

**THE ACT**  
dated 8 September 2000  
**amending the Act on toll motorways and other acts**

Article 1

The Act dated 27 October 1994 on toll motorways (Dz. U. No. 127, item 627, of 1996 No. 106, item 496 and No. 156, item 775, of 1997 No. 133, item 885, of 1998 No. 106, item 668 and of 2000 No. 48, item 550) is hereby amended as follows:

1) Article 1 is amended to read:

“Article 1.1. The act defines the conditions for the preparation of construction, the principles underlying the concession process for construction and operation or only operation of toll motorways, hereinafter referred to as “motorways” as well as the competent authorities in these matters.

2. The Council of Ministers, by ordinance, shall determine which motorways or sections thereof shall be built and operated or only operated as toll motorways.

3. Expressways may be built and operated or only operated as toll expressways as provided for in this Act.

4. The Council of Ministers, by ordinance, shall determine which expressways or sections thereof may be built and operated or only operated as toll expressways.

5. Particular motorways and expressways may qualify as the toll motorways and expressways mentioned in paras. 2 and 4 if there exists the possibility of using another, generally-accessible public road.”;

2) The words “the Minister of Transport and Maritime Economy” used in Articles 2.1, 6, 7.2.8, 9.1, 9.2, 16.1, 17.1, 17.2, 18.7, 45, 47.1, 55.1 and 61 shall be replaced by “the minister competent for transport”

3) In Article 2:

a) in para. 1 the words “the Minister of Internal Affairs and Administration” shall be replaced by “the minister competent for architecture and construction”,

b) para. 2 is amended to read:

“2. The minister competent for transport, by ordinance, shall issue technical and building regulations pertaining to motorways with due regard in particular to conditions for the designing and construction of motorways, connections of motorways with other roads, technical equipment of motorways, bearing capacity and stability of earth structures and the structure of motorway pavement, safety of use and protection of the environment.”;

4) Article 3 is amended to read:

“Article 3.1. Tolls shall be collected for the use of a motorway.

2. The tolls for the use of a motorway shall be collected by a company that has been granted a concession on the terms specified in this Act, hereinafter referred to as “concessionaire”.

3. Subject to provisions of para. 4 below, the tolls collected for the use of a motorway shall constitute revenues of the concessionaire.

4. When the concessionaire receives funding in the form prescribed in Article 39d.1.3, the tolls collected for the use of a motorway shall constitute revenues of the Fund mentioned in Article 39.

5. The Council of Ministers, by ordinance, shall establish the conditions and procedure of settlement of accounts and transfer of funds between the concessionaire and the Fund taking into account the scope and conditions of the said funding.

6. When the tolls collected for the use of a motorway constitute the revenues of the concessionaire, the concession agreement shall establish conditions and scope of a profit sharing mechanism for the concessionaire and the Fund mentioned in Article 39.

7. The level of the tolls for the use of a motorway shall be established with due account of the conditions laid down in the ordinance mentioned in para. 8 by:

1) the minister competent for transport, by ordinance, if the tolls constitute the revenues of the Fund mentioned in Article 39,

2) the concessionaire if the tolls constitute the revenues of the concessionaire.

8. The minister competent for transport, by ordinance, shall establish detailed conditions for setting up and collecting the tolls for the use of a motorway, the procedure to announce the level of such tolls taking into account in particular the distance travelled and the category of vehicles.

9. Privileged vehicles on duty shall be exempted from the toll for the use of a motorway.”;

5) In Article 7.2:

a) point 3 is amended to read:

“3) acquire land for motorways for the benefit of the State Treasury and manage such land within the scope of the rights received,”

b) point 5 is amended to read:

“5) hold a tender for concession and draft concession agreement,”;

6) Article 10.2 is amended to read:

“2. The remuneration of the President of the Agency shall be established by the Prime Minister as recommended by the minister competent for transport.”;

7) Article 11.2 is amended to read:

“2. The President of the Agency, in agreement with the ministers competent for transport and public finance, shall approve an annual financial plan of the Agency.”;

8) Article 12.3 is amended to read:

“3. The Agency shall receive subsidies that are set annually in the Budget Act for study and documentation activities concerned with the construction of motorways, for land acquisition and land management activities, compensations, charges for the protection of forest lands, land integration and exchange activities, reconstruction of utility infrastructures, conducting archaeological emergency activities and ecological studies and preparation of the results thereof.”;

9) New Article 12a is inserted, which reads:

“Article 12a. The Agency shall be authorised to manage foreign assistance funds received by the Government of the Republic of Poland under grant agreements or memoranda for implementation of duties in the scope of motorway construction and operation or only operation if such agreements or memoranda provide for such possibility.”;

10) Article 13 is amended to read:

“Article 13.1. The Agency may take out long-term loans and issue bonds as approved by the minister competent for transport and the minister competent for public finance and on the terms laid down in applicable legislation.

2. The liabilities of the Agency resulting from the instruments mentioned in para. 1 may be covered by the State Budget guarantees and sureties only when the revenues on such instruments are committed to the objectives laid down in Article 39d.1.”;

11) In Article 14.2 the words “the Minister of Finance” shall be replaced by “the minister competent for public finance”.

12) Article 17.4 is amended to read:

“4. The minister competent for transport, as requested by the Council, shall establish, by ordinance, its organisation, operating rules and composition taking into account the interest of having representatives of various public administration authorities as its members.”;

13) Article 19 is amended to read:

“Article 19. The minister competent for public administration shall issue recommendations on the location of a motorway or sections of a motorway upon the opinion issued by the President of the Governmental Center for Strategic Studies and in agreement with the ministers competent for the economy, culture and protection of national heritage, agriculture, transport, the environment and the Minister of National Defence as well as the President of the Housing and Urban Development Office and the Chief Sanitary Inspector.”;

14) In Article 20:

a) in para. 1.3 the words “experts chosen by the Ministry for Environmental Protection, Natural Resources and Forestry” shall be replaced by “the experts from the regional list of experts endorsed by the Voivode”,

b) in para. 1.5 the words “the Minister of Culture and Arts” shall be replaced by the “minister competent for culture and protection of the national heritage”,

c) para. 4 is amended to read:

“4. The minister competent for the environment in agreement with the ministers competent for agriculture and rural development, culture and protection of the national heritage and transport shall establish, by ordinance, requirements to be met by the evaluations mentioned in paras. 1.3-1.5 taking into account construction and operation periods of the motorway, its impacts on air, earth surface including soil, extractable resources, surface and ground waters, acoustic climate, humans, flora and fauna, landscape as well as cross-impacts of the motorway together with the analysis of the motorway alignment and alternative alignments from the point of view of losses in agricultural and forest production lands and the impact of the motorway on registered cultural values and the qualities of cultural landscape.”;

15) In Article 25.2 the following text is added “and submit to the applicant, informing all other parties on the issuance and contents by means of announcements in communal offices and local press.”;

16) In Article 26 new para. 2 is added, which reads:

“2. The Agency may acquire, by contract, as the property of the State Treasury, real estate, which is located beyond the right-of-way of the motorway for the purposes of exchange transactions – to be exchanged for real estate located within the right-of-way.”;

17) Article 27.4 is amended to read:

“4. The compensation shall be paid by the Agency from the subsidy mentioned in Article 12.3.”;

18) In Article 29 new para. 2 is added, which reads:

“2. When the legal status of real estate designated for the right-of-way of motorways is not clear, the proceedings shall be initiated by the request by the President of the Agency, without the need to meet the requirements of para. 1 above.

19) In Article 31 new para. 3 is added, which reads:

“3. The decision mentioned in para. 1 above shall authorise the use of the real estate for construction purposes within the meaning of provisions of the construction legislation.”;

20) In Article 33.2 the following text is added to the second sentence: “, which shall be paid by the Agency from the subsidy mentioned in Article 12.3.”;

21) Article 36 is amended to read:

“Article 36.1. The provisions on the protection of agricultural and forest lands shall not apply to agricultural and forest lands affected by a decision on the location of a motorway, except that the dues and compensations for premature clearing of forest specified in these provisions shall be allocated to the Forest Fund of the General Directorate of National Forests – by virtue of the removal of State Treasury lands managed by the “National Forests” State Forestry.

2. The dues and compensations of the value established by the authorities competent for the protection of forest lands shall be transferred by the Agency to the bank account of the fund mentioned in para. 1 when all parcels of land in the same district of land register are procured by the agency, on annual basis by 30 June each year.”;

22) Article 38 is amended to read:

“Article 38.1. Subject to provisions of para 2. The construction of motorways shall be financed from:

- 1) the concessionaires’ own funds and bank loans and credits secured by the concessionaires,
- 2) funds from the state budget as set annually in the Budget Act for the purposes mentioned in Article 12.3,
- 3) allocations of the Fund mentioned in Article 39 on the terms laid down in the concession and concession agreement,
- 4) other sources.

2. When it is expected that a concession shall cover only operation of a motorway or any section thereof, construction of such motorway or the section shall be financed in line with the principles pertaining to financing and construction of public roads as laid down in applicable legislation.

3. The concessionaire may obtain a guarantee or surety from the State Treasury in line with the legislation applicable to guarantees and sureties issued by the State Treasury and particular legal persons.”;

23) Article 39 is amended to read:

“Article 39. Now, hereby the National Motorway Fund is established at the Bank of National Economy (BGK), hereinafter referred to as “Fund”.”;

24) New Articles 29a-39l are inserted, which read:

“Article 39a.1. The revenues of the Fund shall include:

- 1) funds allocated by the state budget in the amount equal to a portion of planned state budget revenues on account of excise tax on motor vehicles,
- 2) interest accrued on the amounts deposited on the Fund bank account plus the interest on bank deposits of sums readily available of the Fund,
- 3) income on investments of the Fund in the form of revenues on securities issued by the State Treasury or the National Bank of Poland and securities providing for monetary benefits guaranteed or secured by the State Treasury or the National Bank of Poland,
- 4) revenues on sale of stock and shares on companies transferred to BGK by the State Treasury for capitalisation of the Fund,
- 5) revenues on the shares and stock mentioned in point 4,
- 6) revenues on tolls for the use of a motorway mentioned in Article 3.4,
- 7) amounts payable by the concessionaires under Article 3.6,
- 8) amounts payable on account of repayment of the loans granted under Articles 39.1.1 and 39.1.2,
- 9) proceeds from loans taken up by the Agency for the purposes mentioned in Article 39d.1,
- 10) revenues on bond issues of the Agency for the purposes mentioned in Article 39d.1,
- 11) grants and bequests,
- 12) revenues on other public means,
- 13) revenues on other accounts.

2. The Council of Ministers, by ordinance to be issued annually by June each year, shall establish a percentage share of planned state budget revenues on account of excise tax on motor vehicles mentioned in para. 1.1 to be allocated to the Fund in the next year taking into account expected level of funding appropriated by the Fund for implementation of duties related to the construction of motorways.

Article 39b. Revenues of BGK, which equal the revenues of the Fund mentioned in Article 39a.1 shall be exempted from the income tax.

Article 39c.1. In order to increase capitalisation of the Fund the minister competent for the State Treasury may, on behalf of the State Treasury and upon request of the minister competent for transport, transfer to BGK stock and shares of companies owned by the State Treasury, free of charge, taking into account accepted by the Council of Ministers level of funding to be appropriated by the Fund for implementation of duties related to the construction of motorways as well as the value of such shares and stock.

2. The State Treasury's stock and shares mentioned in para. 1 shall be sold by BGK in agreement with the ministers competent for public finance, State Treasury and transport.

3. Each sale of the shares and stock mentioned in para. 1 shall be communicated by BGK to the ministers competent for public finance, State Treasury and transport.

4. Provisions on commercialisation and privatisation of state owned enterprises as well as Article 18.1 of the Act dated 8 August 1996 on principles applicable to execution of State Treasury rights and authorisations (Dz. U. No. 106, item 493 and No. 156, item 775, of 1997 No. 106, item 673, No. 115, item 741 and No 141, item 943, of 1998 No. 155, item 1014 and of 2000 No. 48, item 550) shall not apply to the transfer of the shares and stock mentioned in para. 1 and to the sale thereof.

5. The sale of the shares and stock mentioned in para. 1 by BGK shall be exempted from treasury charges.

Article 39d.1. The resources of the Fund shall be used for funding of duties related to the construction of motorways in the following manner:

1) subsidies or interest-free loans granted to the concessionaires on the terms laid down in the concession and concession agreement during the construction period of a motorway or a section thereof,

2) interest-free loans granted to the concessionaires for removing a part of a temporary deficit of cash earned on operation of the motorway in order to provide for liquidity of expenditures related to current debt servicing of loans, credits or bonds taken up or issued in connection with the construction of the motorway,

3) payments to the concessionaires for:

a) fixed costs incurred on account of permanent availability of the motorway, maintenance of the motorway or the capacity thereof,

b) variable amounts depending on the concessionaire performance in meeting the requirements laid down in the concession and concession agreement,

when the tolls collected for the use of the motorway constitute revenues of the Fund.

2. The financial resources of the Fund shall be used for repayment of credits/loans and payment of amounts owed on the bonds mentioned in Article 13.1 and repayment of liabilities on account of guarantee or surety payments made by the State Treasury under the guarantees and sureties mentioned in Article 13.2.

3. In particularly justifiable cases the minister competent for transport may, in agreement with the minister competent for public finance, appropriate the resources of the Fund for coverage of the Agency operating expenditures normally covered from revenues of the Agency, such appropriation never exceeding 25% of available resources.

4. The financial resources of the Fund shall be used for payment of commissions due to BGK.

Article 39e.1. Expenditures of the Fund under Article 39d.1. in the scope approved by the Council of Ministers under Article 42a and resulting from the concession and concession agreement shall be guaranteed by the State Treasury.

2. Provisions of Articles 4, 31, 46 and 47 of the Act dated 8 May 1997 on guarantees and sureties issued by the State Treasury and particular legal persons (Dz. U. No. 79, item 484 and No. 80, item 511 and of 2000 No. 48, item 550 and No. 60, item 693) shall apply to the guarantees mentioned in para. 1.

3. The guarantees mentioned in para. 1 shall:

1) be issued by the Council of Ministers as recommended by the minister competent for public finance in agreement with the minister competent for transport, upon acceptance by the Council of Ministers of the form and scope of funding to be provided by the Fund under Article 42a,

2) not exceed the level of funding approved by the Council of Ministers under Article 42a,

3) be limited in time by the disbursement period of the funding by means provided for under Article 42a.

Article 39f. BGK, acting in agreement with the President of the Agency, shall disburse the funding to the concessionaires in the forms laid down in Article 39d.1, in the scope resulting from the concession and concession agreement.

Article 39g.1. Subject to provisions of paras. 2 and 3, BGK may temporarily use the readily available resources of the Fund in the following manner:

- 1) open deposit accounts with other banks,
  - 2) invest in the securities mentioned in Article 39a.1.3.
2. The sum of the deposits mentioned in point 1 in the same bank or a group of organisationally or financially related banks may not exceed 15% of available resources at any time.
3. The level of the resources of the Fund allocated for the deposits and investments mentioned in para. 1 shall be agreed between BGK and the President of the Agency.

Article 39h. BGK, acting in agreement with the President of the Agency, shall use the resources of the Fund for repayment of loans/credits and payments under bonds and other liabilities mentioned in Article 39d.2.

Article 39i. BGK shall transfer the funding mentioned in Article 39d.3 to the Agency upon a request by the minister competent for transport.

Article 39j. Detailed procedure and deadlines for BGK to make payments, deposits and investments to be financed by the Fund, mentioned in Articles 39f-i shall be established in a contract to be concluded between the minister competent for transport and BGK.

Article 39k.1. BGK shall receive commissions on operation of the Fund.

2. The Council of Ministers, by ordinance, shall establish the level of the commission mentioned in para. 1 as well as procedures and deadlines for payment of the commissions taking into account the costs of the Fund incurred in connection with operation of the Fund, and management of bank deposits and investments financed by the Fund.

Article 39l.1. BGK shall:

- 1) maintain a separate financial plan of the Fund as part of the BGK consolidated financial plan in agreement with the President of the Agency; such plan to be approved by the minister competent for public finance and the minister competent for transport,
  - 2) produce a separate balance sheet and profit/loss account for the Fund, which shall be a part of the consolidated financial statements of the Bank.
2. BGK shall report to the minister competent for public finance and the minister competent for transport on the level of resources of the Fund providing a summary of operations of the Fund. Such reporting shall be done on quarterly basis by the end of the month following each quarter.”;

25) Article 41 is amended to read:

“Article 41. The concessionaire shall be selected in a three-tier tender process conducted by the Agency and including:

- 1) pre-qualification,
- 2) a tender limited to applicants qualified to submit bids, hereinafter referred to as “tender”,
- 3) negotiations of the concession agreement.”;

26) In Article 42:

a) in para. 1 after the words “in the national press” the following text is added: “and the Official Journal of the European Communities;

b) in para. 2 new point 1a is inserted, which reads:

“1a) subject matter of the concession.”,

c) in para. 3 new point 3 is inserted, which reads:

“3) information on the scope and forms of funding for the construction of the motorway provided by the Fund.”;

27) New Article 42a is inserted, which reads:

“Article 42a. Before inviting to pre-qualification the minister competent for transport, as recommended by the President of the Agency, shall submit to the Council of Ministers the information on expected conditions of the tender process and expected principles for provision of funding by the Fund, establishing the scope and form of such funding, for approval.”;

28) Article 43 is amended to read:

“Article 43.1. Subject to provisions of para. 2 below, only joint stock companies seated in the Republic of Poland that have an initial (share) capital of the value not less than EUR 5 million equivalent, the only business of which in accordance with the articles of association is the construction or operation of motorways shall qualify for the tender.

2. At the stage of pre-qualification, documentation may be submitted by potential bidders, which do not meet the eligibility criteria of para. 1 above. Such potential bidders, which submitted the documents at the stage of pre-qualification shall be eligible for subsequent stages of the tender process only when after the pre-qualification is completed they chose register a joint stock company, which meets the eligibility criteria of para. 1. The documentation submitted by such potential bidders at the stage of pre-qualification should include draft articles of association, company agreement and shareholding structure.”;

29) Article 48.3.4 is amended to read:

“4) information on the deadline for payment and the form and value of the security, to be approved by the minister competent for transport as recommended by the President of the Agency.”;

30) In Article 50 the reference to Articles 44-46 is replaced by the reference to Articles 44-47;

31) New Articles 50a-50c are inserted, which read:

“Article 50a. The tender commission shall submit a report on the tender process mentioned in Articles 41.1 and 41.2 to the minister competent for transport and the President of the Agency for approval. The commission shall inform the bidders on the results of the tender.

Article 50b.1. Subject to provisions of para. 2, the Agency shall take up negotiations with the company, whose bid is recognised by the commission as the highest evaluated.

2. The negotiations mentioned in para. 1, may be taken up with more than one company at the same time, in the scope of their bids when such bids are considered equal.

3. In the case mentioned in para. 2, the President of the Agency shall be required to develop guidelines for negotiations taking into particular account the requirements with respect to financial capabilities of the bidder with respect to financing of the construction and operation of the motorway, limited share of public funding and the deadline for completion of the project.

4. The guidelines mentioned in para. 3 shall be submitted to the minister competent for transport for approval.

Article 50c. If the negotiations are not completed within 9 months by virtue of the agreed text of the concession contract, the President of the Agency may, as approved by the minister



competent for transport, declare the tender null and void and take up negotiations with the second highest evaluated bidder.”;

32) in Article 51.1 after the words “the tender” the following text is inserted: “or negotiations of the concession contract”;

33) Article 52 is deleted;

34) New Article 52a is inserted, which reads:

“Article 52a.1. The President of the Agency shall submit to the minister competent for transport a report on negotiations of the concession agreement and shall notify the bidders on the results of the negotiations.

2. When the negotiations are completed by virtue of the agreed text of the concession agreement, the President of the Agency shall submit to the minister competent for transport a draft concession and the agreed draft of the concession agreement, together with the report mentioned in para. 1.”;

35) Article 53 is amended to read:

“Article 53. The minister competent for transport, by ordinance, shall establish detailed conditions of the tender process and the procedure of work of the tender committee taking into particular account substantial scope of the pre-qualification criteria, information on the tender conditions and bids submitted by the bidders as well as the evaluation criteria for each and every stage of the tender process.”;

36) Article 54 is amended to read:

“Article 54. A concession shall be granted to the company, with which the text of the concession agreement has been agreed.”;

37) In Article 55:

a) para. 3 is amended to read:

“3. A fee shall be collected for granting of a concession, such fee being payable in a lump sum or instalments.”;

b) para. 5 is amended to read:

“5. The minister competent for transport in agreement with the minister competent for public finance, by ordinance, shall establish the level of, procedure and deadline to pay the concession fee having due regard to expected total construction cost of a given motorway section as provided for in the bid submitted in the tender process by the bidder, with whom the text of the concession agreement has been agreed.”;

38) In article 56 new points 6 and 7 are inserted, which read:

“6) the level and forms of funding provided by the Fund in the scope approved by the Council of Ministers,

7) the level and procedure to pay the concession fee.”;

39) Article 57.5 is amended to read:

“5. maintenance of the motorway in the scope laid down in Article 57a up to the standards laid down in applicable legislation and the agreement.”;

40) New Article 57a is inserted, which reads:

“Article 57a.1. The concessionaire shall be required to maintain, modernise and protect the motorway including the road pavement and bridges within the right-of-way as well as the safety equipment and traffic control devices intended for operation of such motorway, subject to provisions of para. 2.

2. Maintenance of crossings with roads and other traffic arteries within the right-of-way of the motorway, in the road and bridge part including slopes of embankments and cuts, drainage facilities, pavement, tracks, sidewalks, shoulders, barriers as well as traffic control and safety devices shall be the responsibility of relevant administration responsible for such roads or traffic arteries in their alignment.”;

41) Article 58.1.1 is amended to read:

“1) Failure to sign the concession agreement within 30 days after the date the decision on granting the concession becomes final.”;

42) Article 59 is deleted;

43) In Article 60 new paras. 3 and 4 are inserted, which read:

“3. Upon request by the President of the Agency the minister competent for transport may call upon the concessionaire to remedy the irregularities within a specific deadline.

4. If the irregularities are not remedied by the concessionaire within the deadline mentioned in para. 3, provisions of Article 58.1 shall apply respectively.”;

44) in Article 61 new para. 2, is added, which reads:

“2. The minister competent for transport shall agree with the minister competent for public finance upon provisions of the agreement mentioned in para. 1 in the scope of financial obligations of the State Treasury.”;

45) In Article 62.1:

a) new points 2a and 2b are inserted, which read:

“2a) the level and forms of the funding provided by the Fund,

2b) the conditions and scope of the mechanism of sharing profits between the concessionaire and the Fund,”;

b) point 4 is amended to read:

“4) procedure, deadlines and principles of payment for making the land available for construction of the motorway by the Agency and conditions for development of structures, buildings, facilities, forests and crops located on such land,”;

c) in point 7:

- in letter d) the words “Armed Forces” shall be replaced by “the Armed Forces of the Republic of Poland and the following text is added: “as well as armed forces of allied states”;

- new letter e) is added, which reads:

“e) provision of relevant premises for the Police in the scope provided for in applicable technical and construction legislation for toll motorways in order to enable efficient implementation of duties consisting in surveillance and enforcement of safety and order in road traffic on toll motorways,”

d) new points 8a and 8b are added, which read:

“8a) conditions for approval of the motorway for operation,

8b) scope of the authorisation for the concessionaire in the field of road management,”;

46) New Article 62a is inserted, which reads:

“Article 62a. The Council of Ministers, as recommended by the minister competent for transport, by ordinance, shall establish general framework for cooperation of the concessionaire with the road administration, police, emergency services and the units of rescue and fire-protection system taking into account statutory duties of such authorities in providing for undisturbed access to the motorway and its capacity.”;

47) Article 63 is amended to read:

“Article 63.1. When the concession covers only operation of a motorway, provisions of this chapter shall apply respectively, subject to para. 2 below.

2. The concession agreement covering only the operation of a motorway should establish conditions for taking over the motorway by the concessionaire for operation.”.

#### Article 2

In the Act dated 21 March 1985 on public roads (Dz. U. of 2000 No. 71, item 838), Article 13 is amended in the following manner:

a) para. 2.1a is amended to read:

“1a) use of motorways and expressways constructed or operated or only operated as toll motorways and expressways in line with the legislation on toll motorways.”;

b) para. 5 is amended to read:

“5. Regulations on toll setting and collection mentioned in para, 2.1a are included in the legislation on toll motorways.”

#### Article 3

In the Act dated 28 September 1991 on forests (Dz. U. of 2000 No. 56, item 679), Article 38a is amended to read:

“Article 38a. Transfer of real estate of the State Treasury managed by the National Forests to the Agency for Motorway Construction and Operation for use shall be made free of charge on the basis of a contract between the Director General and the President of the Agency.”.

#### Article 4

In the Act dated 15 February 1992 on the income tax on legal persons (Dz. U. of 2000 No. 54, item 654 and No. 60, items 700 and 703) Article 17.1.4k is amended to read:

“4k) income of BGK maintaining the National Housing Fund, Thermomodernisation Fund and National Motorway Fund and the bank maintaining a housing account, which equals the income of such Funds or the housing account on the account of titles established in applicable legislation – in the part allocated solely for achievement of the objectives laid down in such legislation of respectively the Funds and the housing account.”.

#### Article 5

In the Act dated 14 December 1994 on the Bank Guarantee Fund (Dz. U. of 2000 No. 9, item 131) Article 14.3 is amended to read:

“3. Obligatory annual fee shall not be charged on the assets of National Housing Fund, Thermomodernisation Fund and National Motorway Fund maintained by BGK and on the funds accumulated on the account of surety and guarantee reserves of the State Treasury held in the same bank.”.

## Article 6

The Act dated 8 May 1987 on guarantees and sureties issued by the State Treasury and particular legal persons (Dz. U. No. 79, item 484 and No. 80, item 511 and of 2000 No. 48, item 550 and No. 60, item 693) is amended in the following manner:

1) In Article 2

a) in point 2 new letter c) is added, which reads:

“c) performing under bonds issued by the Agency for Motorway Construction and Operation.”;

b) new points 12 and 13 are inserted, which read:

“12) the Agency for Motorway Construction and Operation shall mean the authority established under the Act dated 27 October 1994 on toll motorways (Dz. U. No. 127, item 627, of 1996 No. 106, item 496 and No. 156, item 775, of 1997 No. 133, item 885, of 1998 No. 106, item 668 and of 2000 No. 48, item 550 and No. 86, item 958),

13) the National Motorway Fund shall mean the fund provided for in the Act dated 27 October 1994 on toll motorways (Dz. U. No. 127, item 627, of 1996 No. 106, item 496 and No. 156, item 775, of 1997 No. 133, item 885, of 1998 No. 106, item 668 and of 2000 No. 48, item 550 and No. 86, item 958).”;

2) In Article 7 new para. 3 is inserted, which reads:

“3. Guarantees or sureties may be also extended for liabilities of the Agency for Motorway Construction and Operation provided that they cover credits, which proceeds are used for the support of the National Motorway Fund.”;

3) The heading of chapter 3 reads: “Sureties and guarantees for performance under bonds”;

4) In Article 12 new para. 1a is inserted, which reads:

“1a. The Council of Ministers, as recommended by the minister competent for public finance, may issue guarantees on behalf of the State Treasury covering the liabilities under bonds issued by the Agency for Motorway Construction and Operation.”;

5) In Article 14 new para. 2 is added, which reads:

“2. Guarantees and sureties may also cover performance of the Agency for Motorway Construction and Operation under bonds issued for the support of the National Motorway Fund.”;

6) Article 15 is amended to read:

“Article 15. A charge shall be payable for issuance of the guarantees or sureties at the level not exceeding 1% of the amount guaranteed or secured.”;

7) Article 16 is amended to read:

“Article 16. Provisions of Article 4, 5, 6 and 8 shall apply respectively to the guarantees and sureties.

## Article 7

In the Act dated 19 November 1999 – the Law on economic activity (Dz. U. No. 101, item 1178) Article 14.1.6 is amended to read:

“6) construction and operation or only operation of toll motorways and expressways, to which the provisions of the legislation on toll motorways are applicable.”;

#### Article 8

The minister competent for the State Treasury in agreement with the minister competent for public finance and the minister competent for transport, upon the opinion of the Bank Supervision Commission, shall bring the articles of association of BGK to conformity with the provisions of this Act taking into account the principles for setting up and maintaining the Fund, by ordinance, within 2 months after the date this Act becomes effective.

#### Article 9

1. The concessions issued before the date this law becomes effective and the concluded concession agreements shall remain in full force.
2. When the concession agreement is not signed with the concessionaire, who received the concession in accordance with current legislation, provisions of such legislation shall continue to apply in the part not amended by this Act.
3. provisions of this Act shall apply respectively to tender processes initiated before the date this Act becomes effective.

#### Article 10

Current secondary legislation shall continue to apply until new secondary legislation is enacted however not longer than within 12 months after the date this Act becomes effective.

#### Article 11

The minister competent for transport shall announce in the Official Journal of the Republic of Poland the consolidated text of the Act dated 27 October 1994 on toll motorways within 6 months after the date this Act is published.

#### Article 12

This Act shall become effective on the 31<sup>st</sup> day after the publication.