

Draft as of Jan. 26, 2:30pm

THE FORESTS ACT
(No. 7 of 2005)

IN EXERCISE of the powers conferred by section 59 (d), (m) and (p) of the Forests Act 2005, the Minister for Environment and Natural Resources, on the recommendation of the Board, makes the following rules—

**THE FORESTS (PARTICIPATION IN SUSTAINABLE
FOREST MANAGEMENT) RULES, 2007**

Part A — Preliminary

Citation. **1.** These rules may be cited as the Forests (Participation in Sustainable Forest Management) Rules, 2007.

Application. **2.** (1) These rules shall apply to the participation of the private sector and forest communities in the sustainable management of state forests.

(2) These rules may, with the consent of the Minister responsible for local authorities in accordance with the Act, and with necessary modifications be applied by a local authority to the participation of the private sector and forest communities in the management of local authority forests.

(3) The Service may apply the provisions of these rules relating to permits, timber licences and contracts in the management of provisional forests declared as such under Section 26 of the Act.

Interpretation. **3.** In these rules, unless the context otherwise requires—

“authorisation” includes a permit, timber-licence, special-use licence, contract, joint management agreement, concession, community forest management agreement; and cultivation-permit;.

“concession management plan” means the site-specific management plan prepared by an applicant or holder for a concession;

“contract management plan” means the site-specific management plan prepared by an applicant or holder for a contract;

“community forest management plan” means the plan prepared by a forest association in partnership with the Service to govern implementation of a community forest management agreement;

“cultivation-permit” means an authorisation issued under rule 46;

“forest general guidelines” means administrative guidelines issued from time to time by the Service for the more convenient carrying out of the functions of the Service;

“joint management agreement” means an agreement under rule 22;

“joint management plan” means the site-specific management plan prepared by an applicant or holder in partnership with the Service to govern implementation of a joint management agreement;

“licence management plan” means the site-specific management plan prepared by an applicant for a licence;

“permit” means an authorisation issued under rule 9;

“prescribed” means prescribed by the Service.

“site-specific management plan” includes a concession management plan, contract management plan, joint management plan, or licence management plan prepared pursuant to Section 37(3) of the Act.

“strategic management plan” means the management plan as described in Section 35(2) of the Act;

“special-use licence” means an authorisation issued under rule 20; and

“timber-licence” means an authorisation issued under rule 11.

Objectives of the rules.

4. The objective of these rules is to provide for the circumstances under which authorisations may be applied for, granted, varied, refused or cancelled, and the manner in which a person granted such authorisation may exercise a right or privilege conferred by the authorisation.

Forest management plans.

5. (1) The Service shall prepare or adopt a strategic management plan covering a period of at least five (5) years in respect of every state forest.

(2) A person making an application to the Service for an authorisation to undertake forestry activities under these rules shall prepare a site-specific management plan in respect of the forest for which the application is made showing the manner in which he intends to undertake such activities during the duration of the authorisation.

(3) A site-specific forest management plan shall be prepared in accordance with guidelines prescribed by the Service.

(4) A site specific management plan shall be consistent with the applicable strategic management plan and shall be evaluated based on social, economic, environmental and sustainability factors.

(5) The Service shall review and approve, with or without modifications, the site-specific management plan submitted with an application under sub-rule (2).

(6) A person authorised under these rules to undertake activities for more than one year shall prepare an operations plan for every year, on which all operations shall be based, and activities shall not commence unless such operations plan has been approved by the Service.

(7) An operations plan prepared under sub-rule (6) shall be evaluated by the Service to ensure that it conforms to the site specific management plan and to sustainable forest use.

(8) Except for forest management agreements and permits for minor activities not significantly and irreversibly affecting forest resources, the Service shall not issue authorisations unless a strategic management plan is in place.

Part B — Private Sector Participation

Service to invite private sector.

6. The Service may, whenever circumstances make it necessary or appropriate to do so, invite the private sector to participate in the sustainable management of state forests.

Types of agreements for private sector.

7. (1) The Service may issue authorisations for forestry activities for purposes of rule 6 in the form of—

(a) a permit, which may be issued to a person to undertake a specified forestry-related activity or services;

(b) a timber-licence, which may be issued by the Service for timber harvesting in a specified forest area;

- (c) a special-use licence, which may be issued to a person to undertake, inside state forests, activities whose primary purpose is to yield public benefit in transportation, communication, energy, research or education;
- (d) a contract, which is an agreement that may be issued to a third party for the latter to conduct any of the activities specified in rule 21(2) on behalf of the Service in a forest area for a specified fee;
- (e) a joint management agreement, which is an agreement whereby the Service may partner with other persons for joint management of a specified plantation or indigenous forest area, specifying the contribution, rights and obligations of each party and setting out the methods of sharing the costs and benefits accruing from the forest so managed; and
- (f) a concession agreement, which is a long term agreement that may be issued by the Service for the management of a specified forest area at a price arrived at by way of forest valuation and bidding under these rules.

(2) No authorisation shall be issued in respect of a forest for which there is a pre-existing authorisation, except on terms mutually agreed upon by all the parties involved.

Eligibility of applicant.

8. (1) A person shall be eligible to apply for an authorisation if such person—

- (a) possesses the necessary legal capacity to enter into binding agreements, and has the technical and financial capacity to undertake the forestry activities for which the authorisation is sought; and
- (b) in the case of a foreign investor, has complied with all the laws for the time being in force relating to investment by foreigners.

(2) In the case of timber-licences, contracts, and concessions—

- (a) the legal capacity of the applicant includes the competence to enter into contracts, which for business entities shall be demonstrated through proof of registration;

- (b) the technical capacity of the applicant includes competence to undertake forestry activities, as demonstrated by employment of technical staff, access to equipment, satisfactory past performance, and a record of good compliance with laws and standards; and
- (c) the financial capacity of the applicant includes solvency and ability to conform to good business practices, as demonstrated by the applicant's audited financial statements for the past three (3) years, where applicable, and tax compliance certificates.

Permits

Permits for utilization of forest goods and services.

9. (1) Any person who is interested in utilizing forest goods or services other than in exercise of customary rights shall make an application to the Service in the prescribed form for the issuance of a permit.

(2) The Service shall evaluate the application, and may, if satisfied that the proposed utilization is sustainable, grant the same.

(3) A permit issued under these rules shall be in the prescribed form and shall indicate—

- (a) name of the permit-holder;
 - (b) the terms and conditions to which the permit shall be subject;
 - (c) the fees and other charges payable by the permit-holder in respect of the activity for which the permit is given;
 - (d) the forest or other area in respect of which it is issued;
 - (e) the duration, which shall not exceed six (6) months; and
 - (f) the name and signature of the issuing officer.
- (4) The Service shall not issue a permit for timber harvest except for the collection of firewood.

Variation or cancellation of permit.

10. A permit may be varied or cancelled by the Service—

- (a) on the request of the permit-holder; or
- (b) on its own motion, after giving fourteen (14) days notice to the permit-holder thereof with reasons for such variation or cancellation in writing:

Provided that the Service may cancel a permit with immediate effect and without notice where the permit-holder breaches any of the conditions attached to it.

Timber-Licences

Determination of annual areas to be offered.

11. (1) The Service shall in every year determine the areas of State forest suitable for private sector harvest under timber-licences.

(2) The Service shall only issue timber-licences for plantation areas identified as suitable for commercial harvesting in the Service's strategic management plans.

Content and duration of timber-licence.

12. (1) A timber-licence issued under these rules shall be in the prescribed form, and shall indicate—

- (a) the name of the timber-licence holder;
- (b) the state forest land involved;
- (c) the specific timber harvesting activities to be carried out;
- (d) the duration of the timber-licence;
- (e) the charges payable to the Service, including any fees in addition to the fees set by bidding;
- (f) a requirement to comply with applicable environmental standards, including forest general guidelines and laws relating to environmental impact assessment;
- (g) a commitment by the timber-licence holder to honour customary rights and to protect the forest resource;
- (h) the monitoring and evaluation procedures; and
- (i) the other terms and conditions to which the licence shall be subject.

(2) The maximum duration for a timber-licence shall be one (1) year.

Pre-qualification procedure.

13. (1) The Service shall, once every year, pre-qualify suitable persons for the harvesting of timber in state forests following the procedure set out in this rule.

(2) The Service shall invite applications for pre-qualification by placing a notice—

- (a) at a conspicuous place at the Service Headquarters,

detailing where a person can obtain an application form for pre-qualification, where the completed application forms may be submitted, and when submission is due;

- (b) in two newspapers of national circulation, detailing where interested persons can obtain the information listed in paragraph (a); and
- (c) on the website of the Service, or equivalent electronic means available to the public, including all the information listed in paragraph (a).

(3) An application under the foregoing sub-rules shall be in the prescribed form and shall—

- (a) specify the name of the applicant, and where the applicant is a business entity, or a forest association, shall be accompanied by the appropriate registration documents; and
- (b) present a statement of the applicant's technical and financial capacity to harvest timber.

(4) Applicants shall submit their applications to the Service, and the Service shall forward all applications to the appropriate forest conservation committee, which shall in turn evaluate the applications and submit its findings and recommendations to the Service.

(5) The Service shall consider the recommendations of the forest conservation committee and select persons qualified based on their technical and financial capacity.

(6) The Service shall issue the persons pre-qualified in accordance with sub-rule (5) with a certificate of pre-qualification in the prescribed form, subject to such terms and conditions as it may determine.

(7) Where the Service rejects an application, it shall, within seven (7) days of the decision, notify the applicant in writing.

(8) Unless earlier revoked by the Service for just cause, a certificate of pre-qualification shall be valid for a period of five (5) years from the date of issue.

(9) Pre-qualified bidders shall tell the Service where in the country they would be interested in conducting harvests.

Offering and

14. (1) Before advertising for bids on a timber-licence,

advertisement. the Service shall—

- (a) identify and describe the forest area, specifying the boundaries on maps;
- (b) conduct an inventory and valuation of the forest resources;
- (c) ensure that offering the timber-licence is consistent with the applicable strategic management plan;
- (d) specify the activities to be undertaken in the area;
- (e) set a reserve price for the timber-licence and a performance bond reasonably reflecting the timber-licence's commercial value;
- (f) prepare a draft timber-licence consistent with rule 12; and
- (g) prepare a written prospectus with information about items (a),(b),(d),(e) and (f) of this sub-rule.

(2) The Service shall invite in writing interested pre-qualified bidders to submit bids for the timber-licence and shall publish a notice of the bidding process, at the Forest Service Headquarters, and at the forest stations responsible for the area.

(3) The Service shall make available a copy of the prospectus prepared under sub-rule (1) to all persons who request it.

(4) A pre-qualified bidder may, after notifying the Service, visit the forest area subject of the announced bidding.

Bidding procedure.

15. (1) The Service shall oversee the bidding process and shall accept the bids submitted by the pre-qualified persons.

(2) All persons wishing to bid shall purchase the bid documents and submit a bidding package consisting of—

- (a) a bid of a fixed payment in a sealed envelope;
- (b) a proposed licence management plan ; and
- (c) a bidder's bond equivalent to two percent (2%) of the reserve price, which the bidder shall forfeit in case the Service awards the timber-licence and the bidder decides not to accept it.

(3) Before the sealed bids are opened, the Service shall review the proposed licence management plans of the bidders and inform the bidders of any modifications that may be necessary, at which any bidder may withdraw without forfeiture of the bidder's bond under sub-rule(2).

(4) The Service shall open the sealed bids and read them out in a meeting to which all bidders are invited and the public is allowed to attend.

(5) The timber-licence shall be awarded to the highest bidder above the reserve price and in case of a tie, the Service shall conduct another round of bidding involving the tied parties.

(6) If the highest bidder refuses the timber-licence, the same shall be awarded to the next highest bidder above the reserve price.

(7) If no bidder is above the reserve price, the Service shall return all bonds and declare that there will be no award.

(8) All unsuccessful bidders shall be informed by the Service of the results of the bidding within a period of seven (7) days from the time the bidding is completed.

Announcement of intention to award.

16. Pursuant to Section 37 (4) of the Act, the Service shall publish its intention to award the timber-licence to the successful bidder in two daily newspapers of national circulation at least thirty (30) days before the timber-licence is to take effect.

Award of timber-licence.

17. (1) After said publication, the Service shall award the timber-licence to the successful bidder.

(2) After award, at the request of the successful bidder, the Service may divide the harvest area into units and divide the bid price among the units.

(3) Before commencing any harvest operations, the timber-licence holder shall post the performance bond, as set under rule 14, to cover any damage which might be incurred.

(4) Before commencing harvest in a particular unit, the successful bidder shall pay the Service the bid price assigned to such unit.

Monitoring and evaluation of licensee.

18. The Service shall periodically monitor the operations of the licensee.

Non-transferability.

19. The timber-licence shall not be transferable.

Special-Use Licence

Content and procedure in grant of special-use licence.

20. (1) A person who is interested in undertaking activities inside state forests whose primary purpose is to yield public benefit in transportation, communication, energy, water supply, research and education or such other purpose as the Service may approve, may apply in writing for the issuance of a special-use licence.

(2) The Service shall evaluate all applications received under this rule and may, after completion of any environmental impact assessment required under law, issue a special-use licence if satisfied that—

- (a) the proposed activity is in the public interest; and
- (b) if the proposed activity removes tree cover from the land on a long-term basis, there is no practical alternative to using forest land for the activity.

(3) A special-use licence shall be in prescribed form and shall indicate—

- (a) the name of the holder;
- (b) the forest area in respect of which it is issued;
- (c) the duration of the special-use licence;
- (d) the fees and other charges payable in respect thereof;
- (e) the conditions subject to which it is issued; and
- (f) the name and signature of the issuing officer.

(4) A special-use licence may be varied or cancelled by the Service—

- (a) on the request of the holder upon completion of the activity, or for any other cause; or
- (b) on its own motion after giving fourteen (14) days notice to the holder with reasons for such variation

or cancellation;

Provided that the Service may cancel the special-use licence with immediate effect where the holder breaches any of the conditions attached to it.

Contracts

Procedure in the grant of contracts.

21. (1) The Service may, whenever it deems it appropriate to do so, enter into a contract with suitably qualified persons for the performance of specified activities on its behalf within a State forest which is under its control.

(2) The activities referred to in sub-rule (1) shall be those set out in the strategic management plans of the Service, and shall include—

- (a) raising of seedlings;
- (b) tree planting;
- (c) silviculture;
- (d) forest management and protection;
- (e) preparation and review of management plans;
- (f) resource assessment and valuation;
- (g) road construction;
- (h) construction of buildings;
- (i) general improvement of infrastructure;
- (j) logging; and
- (k) other similar activities within the responsibility of the Service.

(3) The Service shall consider all offers made under this rule, and subject to the procurement law where appropriate, accept the lowest offer for the performance of the specified activity.

(4) The Service shall prepare a contract document containing details of the contract period, specific activities to be undertaken, the output expected, the expected standard of performance and such other matters as the Service may deem

advisable.

(5) The contract document shall constitute the contract management plan.

(6) No contract that involves logging shall grant the contract holder title to the felled timber for off-site use or disposal.

Joint Management Agreements

Main features.

22. The following shall be the main features of a joint management agreement:

- (a) the primary purpose shall be to conserve the forest and allow non-consumptive uses, however an agreement may also allow limited consumptive use of forest resources if sustainable;
- (b) a joint management agreement shall be between the Service and a professional association, an educational institution, a research institution, a cooperative society, a forest association, a government agency, or a non-governmental organisation;
- (c) a joint management agreement may apply to state plantation or indigenous forests; and
- (d) a joint management agreement shall be non-transferable.

Procedure in the grant of joint agreements.

23. (1) The Service shall, before entering into a joint management agreement—

- (a) identify, delineate and describe the forest area for possible joint management;
- (b) conduct an inventory and valuation of the forest resources therein to support the preparation of the joint management plan;
- (c) cause a notice of the availability of the area for joint management to be published—
 - (i) in two newspapers of local circulation near the forest area;
 - (ii) at the Forest Service Headquarters, and

(iii) at the forest station for the area where the forest is located, and in such other place as may be suitable to bring the notice to the attention of the local community; inviting applications from interested persons within a period of three (3) months from the date of the notice.

(2) Interested persons shall submit their applications to the forest conservation committee responsible for the area for the purpose of evaluation, together with a statement of their technical and financial capability and a proposed joint management plan prepared in accordance with the guidelines set by the Service.

(3) The forest conservation committee shall submit to the Service the names of all those who apply, together with the committee's comments and recommendations on the qualifications of each applicant, within a period of one (1) month from the date of expiry of the period specified under sub-rule (1) (c).

(4) The Service shall evaluate the applicants on the basis of their technical and financial capacities, and invite all those judged to be qualified to present their proposals for the management of the forest at a public hearing held by the Service.

(5) Based on the hearing and the evaluations under sub-rules (3) and (4), the Service shall select the most suitable applicant or, if pooling applications would lead to a stronger proposal, the most suitable coalition of applicants.

(6) The Service shall facilitate the formation of a joint management team composed of representatives from the Service and from the selected joint managers to discuss creation of a joint management agreement and oversee its implementation.

(7) Upon successful negotiation of a joint management agreement, the Service shall sign the agreement with the selected joint managers.

(8) The Service shall in writing inform all unsuccessful applicants accordingly, within fourteen days from the date of the conclusion of the process under this rule.

(9) A joint management agreement shall be in the prescribed form and shall specify—

(a) the activities to be carried out under a joint forest

- management plan prepared jointly with the Service;
- (b) the duration of the joint management agreement, which shall not exceed ten (10) years, renewable for two terms.
- (c) the rights and obligations of the parties;
- (d) the composition of a joint management team to oversee the implementation of the agreement;
- (e) a cost and benefit sharing arrangement;
- (f) the mechanism to be applied for the resolution of conflicts;
- (g) the circumstances under which the agreement may be varied, suspended or terminated;
- (h) the monitoring and evaluation procedures to be applied by the parties;
- (i) the social responsibility of the parties to ensure equity for the community residing adjacent to the forest; and
- (j) such other matters as the parties may require.

Concession Agreements

Determination of areas to be offered.

24. (1) The Service shall from time to time determine the areas of State forest suitable for management under concessions.

(2) The Service shall only issue concessions for areas identified as suitable for long-term private-sector management in the Service's strategic management plans.

Content of concession agreement and duration.

25.(1) A concession agreement shall specify—

- (a) the name of the concession holder;
- (b) the land involved and the activities to be carried out under the concession;
- (c) the duration of the concession;

- (d) the charges payable to the Service including any fees in addition to the annual fees set by bidding, which shall be reviewed every year;
- (e) a requirement to comply with applicable environmental standards, including forest general guidelines and laws relating to environmental impact assessment;
- (f) the mechanism for settlement of disputes arising with respect to the concession;
- (g) monitoring and evaluation procedures;
- (h) the obligations of the concession holder by way of social responsibility to ensure equity for the local community; and
- (i) any other terms and conditions applicable to the concession.

(2) The Service shall prepare a model concession agreement.

(3) The maximum duration of a concession shall be thirty (30) years, subject to renewal under rule 31.

Pre-
Qualification.

26. (1) The Service shall at least once a year offer persons opportunity to pre-qualify for bidding on concession agreements following the procedure set out in this rule.

(2) Before inviting persons to pre-qualify, the Service may establish classes of concessions, including but not limited to eco-tourism or large-scale plantation management.

(3) The Service shall announce the opportunity to pre-qualify by placing an advertisement—

- (a) at a conspicuous place at the Service Headquarters, detailing where a person can obtain an application form for pre-qualification, what classes of concessions are open for pre-qualification, where the completed application forms may be submitted, and when submission is due;
- (b) in two newspapers of national circulation, detailing where interested persons can obtain the information listed in paragraph (a);
- (c) on the website of the Service, or equivalent electronic means available to the public, including all the

information listed in paragraph (a); and

(d) in such other place as may be suitable for bringing it to the attention of the local communities where the forest is located.

(4) An application for pre-qualification under the foregoing sub-rules shall be in writing and shall—

(a) specify the name of the applicant, and where the applicant is a business entity, or a forest association, shall be accompanied by the appropriate registration documents;

(b) specify the class or classes of concession for which the application is made; and

(c) present a statement of the applicant's technical and financial capacity to undertake long-term forest management activities.

(5) Applicants shall submit their applications to the Service, and the Service shall forward all applications to the appropriate forest conservation committee, which shall in turn evaluate the applications and submit its findings and recommendations to the Service.

(6) The Service shall consider the recommendations of the forest conservation committee and select persons qualified based on their technical and financial capacity.

(7) The Service shall issue the persons pre-qualified in accordance with sub-rule (6) with a certificate of pre-qualification in the prescribed form, subject to such terms and conditions as it may determine.

(8) Where the Service rejects an application, it shall, within seven (7) days of the decision, notify the applicant in writing.

(9) Unless earlier revoked by the Service for just cause, a certificate of pre-qualification shall be valid for a period of five (5) years from the date of issue.

(10) Pre-qualified bidders shall indicate to the Service the areas of the country in which they are interested in conducting concessions.

Offering and advertisement.

27. (1) Before advertising for bids on a concession, the Service shall—

- (a) identify and describe the forest area, specifying the boundaries on maps;
- (b) conduct an inventory and valuation of the forest resources;
- (c) ensure that offering the concession is consistent with the applicable strategic management plan;
- (d) hold consultations with the local communities;
- (e) specify the activities to be undertaken in the area;
- (f) specify the mode, terms and conditions of the payment;
- (g) set a reserve price for the concession and a performance bond reasonably reflecting the concession's commercial value;
- (h) prepare a draft concession agreement consistent with rule 25; and
- (i) prepare a written prospectus with information about items (a),(b),(e),(f), (g) and (h) of this sub-rule.

Note: Issue for the Board: whether the reserve price (Item (g)) should be stated in the prospectus.

(2) The Service shall in writing invite interested pre-qualified bidders to submit bids for the concession and shall publish a notice of the bidding process at the Forest Service Headquarters and at the forest stations responsible for the area where the concession is to be offered.

(3) The Service shall make available a copy of the prospectus prepared under sub-rule (1) to all persons who request it.

(4) A pre-qualified bidder may, after notifying the Service, visit the forest area subject of the concession.

Bidding procedure.

28. (1) All persons wishing to bid shall purchase the bid documents and submit to the Service an expression of interest consisting of a proposed concession management plan.

(2) The Service, in consultation with the forest

conservation committee of the concession area, shall review the proposed concession management plans and, within forty-five (45) days after the bid submission deadline, shall either withdraw the concession for lack of sufficient bidder interest or inform each bidder of any modifications that may be necessary to that bidder's plan.

(3) Within fifteen (15) days after receiving the results of the Service's review of the proposed concession management plan, bidders willing to accept the required modifications, if any, and still wishing to bid shall submit a bidding package consisting of—

(a) a bid in a sealed envelope; and

(b) a bidder's bond equivalent to two percent (2%) of the reserve price, which the bidder shall forfeit in case the Service awards the concession and the bidder decides not to accept it.

(4) The Service shall open the sealed bids and read them out in a meeting to which all bidders are invited and the public is allowed to attend.

(5) The concession shall be awarded to the highest bidder above the reserve price and in case of a tie, the Service shall conduct another round of bidding involving the tied parties.

(6) If the highest bidder refuses the concession, the same shall be awarded to the next highest bidder above the reserve price.

(7) If no bidder is above the reserve price, the Service shall return all bonds and declare that there will be no award.

(8) All unsuccessful bidders shall be informed by the Service of the results of the bidding within a period of seven (7) days from the time the bidding is completed.

Announcement
of intention to
award.

29. (1) Pursuant to Section 37 (4) of the Act, the Service shall publish its intention to award the concession to the successful bidder in two daily newspapers of national circulation at least thirty (30) days before the concession is to be signed and shall hear and consider all representations and objections that may be raised in a process of public consultation.

(2) Based on that consultation, the Service shall either—

- (a) disqualify the bidder based on evidence of improper process or false, misleading, or no longer valid representations by the chosen bidder to pre-qualify or qualify for the concession;
- (b) award the concession under rule 30 with an appropriate modification in the draft concessions agreement to accommodate concerns expressed in the consultation, however the modification may not lower the annual bid or materially increase the value of the agreement to the winning bidder;
- (c) withdraw the concession and make no award, with the option of restarting the process of soliciting bids using a new draft concessions agreement; or
- (d) award the concession under rule 30 following the terms of the draft concessions agreement.

(3) If the Service disqualifies the chosen bidder under sub-rule (2), the Service shall select the next highest bidder eligible for the award, and the Service shall then hold new consultations under this rule.

(4) If the Service makes a minor modification to the concession agreement under sub-rule (2), the chosen bidder may opt to withdraw its bids, in which case—

- (a) the Service shall return the chosen bidder's bond;
and
- (b) the Service may either
 - (i) choose the next highest eligible bid and hold new consultations under this rule; or
 - (ii) withdraw the concession with the option of reoffering it in modified form.

Award of
concession.

30. (1) After said consultation, the Service shall award the concession to the successful bidder.

(2) Before commencing operations, the concession holder shall—

- (a) post the performance bond, as set under rule 27, to cover any damage which might be incurred; and
- (b) pay the initial payment to the Service, as set in the concession agreement.

(3) The bond posted under sub-rule (2) shall be reviewed annually to take into account inflation.

(4) The Service may draw against the bond to recover unpaid annual fees or to cover damages to the forest caused by the winner or its agents.

(5) The Service shall require the concessionaire to make up the difference when it draws upon the bond under sub-rule (4).

(6) The Service shall return the remainder of the bond within six (6) months after the expiry of the concession agreement, unless the agreement is renewed.

(7) If the winning bidder fails to pay the initial bid amount, post the performance bond, and sign the agreement within sixty (60) days after requested to by the Service, the Service shall collect the bidder's bond posted under rule 28 (2)(c), and either—

- (a) select the highest of the remaining bidders above the reserve price; or
- (b) reject all remaining bids with the option of restarting the process, and invite all pre-qualified applicants to re-submit bids.

(8) After the completion of the award process as described in this rule, the Service shall return the bidder's bond of the unsuccessful bidders.

Planning,
evaluation and
renewal.

31. (1) The concession holder shall revise its concession management plan at least once every five years, and shall submit such revised plan to the Service.

(2) The Service shall review the concession management plan and may require such modifications as may be necessary to meet the requirements of rule 5, the strategic management plan in effect at the time of the review and the

concession agreement.

(3) The concession holder shall prepare an annual operations plan and submit it to the Service.

(4) The Service shall review the annual operations plan and require such modifications, if any, necessary to meet the requirements of rule 5, the strategic management plan in effect at the time of the review, the concession management plan, and the concession agreement.

(5) A concession holder shall only undertake activities consistent with the applicable management plans, except in cases where emergency action is required because of imminent danger to human life or property.

(6) The Service shall undertake a comprehensive evaluation of the management of the concession area once in every five (5) years.

(7) At least three (3) years before the concession agreement expires, the Service shall begin a comprehensive evaluation, including public consultation, of the activities of the concession holder under the agreement, and if the concession holder is found to have carried out sustainable management of the forest, the Service may negotiate a renewal of the concession at fee at least as great in inflation-adjusted terms as the original annual fee.

Employment of professional foresters.

32. Where the activities under a concession agreement are forestry activities, the concession holder shall employ professional foresters registered by Kenya Forestry Society to assist in the management of the forest.

Transferability.

33. A concession agreement may with the approval of the Service be transferred to a third party only if the transferee has been in existence for at least six (6) years, the transferee is pre-qualified under these rules to apply for a concession, and the transfer is not being done for purposes of speculation.

Part C — Community Participation

Service to invite community participation.

34. The Service may, whenever circumstances make it necessary or appropriate to do so invite forest associations to participate in the sustainable management of state forests.

Types of agreements for community participation.

35. The Service may issue authorizations for community participation for purposes of rule 34 in the form of—

- (a) a community forest management agreement which shall be issued to a forest association to undertake community forestry activities; and
- (b) a cultivation-permit which shall be issued to members of a forest association to undertake non-resident cultivation.

Community Forest Management Agreements

Forest management agreements.

36. (1) The Service may enter into a community forest management agreement with forest associations wishing to conserve and utilize a forest for purposes of livelihood, cultural or religious practices.

(2) A community forest management agreement shall contain details on—

- (a) the name, size and particulars of the forest association making the application;
- (b) the name and location of the forest;
- (c) the duration of the agreement and any provisions for renewal;
- (d) the rights and obligations of the parties, including—
 - (i) the activities to be carried out in the forest by the forest association;
 - (ii) the technical and material support to be provided by the Service;
 - (iii) the commitment of the parties to meet regularly to discuss forest management; and
 - (iv) any reasonable limits on exercise of traditional user rights by forest association members;
- (e) a schedule of fees, if any, for the exercise of traditional user rights by forest association members;
- (f) a mechanism for resolving conflicts;

(g) the circumstances under which the agreement may be suspended or terminated; and

(h) such other matters as the parties may agree.

(3) The Service shall develop sample community forest management agreements.

Management unit.

37. (1) For purposes of community participation, the management unit for a forest shall comprise either—

(a) the forest area under the jurisdiction of one forest station; or

(b) where geographical factors make separation of the unit into blocks more practical, individual forest blocks within the jurisdiction of one forest station.

(2) Each management unit shall be under a separate forest association, and the Service may decide whether the parties shall develop individual community management plans for each management unit or combined community management plans covering more than one unit.

(3) Where more than one forest association makes an application in respect of the same management unit, the Service shall encourage them to consolidate themselves into one association for purposes of the application.

(4) In cases where forest associations fail or refuse to consolidate into one, the Service may conclude an agreement with the forest association which—

(a) has the capacity to implement the activities set out in the community management plan; and

(b) is most representative of the interests of the wider forest community.

Procedure for entering into a community forest management agreement.

38. (1) Prior to entering into a community forest management agreement under this part, the Service and the forest community shall together—

(a) identify the forest area proposed to be the subject of the agreement and its resources;

(b) assess the methods in which the forest community utilises the forest and the impact of those methods; and

(c) facilitate the formation of forest associations based

on existing community structures.

(2) Once a forest association is formed, the Service and the forest association shall—

- (a) facilitate the preparation or adoption of a community forest management plan in respect of the forest area; and
- (b) negotiate, draft and sign a community forest management agreement in respect of the forest area.

(3) In the implementation of community participation in forest management the Service shall apply the Participatory Forest Management Guidelines developed by the Service.

(4) In consultation with stakeholders, the Service shall from time to time review and revise the guidelines used under sub-rule (3).

Forest-level management committee.

39. The Service shall initiate the formation of a forest-level management committee consisting of representatives from the Service, the forest association, and other stakeholders in the area to assist the forest association to implement the community forest management agreement.

Oversight.

40. (1) The Service shall monitor and evaluate the implementation of the community forest management plan.

(2) The forest association shall review the findings made under sub-rule (1), and the Service and the forest association together may revise or otherwise alter the community forest management plan based on those findings.

Technical assistance from the Service.

41. The Service shall provide technical assistance and capacity building to forest associations so as to empower them to perform their functions under these rules.

Commercial activities.

42. Where a forest association, in implementing a community forest management agreement, engages in commercial activities, the association shall comply with all the laws for the time being in force for the regulation of such activities, and any violation of those laws shall be deemed a breach of the community forest management agreement.

Non-Resident Cultivation

Discretion of the Service.

43. (1) The Service may enter into written agreements with forest associations to allow their members to engage in non-resident cultivation in adjacent forest areas.

(2) The Service shall only allow non-resident cultivation in areas intended for the establishment of industrial plantations.

Zoning of forest areas.

44. (1) The Service shall for purposes of rule 43—

(a) identify and zone off the forest areas available for such cultivation;

(b) demarcate individual plots, which shall be of a minimum size of one quarter hectare and of a maximum size set by the Service based on local conditions; and

(c) prepare a sketch map of all the plots, and display it prominently at the forest station responsible for the forest area.

(2) The Service may open up new areas for cultivation in accordance with the approved planting programmes.

Where plots may not be allocated.

45. No plots shall be allocated—

(a) within important water catchment areas or sources of springs;

(b) on slopes exceeding thirty percent (30%) inclination;

(c) within thirty (30) metres on either side of a river course or wetland, spring or other water source; or

(d) in firebreaks, road reserves, natural glades, natural forest areas and areas under mature plantations.

Allocation of plots.

46. (1) The Service shall allocate the plots using a balloting system organised through the forest associations, and persons selected thereby shall be issued with cultivation-permits in the prescribed form.

(2) The Service and the forest association shall ensure that the method of allocation gives preference to the poor and vulnerable members of the community.

Conditions for permits.

47. (1) A cultivation-permit issued under this part shall be subject to the following conditions—

(a) the permit-holder shall plant only annual crops including—

- (i) maize;
- (ii) beans(non-climbers);
- (iii) potatoes;
- (iv) carrots;
- (v) peas;
- (vi) onions;
- (vii) dhanias;
- (viii) chillies;
- (ix) amaranthus;
- (x) cabbages; and
- (xi) such other crops as may be approved by the Service.

(b) the permit-holder shall render assistance to the Service upon request in—

- (i) beating up or replanting, whichever may be appropriate, in cases of low survival rate of seedlings;
- (ii) controlling illegal forest activities; and
- (iii) preventing or fighting forest fires.

(c) the permit-holder shall not lease, sublet or sell the allocated plot;

(d) the permit-holder shall use only hand tools for land preparation; and

(e) the permit-holder shall not erect any structures on the plot allocated, except in areas with high incidences of game damage, and then only with written permission from the Service.

(2) All permit-holders shall pay the annual rental fees upon allocation of the plots and subsequently after every twelve (12) months.

(3) Any person who breaches the conditions of a cultivation-permit shall be guilty of an offence, and the Service shall withdraw the permit forthwith, and such person shall pay the Service an administrative withdrawal fee as may be prescribed.

Period of cultivation.

48. (1) The period of cultivation shall not exceed three (3) years, after which the permit-holder shall be required to vacate his plot.

(2) The Service shall not be under any obligation to allocate another plot to a permit-holder after the lapse of a cultivation-permit.

Planting of seedlings.

49. The planting of tree seedlings shall be done after the completion of one crop season, and the permit-holder shall not interfere with the growth or development of the seedlings or trees.

Monitoring by forest association.

50. The forest association shall assist the Service in the monitoring of the activities of permit-holders and shall ensure that none of its members or agents takes any action which harms the planted seedlings.

Operational guidelines.

51. (1) Before issuing cultivation-permits, the Service shall issue comprehensive operational guidelines for the implementation of non-resident cultivation.

(2) The Service may from time to time revise such guidelines.

Part D — General Provisions

Transitional management.

52. (1) For private sector authorisations other than concessions, applied for within five (5) years of the commencement of these rules, where there is no strategic management plan governing the area of an application, the Service shall evaluate the site-specific management plan based on whether it is consistent with sustainable management of resources.

(2) Where there is as yet no forest conservation committee in a forest conservancy area, all applications shall be submitted and evaluated by the Service.

Forms and documents under these rules.

53. All applications and authorisations under these rules shall be in forms prescribed by the Service.

Establishment of fees.

54. (1) Where these rules call for the Service to charge fees and do not set those fees by public bidding, the Service shall create and make available to the public a schedule of those fees or objective formulas for calculating those fees.

(2) The Service shall from time to time review and revise the fee schedule.

(3) The fee schedule shall be subject to the approval of the Board.

(4) In this rule, "fees" includes royalties and other charges payable to the Service.

Applicable law.

55. The provisions of the law for the time being in force relating to Government procurement and the principles of the law of contract shall apply to the procedures for the award of licences, contracts and concessions under these rules.

Repeat advertisement.

56. Where after advertising for the issuance of authorisations under these rules, no suitable applicant is found, the Service may make a repeat advertisement in the same or different terms.

Verification of various existing authorisations.

57. (1) A person holding a permit, licence or any other authorisation on the date of the coming into operation of these rules shall submit a copy of the same to the Service within a period of twelve (12) months from the date of such commencement for verification and confirmation.

(2) Within one (1) month after the commencement of these rules, the Service shall, by appropriate means, notify such persons of the requirements of sub-rule (1).

(3) Failure to submit an authorisation as required under sub-rule (1) may be used by the Service as a ground for the authorisation's revocation, amendment or cancellation.

Registers.

58. The Service shall maintain registers of authorisations issued under these rules, and members of the public may inspect the same or obtain copies or excerpts thereof within working hours, upon payment of such fees as may be prescribed.

Compliance with environmental laws.

59. Nothing in these rules shall be construed to exempt a person from the requirements of environmental laws.

Liability under other laws.

60. The suspension or cancellation of an authorization shall be without prejudice to other liabilities for which the holder, its Board of Directors or officers where applicable may be accountable under the Act or any other law.

Forest to remain property of State.

61. (1) For the avoidance of doubt, a forest which is the subject of an authorisation under these rules shall be and remain the property of the State.

(2) The rights to the land and underlying minerals or other resources shall not be deemed to be transferred to any person who is a holder of an authorisation or party to an agreement under sub-rule (1).

Appeals.

62. Any person who is aggrieved by a decision of the Service with respect to an application for an authorisation or the action of the Service with respect thereto may appeal to the High Court.

Dated the....., 2007.

.....
Minister for Environment and Natural Resources