

The Marinas Concession and Operation Law

Law No. 7744 of December 19 of 1997,
published in La Gaceta No. 26 of February 6 of 1998.

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Article 1.-Authorization

Concessions on the maritime and terrestrial zone, and the adjacent area permanently covered by the sea, may be granted, in conformity to what is disposed in the present law, except for the mangrove areas, national parks, and biological reserves; for the building, management and exploitation of tourist marinas and wharves.

The municipality of the place will be the competent authority for granting the concession. In case of express request from the respective municipality to state institutions, these must offer technical advisory.

It will correspond to the respective Costa Rican state institutions, in the field of their competence, to supervise, and survey in a regular way, the operation and functioning of the tourist marinas and wharves.

The concession will be granted safeguarding the environment and natural resources of the area.

Article 2.-Definitions

To the effects of the present law, it will be understood by the term of tourist marina, the group of maritime and terrestrial facilities, destined to the protection, shelter and lending of all kinds of services, to recreation, tourist, and sport vessels, no matter their flag and independently of their size, as well as to their visitors and users, national or foreign. Likewise, it includes the facilities under operation, management and handling of a tourist company.

Real estate, facilities, access roads to different areas and other goods in private property are considered part of a marina. They must be destined by their owners to lend services to the tourist marina, and they must have been considered in the concession. For imposing a tax charge on those goods, it's necessary that their owners expressly accept such charge, which must be incorporated in the project's planning. Areas required for public use must be ceded to the State. The cession will be determined by the Inter Institutional Commission of Tourist Marinas and Wharves, which has to consider what is disposed by the Coast Regulatory Plan of the area.

The right of every person to use and enjoy the public area in its full extent is guaranteed, without detriment of the restrictions established by the Inter Institutional Commission of Tourist Marinas and landing places, due to topographic, safety or people`s health reasons.

To the effects of the present law the docks, fixed or floating piers, ramps and other necessary works to allow the arrival of recreation and minor sport vessels, for the enjoyment and safety of tourists, are considered as wharves.

Article 3.-Applicable norms

The construction, management and exploitation of tourist marinas and wharves, as well as the rendering of services in the areas destined for it, will become formal by a concession contract, and will be ruled by the dispositions of the present law and its regulation.

Every tourist marina shall count, at least, with the following facilities and services:

- a) Signs for the arrival and departure of vessels, according to the technical norms approved for the case, respecting international conventions.
- b) Facilities for the berthing and mooring of a minimum of vessels, to be determined in the regulation.
- c) Potable water and electric power supply for vessels that require them.
- d) Fuel and lubricants supply.
- e) Adequate general illumination and permanent vigilance.
- f) Skidding and launching means.
- g) Vessels' maintenance and minor emergency repairs.
- h) Radio communications office with VHF equipment to inform of climatic conditions and navigation routes.
- i) Fire fighting equipment, according to the National Insurance Institute's norms and the size of the tourist marina.
- j) Restrooms and toilets.
- k) Collection and disposal of garbage, waste, and oil. Treatment plant for running water, wastewater and discharges, the above according to the terms foreseen on the environmental impact assessment and the applicable legal norms.
- l) Administrative offices of the grantee, where registrations of users present in the marina are carried out.
- m) Adequate facilities for the exercise of the public control functions assigned to state institutions. Must also coordinate with the Ministry of Government and Police, the General Migration and Foreign Conditions Department, the Ministry of Public Treasury, The General Customs Department, the Legal Organism of Judicial Investigation, and the Narcotics Department.
- n) Insurance Policy covering the grantee from civil liability.
- ñ) Enough trained staff for the operation of the tourist marina.

- o) Parking lot with capacity for one vehicle for every two boats.
- p) Commercial buildings.

Disregard to the above duties will be qualified as serious non-compliance for the purpose of caducity causes of the contract, disposed in the present law.

Article 4.-Legal control

The Attorney General of the Republic, by itself or by petition of any state entity or institution, will exert legal control for due compliance with this law. Without detriment of what corresponds to other institutions the Attorney General of the Republic will conduct the pertinent negotiations as to actions violating or infringing these dispositions or of related laws, of those trying to obtain or recognize rights against such norms or annul concessions, dispositions, permits, acts or agreements obtained by contravening such norms.

Article 5.-Proceedings

To begin the proceeding of a request for concession and functioning of tourist marinas and landing places, the interested must present:

- a) Written request before the municipality of the place, according to the requirements established by the regulation of this law.
- b) The Inter Institutional Commission for Tourist Marinas and Wharves' respective resolution, of the preliminary plan for building and exploitation of tourist marina or wharves, along with a copy of the preliminary plan.
- c) A certification extended by an authorized public accountant, of the financial capacity of the company, and a sworn declaration before a public notary, of their experience in similar projects.

Article 6. - Creation of the Inter Institutional Commission of Tourist Marinas and Wharves.

The Inter Institutional Commission for Tourist Marinas and Wharves is created as an entity of maximum administrative independence; assigned to the Costa Rican Tourist Board. It will be integrated by the director or its representative, of each one of the following institutions:

- a) The Costa Rican Tourist Board. This member heads the Commission.
- b) The National Housing and Urbanism Institute.
- c) The Ministry of Public Works and Transport.
- d) The Ministry of the Environment and Energy.
- e) The Ministry of Public Health.

The Commission's headquarters will be at the Costa Rican Tourist Board. For the compliance with its functions, it will count with all the technical support that it may require from all its' integrating entities, which are authorized to appoint technical staff to help the Commission.

Article 7.-Attributes of the Inter Institutional Commission of Tourist Marinas and Wharves.

It will correspond to the Inter Institutional Commission for Tourist Marinas and Wharves , to:

- a) Issue a technical resolution to approve or reject a preliminary plan, its modifications and other technical documents mentioned in the following article, related with tourist marinas and wharves.
- b) Establish the technical terms of reference to be included in the performance of works and operation of tourist marinas and wharves, specified in the regulation to this law.
- c) Vigilance, control and investigation of activities related with the matter that is object of the present law.
- d) Other functions established by this law or in others.

The functioning of this Commission will be complied with what is disposed by the General Law of Public Administration for associate entities, as well as the regulation of the present law.

The rights of appeal and annulment will proceed against the resolutions of the Commission, in the terms and conditions established by the General Law of Public Administration.

The appeal must be interposed before the director of the Costa Rican Tourist Board.

In this last resolution executive proceeding will be over for effects of the litigious action, in terms and effects mentioned by the Regulatory Law of the Administrative Law Jurisdiction.

Article 8.-Documents to obtain the concession

The person interested in obtaining the concession referred to in this law, must present a preliminary plan for building and exploitation before the Inter Institutional Commission for Tourist Marinas and Wharves, so that it issues the corresponding technical resolution. For the above ends, he must present the following documents:

- a) A preliminary plan including at least, the location of the land and its zoning, description of the project and the works to be executed.
- b) Surveiller's map of the location of the tourist marina or wharf and preliminary plan.

- c) Description of the services to be rendered, indicating the benefits for users.
- d) Economic profile of the project, with a detail of the investment to be made, and the costs-benefit analysis.
- e) Proposed rate system and prices offered.
- f) Environmental Impact Assessment duly approved by the National Environmental Technical Secretariat. In the case of the tourist wharves, the requirement in this clause is also requested.

Article 9.-Proceedings of the Request

Once the request is properly received, the Inter Institutional Commission for Tourist Marinas and Wharves will have a term of two months to manifest, in an obligatory, express and reasoned form, the feasibility of the request of concession of the tourist marina or wharf. In the lapse of this term, the Commission may request explanations and additions deemed necessary, and when these are presented, the Commission will count with the remaining term. The Commission's term to dictate a resolution may be extended, for the same period, only once.

It will be always the Commission's duty to dictate a timely resolution, and if not doing so, it is estimated as a serious service fault and as grounds for dismissal, to its members and other functionaries involved, according to disciplinary and administrative dispositions of the entity, without detriment to the penalties and civil liability derived from the omission against public interest.

Article 10.-Resolution of the request

The request resolved, the Commission will notify the interested of the decision, so that he presents it along with the other requirements to the local municipality.

When the resolution adopted by all members of the Commission present is negative, it won't be subject of knowledge of the respective municipality.

As preliminary act and within the first month of presentation of these requirements, the municipality will order publication of a decree, only once, in "La Gaceta" and a national circulating newspaper. In it, the municipality must indicate the general data of the applicant and the main characteristics of the proposed project. Third interested parties will have a one-month term from the publication of the decree in "La Gaceta" to go before the municipality and formulate an opposition, which must be duly founded, providing proof of endorsement. The municipality will follow the procedure disposed in the regulation of this law, once verifying that the opposition has been duly presented.

The municipality will have a term of three months after the term for oppositions for the proceeding and analyses of the request for concession. The municipality may request the Commission any explanations or additions deemed pertinent, within the twenty workdays after receiving the

resolution, and will have one month to answer, after receiving the corresponding notification. After the respective explanations and additions are done, it will correspond to the municipality to grant or deny the requested concession. In any case, the municipality must express itself in writing, with an express justification of its criteria.

Article 11.- Determination of the term of the concession and its extensions.

The terms of the contract of concession and its extension will be determined, taking into account the characteristics, the complexity and the magnitude of the projects, as well as the economic feasibility and financial profitability.

The municipality may grant the respective concession contract of the tourist marina or wharf for a maximum term of twenty years, with extension terms of five years each.

The extension may be denied for reasons of public use or general convenience, duly founded.

The environmental impact assessment issued by the National Environmental Technical Secretariat will be part of the concession contract of the tourist marina or wharf, signed by the respective municipality and the grantee.

Article 12.- Title holder of the concession

The municipality may grant concessions for development of tourist marinas or wharves) to natural or legal persons, national or foreign. Every titleholder of a concession granted under the protection of this law will be subject to national legislation and the jurisdiction of Costa Rican courts.

To obtain a concession in conformity with this law, companies whose main headquarters are abroad must establish a branch in Costa Rica, according to the legal procedures stipulated by the Code of Commerce. The branch will be considered Costa Rican, for national and international effects, related to concessions, goods, rights and legal actions affecting them

The acceptance of a concession implies the express renouncement to the option of any claim or solution of disputes, through the diplomatic way.

Foreign natural persons shall appoint an agent, with enough power and permanent residence in the national territory.

Prohibitions in matters of contracting established in the Law of Administrative Contracting and its regulation and of the Municipal Code, will apply.

Article 13.- Guarantees

In concession contracts, the amount of the compliance guarantee shall be established, to be rendered by the grantee, to ensure the correct construction and execution of the contract. This guarantee is independent and additional to the one exacted by the National Environmental Technical

Secretariat. It will be of two per cent (2%) of the total value of the works and shall be rendered by the grantee; within the two months following the firmness of the signed concession contract

This guarantee may be rendered by (a) deposit of the guarantee bonds of the National Insurance Institute, or the ones from the banks of the National Banking System, state bonds or of its institutions, certified checks, or management ones of a state bank, titles, as well as cash, by down-payment to the order of a state bank.

The guarantee may be also extended, by another bank or guarantor institution, when it has the endorsement of a bank of the National Banking System or the National Insurance Institution.

If quoted in foreign currency, the amount of the guarantee will be calculated at the official exchange rate valid at the moment of granting it. Bonds will be received by their nominal value.

Interest generated by titles deposited as guarantee up to the moment they are executed, will belong to the owner or depositor

Article 14.-Reimbursement of the guarantee

The proportional part corresponding to the compliance guarantee will be returned within the thirty days following the date in which the municipality takes the construction works as satisfactorily received, according to approved technical specifications for the project, when the stages described in the concession contract are fulfilled. It will be mandatory to foresee a proportional amount of the guarantee, capable to respond for the operation stage of the project. This amount will be returned when the works are received satisfactorily, at the terms foreseen by the present law conclude.

Article 15.-Registration

The concession contract, its modifications, its total or partial cession, taxes and caducity shall be registered in the General Registry of Concessions of the Maritime and Terrestrial Zone of the Public Registry.

Article 16.-Municipal Authorization

For the total or partial cession, the taxation of the obligations and rights derived from the concession, the municipality's authorization is required previously, as indicated by article 45 of law No. 6043. This authorization will be granted provided that the assignor has complied with all his obligations and the grantee has at least the same requirements demanded from the assignor. No act of this nature may be validly issued, before authentically proving the last situation indicated.

The total or partial cession, or the taxation made by the grantee without prior authorization of the municipality will be absolutely void and will imply cause for the caducity of the concession.

Article 17.-Municipal Charges

The municipality will charge the grantee an annual fee of at least four per cent (0.25%) over the value of maritime works and complementary ones on

land, constructed within the area of concession, for concession of the tourist marina or wharf, which must be cancelled in advance, quarterly. The value of these works will be updated by appraisals, every five years, done by experts from the General Department of Direct Taxation.

In addition, grantees must pay the fees, rates or taxes owing to construction, administration and exploitation of tourist marinas or wharves to the other authorities.

Article 18.- Rights of the grantee

In case of death or declared absence of the grantee, his rights may be adjudicated to his heirs. If there weren't any, the concession will be considered terminated, and it will return to the respective municipality, with the existent constructions and improvements

Article 19.-Termination of the concession

When the expiration of the term or any causes mentioned as follows, should terminate the concession, its full use, enjoyment and exploitation will revert to the municipality. The grantee will leave the constructions and facilities that correspond, movable goods or properties in perfect state.

Considered causes of termination of a concession, the following:

- a) Expiration of the term originally fixed in the concession, without requesting an extension or without duly extending it, in conformity to the law.
- b) Disappearance of the object or finality of the concession.
- c) Death or legal absence of the grantee, according to article 18 of the present law.
- d) Reversion favoring the municipality, due to emergency or public interest, duly certified in the procedure established in law N. 6043 of March 2 of 1977, and its regulation, in the Law of Expropriations, no. 7495 of May 3 of 1995, and other related laws.

Termination must be registered in the General Registry of Concessions of the Maritime and Terrestrial Zone, of the Public Registry.

A concession terminated for causes not imputable to the grantee, the State will acknowledge on his behalf, the value determined to this effect by the General Department of Direct Taxation, of the buildings and improvements done, as well as the value for the guarantee, where it corresponds.

Article 20.- Caducity of the concessions

The municipality may declare caducity of concessions, for any of the following events:

- a) Lack of payment of the fee referred in this law.
- b) Non-compliance with legal, regulatory or contractual obligations, acquired by his condition of grantee.

- c) Non-compliance with tributary obligations.
- d) Violation of the dispositions of this law by the grantee.
- e) Cession, taxation or transfer, total or partial, done by the grantee without prior authorization of the municipality, as disposed in numeral 16 of the present law.
- f) Unjustified renouncement or abandonment.
- g) Non-compliance with environmental obligations.

Caducity shall be registered in the General Registry of Concessions of the Maritime and Terrestrial Zone, of the Public Registry.

In case of caducity the Municipality may execute the compliance guarantee, as well as claim charges for damages, additionally.

In case a grantee is an author or participates in crimes sanctioned by this law, or any other related one, the caducity of his concession, will be declared, without detriment to any payment of damages caused by his action or omission.

When caducity has been declared for the concession, due to the mentioned causes, the full use, enjoyment and exploitation of the concession will revert to the municipality.

For effects of this article, the municipality shall follow the rules of due process of Law and right of defense established by the Political Constitution.

Article 21.-Foreign vessels

Any foreign vessel employing the services offered by a tourist marina will have the maximum allowed period of permanence in national waters, of two years, with extension for equal periods. In all cases they will be submitted to the Costa Rican legal order in matters of navigation and operation of the marinas and the respective controls. The respective department of the Ministry of Public Works and Transport will grant the initial permit and its extensions.

During their permanence in Costa Rican waters and territory, such vessels and their crew may not practice remunerated activities such as aquatic transport, fishing, diving; nor other related to sports and tourism, except for tourist cruise ships. Disregard of this disposition will imply imposition of a fine equivalent to one per cent (1%) of the vessel's value, as well as expulsion from the place by municipal authorities.

To the established effects, the grantee must communicate the local municipality where the infraction mentioned in the above paragraph has taken place, when knowing of it. Disregard of this disposition by the grantee will imply application of clause b) or article 20 of this law.

Article 22.-Sanction to legal representatives

Legal agents of companies and natural persons that build operate or exploit tourist marinas or wharves without the respective concession, shall be sanctioned with the penalty imposed in the Penal Code by the crime of appropriation of goods of public domain.

Article 23.-Concession and facilities as guarantee for credits

The concession, its buildings, improvements or installments, may be given in guarantee by the grantee, for effects of credit requests, as disposed by the article 16 of the present law.

Article 24.-Addition

An addition of a new clause will be done to article 36 of the General Law of Migration and Foreign Condition, No. 7033 of August 4 of 1986, whose text will say:

“Article 36”.-

(...)

g) Owners and crewmembers of tourist or recreation vessels. Permanence of these immigrants and their vessels in tourist marinas will be ruled by the legal and respective regulatory norms.”

Article 25.- Gulf of Papagayo Project

What concerns to concessions related to the areas of the Gulf of Papagayo Project, ruled by article 74 of the law cited, and law No. 6578 of June 4 of 1982, and other related laws, will be ruled by the present law, save if it corresponds to the Costa Rican Tourist Board to grant the concession.

In any case, the fee coming from the granted concession of the areas of the Gulf of Papagayo Project will be collected and destined for the respective municipality.

Article 26.-Complementary Norms

For the aspects not properly regulated by this law, the Law of the Maritime and Terrestrial Zone, its regulation, the General Law of Public Administration and the Law of Administrative Contracting and its regulation, will supplementary apply. In any case, the principles of the present legal text will be respected.

Article 27.-Regulation

The Executive Power will regulate this law in a maximum term of ninety days, counting from its publication in “La Gaceta”.

This law will be in force from its publication.

Legislative Assembly.-San José at day fifteen of the month of December of nineteen ninety-seven.-Saul Weisleder, President.-Mario Alvarez Gonzalez, First Secretary.-Carmen Valverde Acosta, Second Assistant Secretary.

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

JOSE MARIA FIGUERES OLSEN.-The Ministers of Government and
Police, Laura Chinchilla Miranda and of Tourism, Carlos Roesch Carranza.-