of the United States of America (US \$1), for each square meter of land transferred, prior to its approval, reimbursable only in case that the Tourist Board does not approve the transfer. Such amount will be adjusted every five years, in conformity to the accumulated LIBOR rate to six months and annually, using the average of the last twelve months.

Article 13.-The granting of concessions, as well as every cession, mortgage, leasing or trust, referent to concessions, will be registered in the Project's Registry of Concessions at the National Registry.

In the cases of transfer of concessions, the purchaser will be considered for every purpose, as a grantee. In case of leasing, the lease will be similar to a concession.

Article 14.- The grantee will have the obligations established by Law 6758, the ones of this Regulation, of the Master Plan, the ones in the contract of concession, in the respective environmental impact study, other

¹ Amended by Decree No. 31991-MP-TUR of May 21 of 2004 published in La Gaceta No. 162 of August 19 of 2004.

² Amended the first paragraph of this article, by Executive Decree No. 29794-MP-TUR of August 30 of 2001, published in La Gaceta No. 180 of September 19 of 2001.

dispositions of the Tourist Board's Board of Directors, and the other applicable norms.

Specifically, no grantee may vary his project, once approved by the Tourist Board, save prior express authorization of the same.

Every grantee must pay the fee foreseen in article 48 of the Law of the Maritime and Terrestrial Zone and 49 of the Regulation to this Law. This fee will be fixed according to the appraisal done by the General Direction of Direct Taxation, taking as a base, the concession value of the land located on the restricted area of the Maritime and Terrestrial Zone.³

Article 15.- Every revenue obtained from the Management of the Project will be transferred to a fund created by article 7 of Law 6758, whose budget will cover all expenses and investments of the project, under the Tourist Board's responsibility.

Article 16.-Grantees of concessions must submit a compliance warranty of up to five per cent (5%) of the estimated value of each stage of the Project to be developed. The respective fixation will be done by the Tourist Board, prior judgment of the Directive Council. This warranty will be returned 60 days after the works of the respective stage are concluded, to the Directive Council's satisfaction. As warranties will be accepted those indicated by the Law and Regulation of Administrative Contracting.

Article 17.-Once a concession is adjudged the respective contract must be signed in a term no greater than three months. The contract subscribed, the procedures of the corresponding permits must begin within the following six months, which must be dutifully done by the grantee. The works must begin within the six months following the Attainment of all the necessary permits. These terms may be extended, according to the judgment of the Directive Council, by a duly motivated and justified act of the Grantee Company. The term for conclusion of the works will be defined in the contract of concession.⁴

CHAPTER III Of the Disciplinary System

Article 18.- It will be considered as a disciplinary fault of the grantee the non-compliance, by itself or the lessor, of the legal, regulatory or contractual obligations, specifically applicable to his condition.

Article 19.-Applicable sanctions to grantees will be:

- a) Written admonition
- b) Restitution of damages
- c) Execution of guarantees; and
- d) Cancellation of the concession

Article 20.-The restitution of damages will proceed when incurring in environmental or archaeological damage, and will apply without detriment

³ **As** amended by Decree No. 31991-MP-TUR of May 21 of 2004 published in La Gaceta No. 162 of August 19 of 2004.

⁴ **As** amended by Decree No.31991-MP-TUR of May 21 of 2004 published in La Gaceta No. 162 of August 19 of 2004.

to penalties that may correspond and of the eventuality of canceling the concession and execution of the corresponding guarantee.

Article 21.-The execution of a guarantee, partial or total, will proceed in cases when guaranteed obligations are not complied with, and will be independent of an eventual cancellation of the concession.

Article 22.-The cancellation will proceed in cases foreseen in article 13 of Law 6758 of June 22 of 1982, when violations stipulated in clauses a) to d) constitute serious acts.

When the cancellation is agreed, the Tourist Board will recover the area granted, acknowledging the value of improvements, in conformity with an appraisal done by the General Department of Direct Taxation.

Article 23.-The imposition of sanctions will be done with a prior ordinary procedure, save in the case of written admonition, in which the summary procedure will be followed.

Article 24.-The cancellation of the concession corresponds to the Board of Directors, prior report from the Directive Council.

It is the power of the Directive Council to impose the remaining sanctions, whose decisions will be appealable within the eight workdays following the communication of the same before the Board of Directors.

Article 25.- In force from its publication.

Given at the Presidency of the Republic.-San José, at day twenty-seven of the month of August of nineteen ninety-six.

JOSE MARIA FIGUERES OLSEN-the Ministers of the Presidency, Marco Antonio Vargas and of Tourism, Carlos Roesch Carranza.-