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**MONTENEGRO: CONCESSION LAW**

*(Zakon o koncesijama, Službeni List Crne Gore, 8/09)*

The Montenegrin Assembly has adopted the new Concession Law ("the Law") after more than 6 months of stalemate resulting from different views within the ruling coalition on the duration of concession.

When the Law comes into force on 12 February 2009, it will set aside the provisions of the Law on Participation of Private Sector in Performance of Public Services (*Zakon o učešću privatnog sektora u vršenju javnih usluga, Službeni List Crne Gore 30/02*), in the part dealing with concessions and BOT arrangements as well as the provisions of sector-specific laws regulating concession procedure (e.g. Law on Waters), to the extent that these legislations contravene the Law.

The transitional provisions of the new legislation provide that the Law shall apply to all pending procedures for award of concessions unless the competent body proposes that a specific pending concession procedure should be completed in accordance with the previous legislation.

As we reported in our August 2008 Newsletter presenting the then draft Law, the major novelty of the new concession legislation is the possibility to award a concession outside of a public tender procedure for large infrastructure projects (e.g. power production or power distribution facilities, roads, railways, ports, communal infrastructure, pipelines etc.) of strategic importance to Montenegro, if it is estimated that the exclusion of competition would accelerate the implementation of the project. A decision on award of a concession is subject to approval by the Montenegrin National Assembly.

Other grounds for awarding a concession outside of a public tender procedure include the cases of extension of existing concessions in time or in scope and concessions in the matters deemed to be vital to national security or defense.

In all other cases, the procedure for awarding of concessions involves a competitive tender, which may involve a pre-qualification phase and a competitive dialogue process for complex projects (EC Directives 2004/17 and 2004/18).

If the value of the concession's subject matter is above a certain threshold determined by a sector-specific law, the concession is awarded by the National Assembly. In other cases, concessions are awarded by the Government of Montenegro or by a local municipality (depending on which level of government owns the public good to be subjected to the concession).

The maximum duration of a concession is 30 years, except when a concession is awarded by the National Assembly in which case it may be extended for a period of 60 years. Once granted, a concession may be extended for up to one half of the initial period of its duration.

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