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MONTENEGRIN DRAFT CONCESSION LAW

The Ministry for Economic Development of Montenegro has published a draft Concession Law (“**Draft**”). Concessions have until now been regulated by the Law on Participation of Private Sector in Performance of Public Services (Official Gazette of RoM, n.30/2002) which was, due to its complexity and poorly drafted provisions on procedures, widely recognized as a key obstacle to the larger introduction of PPP projects in Montenegro.

The major novelty introduced by the Draft is the possibility of awarding the concession without a public procedure for large infrastructure projects (e.g. power production or power distribution facilities, roads, railways, ports, communal infrastructure, pipelines etc.) of strategic importance for Montenegro provided that awarding the concession in such non-public procedure would accelerate the realization of the project. This exceptional procedure is triggered by the submission of a bid by the prospective concessionaire, accompanied by technical and technological documents for its realization. A decision on bypassing the public invitation procedure and of award of such concession is rendered by the Government of Montenegro, subject to prior approval of the National Assembly.

Extension of existing concessions in time or in scope (subject to limitations), as well awarding a concession that is vital to national security or defence may also be performed without a public bid.

Other than these exceptions, the Draft prescribes the awarding of concessions based on a competitive public tender procedure with the possibility of a pre-qualification phase for more complex projects or summary proceedings for simpler projects. The competence for administering tender is with the ministry or the local municipal authority in charge of the relevant sector, depending on whether the relevant property that is the subject-matter of concession is in the ownership of the Republic or local municipality. However, if the value of the subject-matter of the concession is above a threshold determined by sector specific law, the concession is meant to be awarded by the National Assembly.

The Draft envisions establishment of the Commission for Concessions, to be appointed by the Government of Montenegro. This body is supposed to be in charge of resolving appeals submitted by the participants in the tenders for awarding concessions. Decisions of the Commission for Concessions are meant to be challengeable in judicial accountancy proceedings.

The Draft, at the date of this bulletin, does not determine the maximum term of the awarded concession but, instead, declares that duration of the concession is determined based on public interest, nature of the awarded concession, etc. The Draft stipulates the possibility of extending the duration of the awarded concession subject to the fulfillment of certain conditions. There are some indications that the final version of the Draft might contain an explicit maximum duration of the concession award of 90 years.

It is expected that the Draft will be put before the National Assembly in September, in time for many announced PPP projects in Montenegro, predominantly in the energy sector.

AMENDMENTS TO THE DECREE ON PROMOTION OF DIRECT INVESTMENTS
(Official Gazette of the Republic of Serbia No. 70/2008)

In July 2008, the Government of the Republic of Serbia enacted the Amendments to the Decree on the Promotion of Direct Investments ("**Amendments**"). The Amendments broaden the incentives for direct investments established by the Decree on Promotion of Direct Investments enacted in 2006 ("**Decree**").

The Amendments broaden the palette of existing incentives for investments in the manufacturing sector, R&D and services in international trade with additional incentives for "investments of special importance" - meaning investments of at least 200 million euros which create at least 100 new jobs, all within a period of 3 years from the initial day of investment, in the f sectors of car industry, electronics, IT and telecommunications.

Incentives for investments of special importance may be granted in two ways: by financial grant or by establishing a joint venture company owned by the state and the investor, where the state invests financial resources, movable and immovable assets or other rights. A financial grant may be awarded to the investor of special importance in the amount of up to 25% of the total amount of the investment. The dynamics of payment of such grant follow the dynamics of the overall investment.

The Government of the Republic of Serbia decides on incentives for every single investment of special importance, on the basis of its importance, value and investment period. The Government signs an agreement with the investor which defines the subject-matter, amount and dynamics of investment and eventually the amount of grant.

Incentives foreseen by the existing Decree are granted on the basis of a public announcement made by the Serbian Investment and Export Promotion Agency. Investments in agriculture, tourism, catering industry and trade do not qualify for the incentives prescribed by the Decree. Investments must also meet certain thresholds. A minimum number of employees within each sector is necessary - 50 new employees in the production sector, 10 in R&D and 10 in the services sector. The maximum amounts that may be granted per employee are defined in the Decree and depend on the number of new jobs created in a 3 year period, type of investment (production sector, services sector or R&D) and geographical region and range from 2,000 to 10,000 Euros for each new employee.

The Amendments prescribe that the incentives (existing and new ones) will be available until the end of 2010.

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