

LAW ON PUBLIC - PRIVATE PARTNERSHIP

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Pursuant to Article 82 item 2 and Article 91 paragraph 1 of the Constitution of Montenegro, the Parliament of Montenegro, 26th Convocation, at the Sixth Sitting of the Second Regular (Autumn) Session in 2019, on 17 December 2019, adopted the following:

LAW ON PUBLIC - PRIVATE PARTNERSHIP¹

I BASIC PROVISIONS

Subject Article 1

This Law regulates the conditions and procedure for preparing, proposing and approving public-private partnership projects, the method for private partner selecting and other issues of significance for public-private partnership.

Public-Private Partnership Definition Article 2

Within the meaning of this law, public-private partnership shall be a long-term contractual relationship between a public and private partner, based on right-sharing, obligations and risks, in order to perform the works of public interest on public infrastructure and objects (hereinafter: public works), and/or provision of services of public interest (hereinafter:

¹ Official Gazette of Montenegro, no. 073/19 as of 27.12.2019

public services).

By the public-private partnership contract referred to in paragraph 1 of this Article the following activities may be performed:

- 1) transfer of one or more commitments from the framework of the competences of the public partner to the private partner, as follows:
 - a) funding, designing, improving, constructing and/or reconstructing public infrastructure and objects, and/or maintenance, management, utilization and provision of public service related to a newly constructed or reconstructed public infrastructure, or public edifice; and/or
 - b) maintaining, administrating, managing, utilizing and/or providing public service related to the existing public infrastructure, or public edifice;
 - c) certain level and scope of risks that may arise in implementing the commitments under items 1 and 2 of this Article;
- 2) division of responsibilities between the public and private partner for commitments and risks referred to in paragraph 1 of this Article;
- 3) determining a right to reimburse the invested funds and reasonable return of invested capital to a private partner or a company from the Article 43 by following means:
 - awarding the right to use public works and/or public services with the collection of fees from the end users;
 - payments by the public partner usually related to the availability of the public object and/or provided public service; and/or
 - providing financial support which may comprise: pecuniary or non-pecuniary support and/or funding by the public partner including in particular: subsidies, financial or other guarantees, share in the capital or awarding rights to using public infrastructure and objects, land in state ownership or other public property.

Public Partner Article 3

Public partner, under this Law, may be:

- 1) the Government of Montenegro (hereinafter referred to as Government);
- 2) competent local self-government authority, and/or
- 3) company and legal entities performing business activities of public interest.

Companies and legal entities performing business activities of public interest referred to in paragraph 1 item 3 above shall be companies or legal entities:

- 1) in which the state and/or local self-government unit owns more than 50% of shares, i.e. stake;

- 2) in which more than half members of management boards are the representatives of state capital who represent a state authority or a competent local self-government authority; or
- 3) in which the funds from the budget of Montenegro, from local self- government and other public revenues or funds from a company and/or legal entity performing business activity of public interest exceed 50%.

Public Contracting Authority

Article 4

Public contracting authority under this Law shall be a state authority, state administration authority, competent local self-government authority and a company, i.e. legal person performing business activity of public interest. Public contracting authority referred to in paragraph 1 of this Article may also be another body, public service, legal entity and other beneficiary of budget funds of Montenegro, that is, the budget of the local self-government unit and other public revenues, or other contracting authority in accordance with the law regulating public procurement or a special law.

A public-private partnership project can be implemented by one or more public contracting authorities referred to in paragraph 1 above.

The Public-Private Partnership project of lower value, for the purposes of this law, is a project whose estimated value is equal to or less than EUR 5,000,000 without value added tax.

Participant in the Procedure and Tenderer

Article 5

Participant in the procedure shall be a domestic or foreign legal entity or natural person or consortium that took over the tender documentation in the procedure of awarding a public-private partnership contract, or which participates in a procedure of awarding a public-private partnership contract in another way, in accordance with the Law.

Tenderer shall be a domestic or foreign legal entity or natural person or consortium that submitted a tender in the procedure of awarding a public-private partnership contract.

Private Partner

Article 6

Private partner, under this Law, shall be a tenderer whose tender has been selected in the contract award procedure and who the public-private partnership contract has been signed with.

Public-Private Partnership Principles

Article 7

Public-private partnership shall be based on the principles of:

- 1) protection of public interest, which the public partner's obligation to exercise the private partner's rights in accordance with public interest established by law is based on;
- 2) free management which ensures high level quality;
- 3) security and price accessibility, equal treatment in accessing and using works or services under equal conditions; transparency, which is ensured during the entire procedure of public-private partnership contract award procedure, and also during the period of execution of obligations under the public-private partnership contract;
- 4) non-discrimination, which includes equality of tenderers in public-private partnership contract award procedure;
- 5) proportionality, which implies that each measure undertaken by the public contracting authority or public partner is appropriate to the needs of public interest protection;
- 6) competition protection, which includes the prohibition of limitation of market competition among market participants;
- 7) environmental protection, which is exercised through integrated approach to the environment, prevention and precaution, preservation of natural resources, principle of sustainable development and polluter pays principle in accordance with the law.

Types of Public-private Partnership

Article 8

Public-private partnership can be contractual or institutional.

In contractual public private partnership, mutual relationship between a public partner and private partner is regulated by public private partnership contract.

Institutional public-private partnership is based on the establishment of a joint company of the private partner and public partner, which provides public services, performs public works with the maintenance of public objects which are the subject of the works, or carries out construction, reconstruction, management or maintenance of public infrastructure, for the purpose of implementing the public-private partnership project.

Rights and obligations of the public partner and private partner in the joint company referred to in paragraph 3 above shall be regulated in line with the call for competition and tender documentation, i.e. public-private partnership contract.

Contractual or institutional public-private partnership is specified in the project proposal and in the tender documentation in accordance with the intended share of risk and responsibility, for the purpose of implementing a public-private partnership project.

The provisions of the Law on Obligations shall apply to the issues related to public-private partnership contracts which are not regulated by this law.

Implementation of a public-private partnership contract

Article 9

Respecting predominant sources of income for private partner, as defined in paragraph 2 item 3 of the Article 2 of this Law, as well as the share of risk, a public- private partnership contract can be implemented as:

- a) concession contract for public works or concession contract for public services, or
- b) public-private partnership contract for public works or public-private partnership contract for public services.

Concession for public works or concession for public services

Article 10

A contract referred to in Article 9 paragraph 1 item 1 of this Law can be implemented as a concession for public works or concession for public services.

Public works concession contract shall be concluded with an aim of exercising public and financial interest, by means of which a public partner or several of them entrust the performance of works to a private partner with remuneration which consists solely of the right to exploit the subject works or of that right and payment.

Public services concession contract shall be concluded with an aim of exercising public and financial interest, by means of which a public partner or several of them entrust the provision and management of services, which are not the performance of works referred to in paragraph 2 above, to a private partner with remuneration which consists solely of the right to exploit the subject services or of that right and payment.

Awarding concession for public works or for public services also includes the transfer of operational risk to a private partner while exploiting such works or services, which encompasses the risk of demand or risk of supply, or both.

Transfer of a part of operational risk implies actual exposure to market changes, so that any potential assessed loss suffered by the private partner is not symbolic and negligible. The risk of exposure of the private partner to market conditions in such a way that the public partner does not guarantee to the private partner that, under normal conditions of work, indirectly or directly, he will achieve return of the invested funds or costs incurred during the performance of works or provision of services, which are the subject matter of concession, shall be considered risks referred to in paragraph 4 above.

The risk of demand referred to in the paragraph 4 above shall cover the volatility of demand on the market for works and services, which are the subjects of a public-private partnership contract (higher or lower than the one foreseen by the contract).

The risk of supply referred to in paragraph 4 above covers the risk related to the

performance of works or provision of services, which are subjects of the contract, especially when the performance of these works, and/or provision of services do not correspond to demand.

PPP contract for public works and public services

Article 11

The contract referred to in Article 9 paragraph 1 item 2 of this Law can be implemented as a public-private partnership contract for public works or public services, in accordance with Article 2 paragraphs 1 and 2 of this Law, provided:

- a) there are no conditions which are necessary for the public-private partnership contract to be implemented as a concession pursuant to the Article 10 herein, and
- b) private partner mainly assumes the risk of availability.

The risk of availability referred to in paragraph 1 item 2 above purports assuming the risk of keeping public infrastructure or a public object in a functional condition pursuant to the agreed standards of the quality of services.

Mixed Contract

Article 12

Mixed contract shall include concessions the subjects of which are both works and services.

The mixed contract referred to in paragraph 1 of this Article, which includes several types of concessions, which cannot be separated, shall be granted in the way and in accordance with the procedure, applicable to the main subject of the concession.

The main subject of the mixed contract referred to in paragraph 1 of this Article is determined according to the prevalent subject of the contract for works or services.

Mixed contract containing the elements of concession and elements of public procurement shall be subject to application of the provisions of the law regulating public procurement.

Public Private Partnership Subject

Article 13

Pursuant to this law, public-private partnership can be implemented in various areas and within the framework of various activities and their predominant subjects may be as follows:

- 1. roads, road and supporting facilities;
- 2. railway infrastructure;
- 3. airports;

4. facilities pertaining to water transport and ports, in accordance with law;
5. electronic communication networks and/or electronic communication infrastructure and related equipment;
6. information-communication infrastructure;
7. health-care and social care and protection;
8. education and scientific activities;
9. utilities infrastructure and/or utilities equipment;
10. sports and recreational facilities and culture facilities;
11. cable-ways;
12. infrastructures related to production, transmission or distribution of electricity or energy sources, in accordance with law;
13. social housing and other forms of housing;
14. postal services;
15. utilities activities;
16. tourism and hospitality, pursuant to the law which governs the performance of tourism and hospitality activity;
17. swimming areas, marinas, berthing facilities, piers and other coastal infrastructure facilities, in accordance with law;
18. free economic zones and industrial parks;
19. energy efficiency;
20. other public infrastructure and facilities used for the purpose of providing public services and/or other public service in accordance with the law.

Public-private partnerships for road, railway, airports and ports construction and management are of strategic interest for Montenegro.

The Parliament of Montenegro may proclaim the public-private partnership contract for areas other than those referred to in paragraph 1 of this Article to be of strategic interest of Montenegro.

Application Exemptions

Article 14

This Law shall not apply to:

- 1) the projects that are:
 - a) executed according to international organisation special procedures, on basis of concluded contract;
 - b) executed according to the rules of the international organisation or international financial institution, which fully finances the project, unless contracted otherwise; executed according to the rules of the international organisation or international financial institution, which co-finances the project in an amount greater than 50%, and the contracting parties agree by mutual agreement what

- rules of procedure will be applied;
- c) related to protection and rescue from natural disasters, catastrophes and in case of the state of emergency;
 - d) related to procurement of arms, ammunition and other items required for defence and security of Montenegro;
 - e) related to civil protection in accordance with the law regulating protection and rescue.

2) Goods, services and works covered by the law which regulates public procurement and to:

- a) the contracts related to acquisition, development, production or coproduction of materials intended for radio-television broadcasting;
- b) the services of arbitration, amicable dispute resolution and notary services;
- c) representation in the proceedings before courts, tribunals or institutions of other states or before international courts, tribunals or institutions;
- d) legal services related to exercise of public authorisations;
- e) financial services related to issue, sale, purchase or transfer of securities or other financial instruments, particularly contracting authority's transactions, aimed at raising money and capital and Montenegro Central Bank services;

3) hydro-carbons survey and production in line with the law as well as in:

- a) survey or exploitation, or survey and exploitation of mineral resources;
- b) use of water courses and other waters, or their sections or specific water quantities for uses specified in special laws;
- c) construction of hydro-melioration systems and extraction of materials from water soil;
- d) usage of forests;
- e) usage of natural resources from maritime domain for the purpose of carrying out activities of public interest;
- f) survey and/or exploitation of off-shore, marine bed and underground, as well as living and non-living resources in internal sea waters, territorial sea and continental shelf;
- g) usage of natural resources under state ownership for the purpose of construction, maintenance and use of energy facilities in view of producing electricity and/or thermal energy;
- h) use of river banks and lake shores; use of natural wealth in the areas with natural-medical properties and other natural values in view of constructing, maintaining, using and modernizing the facilities;
- i) organisation of lottery games of chance and specific games of chance;
- j) exploitation of river sediments on public water resources;

- 4) projects that the public contracting authority is obliged to carry out according to the procedures laid down in a way different from this law, based on the legal instruments establishing the international legal obligations, such as the ratified international agreements between Montenegro and one or more third countries for the public-private partnership projects;
- 5) provision of public services, performance of public works and construction, reconstruction, public infrastructure management and maintenance that the public partner awards to the related party in line with a special law.

Legal instruments establishing the international legal obligations and the respective rules and procedures applicable for the award of contracts referred to in paragraph 1 item 4 of this Article shall be implemented in accordance with the principles of equal treatment, non-discrimination and transparency.

The Government shall notify the European Commission on the concluded agreements referred to in paragraph 1 item 4 of this Article.

Related legal person, referred to in paragraph 1 item 5 of this Article, shall be deemed the party where:

- public partner has more than a half of shares or stakes or more than a half of voting rights or has other managerial rights or control rights;
- public partner has the right to select majority members of the managing body or persons authorised to be representatives in line with the law, or decisive influence on managing and operating of business activities of such person; or
- there is no direct participation of private capital in accordance with the founding act, unless otherwise regulated by law; or
- more than 80% of revenues are acquired through performance of the operations entrusted to the related party by the public partner controlling such related party or other legal entities under the control of the same public partner.

Use of Gender Sensitive Language

Article 15

The terms used in this Law for natural persons in masculine gender shall imply the same terms in feminine gender.

Procedure Language

Article 16

Public contracting authority shall draw up a call for competition and tender documentation and manage the procedure in Montenegrin language.

Public contracting authority may draw up the call for competition and tender

documentation in English or other language common in international use.

Public contracting authority may specify in the call for competition and tender documentation that a part or entire tender may be submitted in English or other language common in international use, particularly in the part related to technical characteristics, quality and technical documentation.

In case of dispute, the version of tender documentation and/or tender in Montenegrin language shall prevail.

II. MONTENEGRIN INVESTMENT AGENCY

Legal Position of the Agency Article 17

For the purpose of executing the public-private partnership, investments and promoting investment potentials of Montenegro as an investment destination, the Government shall establish the Montenegrin Investment Agency (hereinafter referred to as Agency).

The Agency shall have the capacity of a legal entity.

Employees of the Agency shall exercise the rights and obligations arising from employment in accordance with the law governing the rights, obligations and responsibilities of civil servants.

The Agency shall operate under the name of Montenegrin Investment Agency. The name of the Agency in English shall be: Montenegrin Investment Agency (MIA).

The registered office of the Agency shall be in Podgorica.

Agency Operations Article 18

For the purpose of executing the public-private partnership, investments and promoting investment potentials, the Agency shall:

- 1) approve the project proposal on public-private partnership in accordance with this law;
- 2) give opinions and proposals to public contracting authorities related to investments;
- 3) monitor the realization of investments, cooperate with public contracting authorities and other competent bodies, on promotions and support for the realization of investments and public-private partnership;
- 4) carry out expert operations on promoting Montenegro's investment opportunities, in accordance with the law regulating foreign investments, and Annual Work Programme of the Agency, which includes in particular:
 - preparation, development and promotion of business opportunities in view of attracting investments;
 - professional assistance to foreign investors to invest in specific areas and sectors of economy;

- organisation of direct contacts between foreign and domestic companies and legal entities; and
 - cooperation with international institutions, in view of increasing foreign investments and competitiveness;
- 5) monitor the status and dynamics of implementation of public-private partnership projects and other investment projects in line with the law;
 - 6) propose measures with a view to increase foreign investments and improve investment environment;
 - 7) keep a register of approved public-private partnership projects (hereinafter referred to as Projects Register);
 - 8) keep a register of concluded public-private partnership contracts (hereinafter Contracts Register);
 - 9) keep records of foreign investors and foreign investments;
 - 10) encourage economic development through attraction of investments;
 - 11) assess feasibility of development and investment programmes of interest to Montenegro;
 - 12) provide information on institutional and legislative framework for public-private partnership and other investments;
 - 13) cooperate with international organisations competent for public-private partnership and investments and take part in initiatives of significance for public-private partnership and investments;
 - 14) carry out administrative-technical operations for the needs of the Government working bodies in the area of investment policy, privatisation and capital investment projects, in accordance with the law;
 - 15) carry out other operations in accordance with the law and the Agency Statute.

Agency Bodies **Article 19**

The bodies of the Agency shall be the Council and Director of the Agency.

The Agency shall have a deputy directors and assistant directors, who are elected on the basis of a public competition in accordance with the law regulating the rights, obligations and responsibilities of civil servants and state employees.

Council of the Agency **Article 20**

The Council of the Agency (hereinafter referred to as: Council) shall have a president and four members.

The president and the members of the Council shall be appointed and released from duty by the Government, for the period of five years.

The president and the members of the Council shall be accountable for their work to the Government.

The president and the members of the Council shall be entitled to remuneration for their work in line with the law regulating salaries of public sector employees.

Director of the Agency Article 21

The work of the Agency shall be managed by the Director of the Agency.

The Director of the Agency shall be appointed by the Government for the period of five years, following the completion of public competition procedure.

Powers of the Council Article 22

The Council shall:

- 1) pass the Statute of the Agency;
- 2) pass annual work programme of the Agency;
- 3) establish proposal of investment incentive-giving strategy;
- 4) establish the report referred to in Article 26 of this Law;
- 5) decide on other issues in accordance with the law and the Agency's Statute.
The act referred to in paragraph 1 item 1 of this Article shall be subject to the Government's consent.

Powers of the Director of the Agency Article 23

The Director of the Agency shall:

- 1) represent, manage and organize the work of the Agency;
- 2) be responsible for the legality of operations of the Agency;
- 3) propose the Statute of the Agency;
- 4) propose the annual work program and financial plan of the Agency;
- 5) propose the report referred to in Article 26 of this Law;
- 6) enforce the decisions made by the Council;
- 7) propose the act on internal organisation and systematisation of the Agency;
- 8) decide on other issues in accordance with the law and the Agency's Statute.

Statute of the Agency Article 24

The Statute of the Agency shall regulate detailed competences of the Council and the Director, detailed scope of work of the Agency, procedure for passing general acts, public nature of work and other issues of significance for operating of the Agency.

Agency Funding Article 25

The funds required for the operations of the Agency shall be provided from:

- 1) the budget of Montenegro;
- 2) donations; and
- 3) other sources in accordance with the law.

Annual Reports Article 26

The Agency shall submit to the Government annual performance reports no later than 1st quarter of the current year for the previous one.

III. PREPARATORY ACTIONS FOR APPROVING PUBLIC-PRIVATE PARTNERSHIP PROJECTS

Content of Preparatory Actions Article 27

For the purpose of approving a public-private partnership project and concluding the contract in line with this Law, the public contracting authority is to undertake the following preparatory actions in particular, i.e.:

- 1) establish potential public-private partnership projects;
- 2) prepare public-private partnership project proposal including:
 - feasibility study of public-private partnership,
 - draft public-private partnership contract;
- 3) submit public-private partnership project proposal to the Agency, a state authority in charge of financial affairs (hereinafter: Ministry) and the Protector of Property-Legal Rights of Montenegro (hereinafter: Protector of Property-Legal Rights) for opinion.

Public contracting authority may authorise other public contracting authority to undertake preparatory actions referred to in paragraph 1 of this Article.

Advisor Commissioning Article 28

Public contracting authority may commission an advisor to provide expert support in preparatory actions referred to in Article 27 paragraph 1 above, in public-private

partnership contracting and in public-private partnership contract execution.

The advisor referred to in paragraph 1 of this Article must not find himself/herself have conflict of interest and must not be the advisor to the public contracting authority and to the Tenderer in the same public-private partnership project.

The advisor referred to in paragraph 1 of this Article shall be hired pursuant to the law regulating public procurement, and he/she shall be responsible for the provision of expert support referred to in paragraph 1 above in accordance with, profession rules and provisions of the commissioning contract entered into with the public contracting authority.

Self-initiated Proposal Article 29

Preparatory actions referred to in the Article 27 paragraph 1 of this Law may be undertaken by the public contracting authority upon an initiative of an interested party accompanied with a public-private partnership project proposal.

The public contracting authority may accept the public-private partnership project proposal upon the initiative of an interested party, which includes a cost-benefit analysis for the implementation of the public-private partnership project, with the proof of costs of making the analysis, if public-private partnership project proposal is not included in the annual plan referred to in Article 35 of this Law.

Public contracting authority shall consider the public-private partnership project proposal and the analysis provided by an interested party with regard to public interest protection. Public contracting authority shall undertake preparatory actions referred to in the Article 27 paragraph 1 items 2 and 3 of this Law and following the completed procedures for project approval referred to in the Article 33 of this Law shall prepare a proposal to amend the annual plan of approved public-private partnership projects.

Initiative submitter referred to in the paragraph 1 of this Article shall take part in the public-private partnership contract award under equal conditions with other tenderers and must not have privileged treatment.

The reimbursement of actual costs of making the analysis to the submitter of the initiative referred to in paragraph 2 above shall be done by the selected private partner upon the completion of contract awarding procedure, pursuant to the public-private partnership contract.

Estimation of Public-Private Partnership Project Value Article 30

The public-private partnership project value shall be the actual value of total estimated revenue of the private partner generated during the contract period, at the moment of project development, net of value added tax (VAT), which is estimated based on works and services that are the subject of the public-private partnership contract, as well as the supplies related to such works and services.

The estimated value of the public-private partnership project shall be calculated based on

the data from the feasibility study in accordance with the Article 32 of this Law.

The estimated value referred to in paragraph 1 of this Article shall be valid from the moment of the announcement of the call for competition for the public-private partnership contract award or, if the obligation of publishing the call for competition is not established by law, from the moment of initiating the public-private partnership contract award procedure.

If the value of public-private partnership project at the moment of contract award is by 20% higher in relation to the originally estimated value in the public-private partnership project proposal, the value of the project shall be determined based on the value at the moment of contract award, in accordance with the results of the new estimation.

The issues related to calculation of the estimated value of the public-private partnership project that are not regulated by this Law shall be subject to the application of the provisions of the law on accounting regulating estimation of value.

Calculation of Estimated Value of the Public-Private Partnership Project

Article 31

When estimating value and calculating economic justification of the public-private partnership project, the public contracting authority, depending on the subject of the public-private partnership contract, shall particularly take into consideration:

- 1) the value of all forms of public-private partnership that are considered in the procedure of proposing the public-private partnership project, including duration, as well as potential extensions of duration of the proposed public-private partnership project;
- 2) estimated revenues of the private partner, in respect of remuneration from end-beneficiaries of works or services, as well as other estimated revenue of the public partner in respect of the public-private partnership contract;
- 3) payments or financial support by the public partner to the private partner, including remuneration for provision of public services and subsidising investment costs;
- 4) value of anticipated donations or other financial support by third parties for the execution of the contract;
- 5) revenue from the sale of property that relates to the subject of the public-private partnership contract, in accordance with rights and obligations set up in the public-private partnership contract in line with the law;
- 6) value of goods and services that the contracting authority made available to the private partner, if necessary for the performance of works or provision of services;
- 7) awards or other payments to the private partner;
- 8) fines, penalties and other liabilities that the end-users of works or services have.

If public-private partnership subject includes the awarding of several public-private partnership contracts, the total estimated value of all contracts shall be taken into account for value estimation.

Feasibility Study

Article 32

Achievement of public interest by the public-private partnership project, environmental impact, risk assessment and technical, financial and economic effects of the proposed public-private partnership project shall be particularly taken into consideration in the development of the feasibility study.

The feasibility study referred to in paragraph 1 of this Article shall include in particular:

- 1) subject and type of public-private partnership, estimated value of the public-private partnership project, location of the performance of the public-private partnership activity and objectives to be achieved in the implementation of such project;
- 2) business plan which includes the envisaged assessment of capital costs, financing costs, operating costs and expected revenues;
- 3) the matrix of risk identification and allocation;
- 4) analysis of potential project implementation through other alternative models (public procurement and direct financing);
- 5) value-for-money analysis;
- 6) planned development schedule of the public-private partnership project;
- 7) types and amounts of security ensured by the public and private partners;
- 8) assessment of financial risks and impact on the budget of Montenegro, i.e. local self-government budget, with the analysis of the public partner's payment capability;
- 9) proposed period of the public-private partnership contract;
- 10) technical, financial, economic and legal analysis;
- 11) extract from spatial-planning documents, ownership structure and manner of resolving property-legal issues, as well as the data on infrastructure and other facilities located in the area envisaged for implementation of the public-private partnership contract;
- 12) environmental impact;
- 13) a possibility to enable the public-private partner by the contract to perform other commercial activities or construction of other facilities within execution of the public-private partnership contract for purpose of acquiring profit;
- 14) economic sustainability and adequacy of the project for financing by banks and other financial institutions;
- 15) compliance of the project with the strategic goals on the state and local level;
- 16) assessment of market demand and potentials of the market for the implementation of the proposed project;
- 17) assessment of the capacity of the public contracting authority and public

sector in general to prepare and implement the proposed project.
The feasibility study referred to in paragraph 2 of this Article shall be prepared on the form prescribed by the Agency.

The methodology for assessing the value for money referred to in the paragraph 2 item 5 above shall be established by the Agency.

In the feasibility study, the public contracting authority shall fix the public-private partnership contract period and the possibility of its extension, in such a manner which ensures depreciation of the private partner's investment and a reasonable return on the invested capital, taking into account the risks associated with the commercial use of the contract subject-matter.

The feasibility study for small-value public-private partnership projects may be prepared in the way not to include the elements mentioned in the paragraph 2 above, with an explanation of the reasons for the impossibility to specify specific aspects of the study referred to in the paragraph 2 above.

The feasibility study referred to in paragraph 6 of this Article for small-value public-private partnership projects shall contain in particular the elements from items 1, 2, 3, 7, 8, 9, 11 and 14 of the paragraph 2 above.

Approval of Public-Private Partnership Projects

Article 33

The public contracting authority shall submit the proposed public-private partnership project to the Agency and the Ministry for their opinion.

In the procedure of giving the opinion referred to in the paragraph 1 above, the Agency shall particularly take into consideration if:

- 1) the public-private partnership project has been proposed in line with the state and local strategic objectives,
- 2) public contracting authority is authorised to propose the public-private partnership project,
- 3) the obtained value of the proposed project is in line with the methodology referred to in the Article 32 paragraph 4 of this Law, and
- 4) the public-private partnership project meets other conditions established by this Law.

The Agency shall give the opinion referred to in the paragraph 1 of this Article within 20 days following the date of the submission of the proposed public-private partnership project.

In the procedure of giving the opinion referred to in the paragraph 1 of this Article the Agency may ask for additional information from the public contracting authority, as well as from other competent state authorities.

In the procedure of giving the opinion referred to in the paragraph 1 of this Article the Ministry shall particularly assess the fiscal effects of the proposed public-private

partnership project, fiscal availability, sustainability and feasibility, i.e. direct and indirect fiscal effects and risks, and it shall give the opinion within 20 days following the date of receipt of the proposed public-private partnership project to the public contracting authority and the Agency.

In accordance with the subject of the public-private partnership, in the procedure of giving the approval to the public-private partnership projects, a public contracting authority shall obtain an opinion from the Protector of Property and Legal Interests of Montenegro regarding protection of property interests of Montenegro, in accordance with the separate law.

If material changes are made in the public-private partnership project based on the suggestions by the Agency, the Protector of Property-Legal Interests of Montenegro, or the Ministry, the public contracting authority shall submit the amended project to the Agency, i.e. Ministry.

The public contracting authority is to obtain a positive opinion of the Agency and the Ministry on the proposed project in the procedure of approving public-private partnership projects.

Public-private partnership project shall be deemed approved upon the Agency, i.e. Ministry giving a positive opinion.

Register of Approved Projects

Article 34

The Agency shall enter the proposed public-private partnership projects that have been given positive opinions in line with the Article 33 of this Law into the Projects Register within 7 days following the approval date.

The Agency shall publish the Projects Register on its website.

The content and method of keeping the Projects Register shall be established by the Agency.

Annual Plan of Approved Public-Private Partnership Projects

Article 35

Public contracting authorities shall submit to the Agency the list of approved public-private partnership projects to be implemented in the year for which the annual plan of approved projects is passed, except for the projects within the local self- governments' competence, by the end of the second quarter of the current year for the next one.

The Agency shall subject the draft annual plan referred to in the paragraph 1 above to public consultation process for the period of minimum 30 days.

The Agency shall submit the proposed annual plan of the approved public-private partnership projects to the Government, following the public consultations process, by the end of the third quarter of the current year for the next one for consideration and adoption.

The Government shall adopt the annual plan of approved public-private partnership projects for the following year by 30th November of the current year.

The Agency shall post the annual plan referred to in the paragraph 3 above on its website by the end of the current year.

The annual plan of public-private partnership projects for the following year under the competence of local self-government, following the completed public consultation process, shall be passed by the competent local self-government authority by 30th November of the current year.

The annual plan referred to in the paragraph 6 of this Article shall be submitted by the competent local self-government authority to the Agency to post it on its website.

The proposed public-private partnership projects under paragraphs 3 and 6 of this Article must be in line with the fiscal policy guidelines.

The public contracting authority shall submit the public-private partnership project that is not included in the annual plan in line with the paragraph 1 above to the Agency to supplement the plan in accordance with this Law.

The proposed amendments to the annual plan of the approved public-private partnership projects for the current year, following the completion of public consultation process, shall be adopted by the Government, i.e. competent local self-government authority.

If the approved public-private partnership projects the implementation of which is planned in the annual plan of the approved projects have not been implemented in the planned year, they shall be an integrated part of the annual plan of the approved projects for the following calendar year, unless the public contracting authority and/or Agency decide otherwise.

Decision on Procedure Initiation

Article 36

The decision on the initiation of the procedure for awarding public-private partnership contracts based on the approved public-private partnership project proposal, in accordance with the annual plan of the approved public-private partnership projects shall be adopted by the public contracting authority.

Concurrently with the adoption of the decision on the procedure initiation the public contracting authority shall appoint a Tender Board (hereinafter referred to as Board).

Tender Board

Article 37

Members of the Board shall be appointed out of the persons from legal, economic, technical profession and other relevant fields, depending on the subject and characteristics of the public-private partnership project.

The number of the Board members shall be odd and it may not exceed nine members.

The Board shall have a secretary.

The members of the Board shall sign a statement that they are not in the conflict of interest, to guarantee that they have no direct or indirect personal interests in the procedure of public-private partnership contracts award.

The statement referred to in the paragraph 4 of this Article shall be an integrated part of tender documentation.

In case that conflict of interest arises or if a member of the Board fails to submit the statement under the paragraph 4 above, he shall be exempted from the public- private partnership contract award procedure.

The content of the statement referred to in the paragraph 4 above shall be prescribed by the Ministry.

Conflict of Interest Article 38

The conflict of interest referred to in the Article 37 paragraph 4 of this Law shall exist if a Board member is:

- 1) a tenderer, sub-contractor, legal representative or proxy of the tenderer;
- 2) a tenderer's relative in the straight line of kinship, or in the lateral line of kinship up to the fourth degree, or is the tenderer's marital or extra-marital mate or in-law up to the second degree, regardless of whether the marriage is terminated or not;
- 3) a guardian, adopter or adoptee of the tenderer, or of his legal representative or proxy;
- 4) a shareholder or member of management bodies of the tenderer or applicant;
- 5) person who has direct or indirect interest in the public-private partnership contract award procedure;
- 6) directly or indirectly involved in other circumstances causing a doubt about such person's impartiality.

Provisions of Article 37 paragraphs 4 and 6 of this Law and paragraph 1 of this Article shall also refer to other persons that are with public contracting authority involved in the preparatory actions for approving public-private partnership projects, or public-private partnership contract award procedures.

Nullity of Contracts Article 39

The public-private partnership contract implemented with the existence of a conflict of interest shall be null and void.

Board Operations Article 40

The Board shall:

- 1) prepare the call for competition and tender documentation in line with the

proposed public-private partnership project referred to in the Article 34 of this Law;

2) carry out the procedure of tender opening, evaluate and verify adequacy of tenderers to take part in the call for competition, verify regularity of tenders in relation to the conditions set up in the call for competition and tender documentation, evaluate tenders and produce a ranking list of tenderers;

3) draw up minutes on public opening of tenders and minutes on examination, appraisal and evaluation of tenders;

4) perform other activities required for carrying out the public-private partnership contract award procedure.

The Board may commission experts (from financial, legal and technical fields) to perform expert operations and provide assistance in carrying out the operations referred to in the paragraph 1 above.

In the cases referred to in the paragraph 1 above, the Board shall make a decision by majority votes of the total number of members.

Content of the Tender Documentation

Article 41

Depending on the nature of a specific public-private partnership, tender documentation shall include in particular:

- 1) name of the public contracting authority;
- 2) public-private partnership subject (technical characteristics, i.e. specifications for the performance of works or provision of services, sub-contracting conditions, deadline for works commencement or provision of services, indicative completion date for works or provision of services, i.e. envisaged validity period of the contract);
- 3) conditions that must be met by the tenderers in respect of economic-financial capabilities and professional-technical and personnel capabilities, evidence and data that serve to the tenderer or consortium to prove the fulfilment of such conditions;
- 4) value of the public-private partnership project;
- 5) conditions for eligibility for participation of a tenderer in the public-private partnership contract award procedure, as well as the conditions and requirements that must be met in line with special regulations or trade rules;
- 6) place, time and manner for purchasing tender documents and the person designated to provide additional information;
- 7) instructions to tenderers (content and method of tender preparation, submission method, price setting method, i.e. concession or other fees, currency in which to state the value of the tender, language and alphabet in which to draw up the tender, and other issues of significance for the public-private partnership subject);

- 8) amount, type and validity period of the bank tender guarantee, i.e. bank performance guarantee or other security;
- 9) conditions in respect of economic-financial capabilities and professional- technical and personnel capability to be met by the tenderers;
- 10) criteria for selection of the best tender and evaluation of the tenders;
- 11) place and time for inspecting the documentation required for the preparation of the tender and/or visit to the location where the activity that is the public-private partnership subject shall be carried out;
- 12) conditions, deadline and manner for returning guarantee, i.e. other security;
- 13) information to be submitted by the tenderer on its competencies and competencies of consortium members, i.e. sub-contractors; (item 3)
- 14) conditions to be met individually and jointly by the consortium members, if needed;
- 15) list of required technical documents with conditions for its development and a list of permits, approvals and consents to be obtained prior to the commencement of implementation of the public-private partnership contract, in accordance with the law;
- 16) extract from spatial-planning documents and information on infrastructure and other facilities located in the area for implementation of the public-private partnership contract;
- 17) information on the date, time and place for tender submission, i.e. tender withdrawal deadline;
- 18) tender validity period;
- 19) date, time and place for public opening of tenders;
- 20) list of competent authorities from which the tenderer may obtain information on obligations and a list of regulations regulating issues of significance for the public-private partnership subject;
- 21) deadline, manner and conditions for payment of the concession fee or other fees or payments by the public partner;
- 22) data on property-legal relations, ownership structure and method of resolving property-legal issues;
- 23) deadline for making the decision on the award of the public-private partnership contract;
- 24) information on legal remedies in the procedure of public-private partnership contract award; and
- 25) other data of significance for the procedure of public-private partnership contract award.

Integral part of tender documentation includes the public call and draft public- private partnership contract.

If the best ranking tenderer is obliged to establish a special purpose enterprise in line with the law, pursuant to the Article 43, the tender documentation shall specify the

form of such company and minimum initial capital, i.e. in case of establishing a joint company, mutual rights and obligations of the public and private partners.

The public contracting authority must not in the tender documents limit or threaten the competition in the public-private partnership contract award procedure.

Tender documentation must be drawn up in the way to facilitate easy review and comparability of submitted tenders.

Tender documentation may also contain templates, statements and other forms.

Tender documentation may contain other elements pertaining tender documentation in accordance with the law governing public procurement.

Tender documentation for small-value public-private partnership projects may be prepared without certain elements referred to in paragraph 1 above, with an explanation of the reasons why specific elements of the tender documentation are impossible to be specified.

With the exception of small-value projects, the consent to the tender documentation for the public-private partnership projects shall be issued by the Government and/or competent local self-government authority in the public-private partnership contracts where local self-government is a public partner.

Technical and Functional Characteristics and/or Specifications

Article 42

A public contracting authority may determine by tender documentation the technical and functional characteristics, namely the specifications, which relate to works and services that are the public-private partnership subject, specific process or production or performance of works or provision of services if related to the contract subject or proportional to the value and objectives of the contract subject.

Technical and functional characteristics or specifications referred to in paragraph 1 of this Article may also refer to the quality level, environmental impact, special requirements (including access for persons with disabilities) and assessment of compliance, performance, safety or measurement, terminology, symbols, testing, test methods, labelling or user instructions.

In tender documents the public contracting authority must not use or refer to technical and functional characteristics, or specifications of the public-private partnership subject, if such indication would provide advantage to certain tenderer in the procedure or could unjustifiably exclude other tenderers.

When in the tender documentation a public contracting authority is not able to describe technical and functional characteristics, or specifications of the public-private partnership subject referred to in the paragraph 1 of this Article, in the way to ensure that characteristics or specifications are understandable to tenderers, the contracting

authority may specify the elements such as trade mark, patent, type or manufacturer, provided such indication is followed by the words “or equivalent”.

Obligation to Establish a Company

Article 43

In the public call and in tender documentation, the public contracting authority may specify the obligation for the private partner to establish a special purpose vehicle prior to concluding a public-private partnership contract, as well as all other conditions that the special purpose vehicle shall have to fulfil.

Exceptionally referred to in paragraph 1 above, the public contracting authority may establish the obligation in the public call and tender documentation for the tenderer to expand the activity of a company or other legal entity with the registered seat in Montenegro for the performance of the activity which is the subject of the public-private partnership before the public-private partnership contract enters into force.

The special purpose vehicle referred to in the paragraph 1 above may carry out the activities exclusively aimed at the implementation of the public-private partnership project which it has been founded for.

Place of registered office, status or ownership structure of the company, a part of a foreign company or other legal entity in the territory of Montenegro referred to in the paragraphs 1 and 2 of this Article can be changed by the private partner, with previous consent of the public partner.

A contract concluded contrary to the paragraph 4 above shall be null and void.

The company referred to in the paragraphs 1 and 2 above shall be established in line with the provisions of the law regulating the establishment of companies.

The private partner referred to in paragraph 1 shall be jointly liable for the obligations of the company, i.e. legal entity referred to in the paragraphs 1 and 2 above, unless otherwise envisaged in the public-private partnership contract.

Consortium

Article 44

For the purpose of taking part in the public-private partnership contract award procedure and its execution, a consortium may be formed, unless otherwise specified in the public call for competition or in tender documentation.

Consortium consists of two or more legal entities or natural persons who jointly submit one tender in the public-private partnership contract award procedure.

In the call for competition, i.e. tender documentation, in line with the public-private partnership subject, the public contracting authority may set up more detailed conditions to be fulfilled by the consortium.

Consortium Members

Article 45

A consortium member may directly or indirectly take part at one time only in one consortium that is established for the purpose of public-private partnership project implementation.

The consortium member referred to in the paragraph 1 above may not take part in the award procedure as an independent tenderer.

In case of departure referred to in paragraphs 1 and 2 of this Article, the tender of the consortium shall not be considered.

A public contracting authority shall be obliged to assess the capability of each consortium member in view of establishing the fulfilment of the conditions set up in the public call for competition and in the tender documentation.

Liability of Consortium Members

Article 46

Consortium members shall have unlimited joint liability for the execution of the public-private partnership contract, unless otherwise stipulated in the public-private partnership contract.

The change of control in the ownership structure of the company referred to in the Article 43 herein, following the signing of the public-private partnership contract, may be made in the way specified in the public-private partnership contract.

Tender Guarantee

Article 47

Type and value of the tender guarantee shall be determined depending on the type and subject of the public-private partnership, in line with the assessment of the public contracting authority.

Public contracting authority shall determine the amount of the tender guarantee in absolute monetary amount that may not exceed 5% value of the public-private partnership project.

Public contracting authority shall not specify the type and amount of tender guarantee that might discriminate against tenderers based on financial power.

In the case of extending the validity period of the tender at the request of the public contracting authority, the tenderer shall proportionally extend the validity period of the tender guarantee.

Deadline for extension of the tender guarantee referred to in the paragraph 4 of this Article and its submission may not exceed 30 days following the date of extending the tender validity period.

A public contracting authority shall return the tender guarantee to the tenderers that have not been selected in the contract award procedure immediately after the completion of the

public-private partnership contract award procedure, in accordance with tender documentation, while keeping a copy of the guarantee.

IV. PUBLIC-PRIVATE PARTNERSHIP CONTRACT AWARD PROCEDURES

Types of Procedures

Article 48

The procedures determined by the law governing public procurement and Articles 49 to 65 of this Law shall be applied for awarding public-private partnership contracts.

Exceptionally referred to in paragraph 1 above, in the private partner selection procedure the provisions of the law governing public procurement shall not be applied with regards to hiring a sub-contractor, as well as a group of sub-contractors, or in the case of joint tender related to the obligation of performing a part of the contract to be implemented by individual members from the private partner's group, as well as to the issues of liabilities and payments within such private partner's group and sub-contractor.

The issues regarding the procedures for awarding contracts for public-private partnership, which are not stipulated by this Law, the provisions of the law regulating public procurement shall be applied thereto.

Public Call for Awarding Public-Private Partnership Contracts

Article 49

The public call for awarding public-private partnership contracts (hereinafter referred to as Public Call), shall be published in the Official Gazette of Montenegro, at least in one daily printed media distributed within Montenegrin territory, on the website of the public contracting authority and on the website of the Agency and, based on the assessment of the contracting authority, in one international financial printed or electronic media.

The public call shall include in particular:

- 1) information on public contracting authority;
- 2) the date of publication of public call;
- 3) subject and type of public-private partnership;
- 4) type of public-private partnership contract award procedure;
- 5) the duration and, as necessary, the value of the public-private partnership contract;
- 6) conditions for participation in the public-private partnership contract award procedure;
- 7) criteria for selection of the best tender;
- 8) language in which the tenders are to be submitted;

- 9) address and deadline for tender submission;
- 10) date and place for tender opening;
- 11) information on the person designated to provide relevant information during the duration of the public call;
- 12) name and address of the body competent to resolve complaints, as well as the data on the deadlines for filing complaints;
- 13) time and place where tender documentation can be obtained.

The costs for publishing the public call shall be borne by the contracting authority.

Public call may be amended or supplemented no later than seven days prior to the expiry of the tender submission deadline.

If the amendments to the public call result in the changes to the conditions for participation, the criteria, i.e. sub-criteria, the public contracting authority shall extend the deadline for tender submission by the period that has elapsed from the publishing of the public call to the publishing date of the amendments to the public call.

The amendments to the public call shall be published in the same way in which the public call has been published.

Confidentiality of Procedure

Article 50

A public contracting authority may not disclose information designated as confidential by the tenderer in its tender, pursuant to the law governing the protection of trade secret.

At the request of the public contracting authority, the tenderer shall ensure the protection of confidentiality of the data in the public-private partnership contract award procedure.

Corruption Prevention

Article 51

In the process of awarding a public-private partnership contract, a public contracting authority shall undertake measures to prevent fraud, corruption, tenderer favouring and efficient prevention, identification and elimination of conflicts of interest, in order to prevent distortion of competition and ensure transparency of the award procedure and non-discrimination of tenderers.

Access to Tender Documentation

Article 52

As of the day of publication of the public call and/or submission of the invitation to submit a tender, a public contracting authority shall provide electronic access to the tender documentation pursuant to the public call to all interested parties.

The public shall indicate the web site on which the tender documentation can be accessed.

Notwithstanding the paragraph 1 above, the public contracting authority may decide that,

for technical reasons or due to the particularly sensitive nature of commercial information requiring protection, the tender documentation is to be obtained directly from the public contracting authority, in accordance with the public call or invitation to submit a tender.

A procedure participant may request additional clarifications of the tender documentation no later than ten days before the expiry of the tender receipt time limit.

The public contracting authority shall publish clarifications of the tender documentation, i.e. additional information related to the tender documentation, on the web page where the tender documentation can be found, seven days before the expiry of the tender receipt time limit at the latest.

The public contracting authority shall not be obliged to provide additional clarifications referred to in the paragraph 4 above if the provision of such information would breach the provisions of the law or otherwise contravene the public interest, harm the legitimate interests of procedure participants or if it could jeopardize competition among procedure participants.

Obtaining Tender Documentation

Article 53

In the public-private partnership contract award procedure the interested parties have the right to obtain tender documentation under equal conditions.

The public contracting authority shall keep the data on the tenderer that has purchased the tender documents as a secret until the tender opening.

The public contracting authority may provide clarifications, amendments and/or corrections to the tender documentation, provided that they are accessible to the tenderers that have purchased the tender documentation on the same day, and no later than seven days prior to the expiry of the tender submission deadline.

In the case referred to in the paragraph 3 above, the public contracting authority shall ensure accessibility of clarifications, supplements, amendments and/or corrections to tender documentation to all tenderers at the same time and in the same way in which tender documentation has been made available.

Amendments, supplements and corrections referred to in the paragraph 3 above must not change the essential elements of the public-private partnership project proposal.

Ineligible Tenderers

Article 54

A public contracting authority shall exclude from the public-private partnership contract award procedure tenderers whose responsible officer has been sentenced under a final judgment for one of the following crimes:

- 1) criminal association;
- 2) creation of a criminal organization;

- 3) active bribery;
- 4) passive bribery;
- 5) active bribery in commercial activities;
- 6) passive bribery in commercial activities;
- 7) fraud;
- 8) terrorism;
- 9) terrorism financing;
- 10) terrorist association;
- 11) participation in foreign armed formations;
- 12) money laundering;
- 13) trafficking in persons;
- 14) trafficking in minors for adoption;
- 15) submission to slavery and transportation of persons held in slavery.

Paragraph 1 of this Article shall also apply to a member of the tenderer's management body or supervisory body.

A public contracting authority shall exclude from the public-private partnership contract award procedure tenderers who did not settle all liabilities for taxes or contributions in accordance with law.

A public contracting authority shall exclude from participation in the public-private partnership contract award procedure the following tenderers:

- 1) whose tender is not compliant with the principles laid down by this Law;
- 2) who are undergoing bankruptcy;
- 3) for whom it can be proven to have been convicted by a final judgment for a crime committed while performing a professional activity;
- 4) for whom it can be proven to have concluded agreements with other economic operators with the aim to distort competition;
- 5) who have violated the provisions of previously concluded public-private partnership contracts or other contracts with the public contracting authority;
- 6) who provide inaccurate data or conceal data of importance to its eligibility to participate or to the decision making in the public-private partnership contract award procedure;
- 7) if operations, property, financial and fiscal records data from their state of establishment or permanent residence respectively are not available to the competent authorities of Montenegro;
- 8) who attempted to interfere with the decision-making process of the public contracting authority or the Board, or to discover confidential information which would give it an advantage over others in the public-private partnership contract award procedure, as well as
- 9) for reasons of security and defence of Montenegro.

Eligibility to participate in a public-private partnership contract award procedure shall be

demonstrated by the submission of evidence issued by competent authorities and required by the public call and tender documentation.

Submission of Tenders

Article 55

A tenderer shall submit the tender within the time limit specified in the public call, directly or by registered mail to the address of the given public contracting authority.

The tender must be drawn up in accordance with the conditions and requirements set forth in the public call and tender documentation.

The tender shall be submitted in writing, in a sealed package (envelope or sleeve) stating the name and address of the public contracting authority, the public- private partnership contract award procedure which it is related to, number of the public call and endorsed with the following phrase »ne otvaraj« ("do not open").

The tender shall be binding on the tenderer until the expiry of the tender validity period.

The public contracting authority shall submit in the tender documentation an instruction on how to submit tenders.

In the process of awarding a public-private partnership contract, the tenderer may submit only one tender independently, in a consortium or other form of business association.

The public contracting authority may determine the procedure of submitting tenders electronically in accordance with regulations governing electronic government, electronic identification and electronic signature, electronic document, electronic trade and information security.

Tender Submission Time Limit

Article 56

A public contracting authority shall set a time limit in the public call and tender documentation for submitting tenders appropriate to the level of complexity of the case and the time period required to draw up the tenders.

The time limit for submitting tenders or requests to participate in the public- private partnership contract award procedure may not be shorter than 30 days from the day of the publication of the public call, i.e. 22 days from the date of sending the invitation to participate in the public-private partnership contract award procedure, if the procedure takes place in stages.

The tender submission time limit may be prolonged by the public contracting authority at the latest seven days before the expiry of the original time limit.

Where the tender preparation or submission of a request to participate in the public-private partnership contract award requires a visit to a site or an examination of the documents accompanying the documentation for the public-private partnership contract

award, the public contracting authority shall extend the time limit set out in paragraph 2 of this Article commensurately with the time needed to visit the site or examine the documents accompanying the public-private partnership documentation.

The tenderer may, within the tender submission time limit, modify or supplement the tender or abandon the tender in writing.

At the request of the public contracting authority, the tenderer may extend the tender validity period.

Irregular Tender and Request Article 57

A tender and/or request to participate in a public-private partnership contract award procedure shall be deemed irregular if:

- 1) not made in accordance with this Law, public call and tender documentation;
- 2) containing provisions which are harmful to the interests of the public partner and/or interests of Montenegro or which distort or restrict market competition;
- 3) not containing the proof of eligibility of the tenderer in accordance with the tender documentation;
- 4) not accompanied by a tender guarantee in accordance with the tender documentation;
- 5) not corresponding to the description of the subject-matter of the public-private partnership and technical and functional characteristics and specifications, and/or offer services or works incompliant with the subject-matter of the public-private partnership and/or conditions for performing the public-private partnership activity.

Criteria for the Selection of the Best Tender Article 58

Tenders shall be ranked on the basis of objective criteria that are defined in accordance with the subject-matter of the public-private partnership contract, pursuant to the principles of this law.

The criteria set out in the paragraph 1 of this Article can contain environmental, social or innovation-related criteria.

The public contracting authority shall set out the order of criteria by their importance in the public call and tender documentation.

Criteria Article 59

In public-private partnership contract award procedures, the criterion for selecting the best tender shall be the most economically advantageous tender.

The Most Economically Advantageous Tender

Article 60

The most economically advantageous tender, in accordance with the subject- matter of the public-private partnership, shall be identified on the basis of the following sub-criteria in particular:

- 1) quality, including technical merit, aesthetic, innovative, functional and environmental characteristics;
- 2) operational expenses and management costs;
- 3) cost-effectiveness;
- 4) type, value and importance of investment;
- 5) maintenance and technical assistance after delivery;
- 6) time limits for execution of contractual obligations;
- 7) service price for end-users;
- 8) amount of the concession fee and/or other fees;
- 9) achieving public interest;
- 10) effects on employment, infrastructure and economic development.

The monetary values of the sub-criteria shall be expressed in euros at the net present value on the date of expiry of the tender submission time limit.

The value of the sub-criteria set out in the paragraph 1 above shall be expressed by determining the maximum values in the appropriate range, with the sum of all points being 100.

The amount of concession fee offered and /or other fee shall be stated as the euro-denominated unit sum of offered fixed or variable concession fee during the concession contract term, discounted to the net present value at the discount rate specified in the tender documentation.

If a separate law specifies the amount of the lowest concession fee that the concessionaire has to pay, the public contracting authority shall fix in the tender documentation the amount above which the tenderers are to state their tenders.

Tender Examination, Appraisal and Evaluation Minutes

Article 61

The Board shall draw up minutes of the examination, appraisal and evaluation of tenders, containing in particular:

- 1) appraisal of the validity of submitted evidence per tenders;
- 2) opinion of counsellors referred to in Article 28 of this Law, if they have been hired in the procedure;
- 3) reasons for refusing or rejecting tenders;
- 4) evaluation of each individual tender based on the submitted documents for each criterion individually;

- 5) number of points assigned to each of the tenderers for each of the established criteria and sub-criteria, with a justification of the assigned number of points;
- 6) appraisal of tender validity;
- 7) names of the Chair and members of the Board and the place and date when the minutes were drawn up.

Each Board member individually shall evaluate the suitable tenders and/or criteria based on the data included in the tender.

Within 30 days from the day of tender opening the Board shall:

- 1) determine the average of the assigned number of points for each of the established criteria for every individual tenderer;
- 2) draw up minutes and an evaluation report with a ranking list of tenderers, in descending order;
- 3) prepare and submit to the public contracting authority the proposed decision selecting the most advantageous tender;
- 4) draw up the draft decision on awarding the public-private partnership contract.

The time limit set out in the paragraph 3 of this Article may be prolonged by the public contracting authority on a reasoned request of the Board, at the latest three days before its expiry.

If two or more proper tenders scored equally based on the criteria and subcriteria for the selection of the best tender, the public contracting authority shall invite the tenderers having equal number of points and the selection shall be made by the Board Chair in a draw procedure.

Under a proposal put forward by the Board, the public contracting authority shall issue and submit to the tenderers the decision on selecting the most advantageous tender, with an evaluation report and an adopted tenderers' rankings set out in the paragraph 3, item 2 of this Article, within 30 days of the date of its drawing up, by means of registered mail with return receipt.

The decision on selecting economically most advantageous tender shall contain in particular:

- 1) name of the public contracting authority and of the public partner;
- 2) number of the decision and the date of the issuing of the same;
- 3) name of the tenderer of the most advantageous tender;
- 4) basic rights and obligations of the public partner and of the private partner;
- 5) type and subject matter of the public-private partnership;
- 6) period of duration of the public-private partnership contract;
- 7) data on the evaluation of the tenders from the report;
- 8) explanation of reasons for the selection of the most advantageous tender;
- 9) data on the protection of rights in the procedure;
- 10) signature of the public contracting authority responsible officer.

A public contracting authority may pass the decision on the annulment of the public-partnership contract award procedure, provided one of the following conditions has been met:

- 1) if the circumstances, which, had they been known prior to the initiation of the public-private partnership contract award procedure, would lead to the non-publishing of the public call or to significantly different specification of the public call and tender documentation, were to become known;
- 2) if there are no tenders submitted within the set deadline;
- 3) if, after rejecting the tenders in the public-private partnership contract award procedure, there shall remain no proper tender, or
- 4) in other cases, pursuant to special laws.

New public-private partnership proposal preparation procedure referred to in Article 27 of this Law may be initiated after the decision on annulling the public-private partnership contract award procedure becomes enforceable.

Protection of Rights during the Procedure

Article 62

In the process of awarding a public-private partnership contract, the protection of rights in the proceedings is carried out by the Commission for Protection of Rights in Public Procurement Procedures in accordance with this Law and the law governing public procurement.

The tenderer who has lodged an appeal and who does not have registered seat in the territory of Montenegro shall designate an agent to receive notifications and decisions in the territory of Montenegro or shall specify another way of delivery which shall not delay the procedure.

Adoption of the Proposed Decision and Public-Private Partnership Contract

Article 63

Upon the completion of the procedure referred to in the Articles 61 and 62, the proposed decision awarding the public-private partnership contract and the proposed public-private partnership contract shall be adopted by the public contracting authority.

The public contracting authority shall submit the proposed decision on award of a public-private partnership contract, the contract set out in paragraph 1 above and the minutes set out in the paragraph 1 of the Article 61 herein to the Agency, Ministry and the Protector of Property-Legal Interests of Montenegro, for the purpose of obtaining their opinions thereon.

The Agency, Ministry and the Protector of Property-Legal Interests of Montenegro shall determine the conformity of the proposed decision and public-private partnership contract with the proposed public-private partnership project, tender documentation and this Law. The Agency Ministry and the Protector of Property-Legal Interests of Montenegro shall

issue an opinion on the proposed decision and public-private partnership contract within 20 days as of the receipt of that decision and/or contract.

The public contracting authority shall submit to the public partner the proposed decision and contract set out in paragraph 1 of this Article with the minutes and report on the evaluation with the adopted rankings of the tenderers set out in the Article 61, paragraph 3 item 2 of this Law, and the opinions of the Agency, of the Protector of Property-Legal Interests of Montenegro and the Ministry set out in the paragraph 3 of this Article.

Decision on Awarding Public-Private Partnership Contract Article 64

The decision on awarding a public-private partnership contract shall be issued by the public partner.

In the event that the public partner is a company and/or a legal entity performing a public interest activity for small-value public-private partnership projects, the decision on awarding a public-private partnership contract shall be issued by the competent body of the company and/or legal entity, with prior approval of the Government and/or competent local self-government authority.

A public contracting authority may issue the decision on the annulment of a public-private partnership contract award procedure if the awarding of the contract is deemed contrary to the interests of Montenegro.

The decision on awarding a public-private partnership contract shall be published in the Official Gazette of Montenegro.

Notice of Awarding Public-Private Partnership Contract Article 65

In addition to the decision set out in Article 64, paragraph 1 of this Law, the public contracting authority shall also submit to the Agency the decision on selecting the most advantageous tender, as well as the minutes and the report on evaluation with the adopted rankings of the tenderers set out in the Article 64 paragraph 3 item 2 herein.

The notice set out in the paragraph 1 above shall be published on the Agency's website at the latest within 7 days as of the date of publication of the decision on awarding the public-private partnership contract, in accordance with the Article 64, paragraph 4 of this Law.

The Agency shall enter the public-private partnership contract into the Contracts Register. The contents of the notice set out in the paragraph 2 of this Article shall be set forth in an act of the Agency.

V. CONTRACT

Conclusion of Public-Private Partnership Contract Article 66

Public-private partnership contracts shall be concluded in writing.

If the first-ranked tenderer withdraws from the contract conclusion or does not submit a contract performance guarantee or insurance policy within the prescribed time limit, the public partner may decide to award the contract to the next best-ranked tenderer or to order the public contracting authority to annul the public-private partnership contract award procedure.

The rights and obligations from the public-private partnership contract may not be the subject-matter of bankruptcy or liquidation procedure.

A decision or another act whereby the rights and obligations from the public-private partnership contract become subject to bankruptcy proceedings or liquidation shall be null and void.

Fundamental Elements of Public-Private Partnership Contract

Article 67

In accordance with the subject-matter of a public-private partnership, a public-private partnership contract shall govern in particular:

- 1) purpose and subject-matter of the public-private partnership;
- 2) rights and obligations of contracting parties;
- 3) conditions and manner of using the subject-matter of the public-private partnership;
- 4) time period for which the contract is concluded;
- 5) risk sharing between the contracting parties;
- 6) financing or refinancing method and time limits and the schedule of investment;
- 7) property rights and the manner of exercising them;
- 8) type of the performance guarantee and its amount and insurance policies;
- 9) amount, time-limits, requirements and payment method;
- 10) criteria and methods for determining the prices or tariffs for products and services for end users;
- 11) public-private partnership project value established in accordance with the Article 30 of this Law;
- 12) possibility and conditions for compensation and offsetting of claims;
- 13) requirements for contract modification or termination, including in the event of changed circumstances or force majeure and the manner of resolving relations in such cases;
- 14) requirements for contract termination, sanctions and fees in case that contracting parties fail to meet their obligations;
- 15) protection of intellectual property rights, trade secrets and data confidentiality;

- 16) procedure and conditions for the handover of real properties, facilities, equipment or installations, if this arises from the subject-matter of the contract;
 - 17) manner of resolving disputes;
 - 18) supervision over the contract implementation;
 - 19) standards and quality of works and services, technology transfer;
 - 20) guarantees of the founder for a special purpose vehicle;
 - 21) method of financing;
 - 22) actions of the private partner with regard to objects found during implementation of the public-private partnership which have a historic, cultural, or natural value;
 - 23) obligations to revitalize renewable natural resources, that is, rehabilitate and reclaim the areas degraded by the public-private partnership contract performance; amount, time limits and the method of payment of concession or another fee;
 - 24) providing risk insurance for the duration of a public-private partnership contract;
 - 25) rights and obligations concerning the undertaking of measures for providing general safety, protection of health and environment, improvement of energy efficiency, as well as responsibility for compensation of damage in accordance with law.
- The contract set out in the paragraph 1 of this Article shall also lay down the manner of mutual notification on the performance of contractual obligations, manner of controlling the performance of contractual obligations and the exercise of rights and obligations of contracting parties.
- On behalf of the public partner, the contract shall be signed by the person designated within the decision of the award of the public-private partnership contract.
- A public partner may, by contract, allow a private partner to perform other commercial activities or build other facilities within the framework of the implementation of a public-private partnership project, with the aim of generating income.

Duration of Public-Private Partnership Contract

Article 68

For a public-private partnership contract concluded for period more than three years, the duration of the concession shall be determined for the period necessary for the private partner to reimburse the invested funds for the execution of works and / or the provision of services and make a return on the invested capital including the investments necessary to achieve the specific objectives of the contract.

Investments referred to in paragraph 1 of this Article also include initial investments and investments during the duration of the public-private partnership contract.

For public-private partnership contracts awarded for the time period longer than 30 days, a public contracting authority shall, before they are concluded, submit the same to the state authority competent for the state aid control, for purpose of obtaining their opinion.

The deadline referred to in the paragraph 1 above starts running on the date of the signing of the contract, unless stipulated otherwise in the public-private partnership contract.

Contract Performance Guarantees

Article 69

A private partner shall submit to the public contracting authority a bank guarantee or other instrument of security for contract performance in accordance with the tender documentation, and the public-private partnership contract.

A private partner may not acquire benefits, assume rights and obligations from a public-private partnership contract if it fails to submit a bank guarantee or other instrument of security for proper contract performance to the public contracting authority in accordance with the time limit set out in the paragraph 1 of this Article.

The guarantee set out in the paragraph 1 of this Article shall be an integral part of the public-private partnership contract.

The public contracting authority shall monitor the validity (validity period) and the amount of the instrument of security set out in the paragraph 1 of this Article.

The private partner shall provide a new contract performance guarantee at the latest within 30 days or within the deadline stipulated in the public-private partnership contract, provided that the deadline is not shorter than 30 days, prior to the expiry of the guarantee validity.

If the private partner fails to provide a new guarantee set out in the paragraph 5 of this Article, the public contracting authority shall activate the current bank guarantee.

If the private partner fails to provide the instrument of security in accordance with the paragraphs 1 and 5 of this Article, the contract shall be terminated in accordance with the Article 77 of this Law.

Financing

Article 70

A public-private partnership contract may be financed by a private partner and/or public partner by using financial instruments available on the market.

Having obtained the consent of the private partner, the private partner may assign, pledge or mortgage, for a period and to the extent specified in the public-private partnership contract in accordance with the law governing state property, its right or

obligation under the public-private partnership contract in favour of a financial institution, in order to secure a resulting payment or a future claim in conjunction with construction and financing and/or refinancing of a public-private partnership project.

A decision or another act whereby the rights and obligations from the public-private partnership contract become the subject of a pledge, mortgage or other instrument of security contrary to the provisions of this Law, shall be null and void.

Modifications to Public-Private Partnership Contract

Article 71

Public-private partnership contracts may be modified without a new award procedure in any of the following cases:

- 1) if the modifications, regardless of their monetary value, are foreseen in public call and tender documentation with clear provisions which may include modifications in value or options, with the determined scope and nature of possible modifications or options, as well as the conditions in which they can be applied if by proposed modification the nature of the public-private partnership does not change;
- 2) where additional works and services proved to be necessary after concluding contract, and which were not included in the public-private partnership contract, in case if the private partner changes:
 - a change of the private partner is not possible for economic or technical reasons, such as requirements for interchangeability and compatibility with the existing equipment, services or the facilities that are procured under a public-private partnership contract, and
 - it would cause significant difficulties or increase costs for the public partner;
- 3) where the need for modification has been brought about due to circumstances which the public contracting authority could not foresee or have an impact on, provided that the modification does not alter the overall nature of the public-private partnership;
- 4) a private partner after restructuring, including the acquisition, merger, purchase or bankruptcy, is replaced completely or partially with a new private partner, that is, a business entity that fulfils the conditions accomplished also by the private partner with whom the contract has been concluded, and the changes are foreseen by the public call and the tender documentation with clear provisions, provided that other essential modifications to the public-private partnership contract referred to in Article 74 of this Law shall not be made;
- 5) if the modifications made, irrespective of their monetary value are not significant with respect to the public-private partnership contract referred to in Article 74 of this Law;
- 6) if the national security and defense or the environment or human health have been threatened, or it has been required by the public interest of Montenegro in

case the rights guaranteed by the Constitution of Montenegro and the law have been threatened.

Notwithstanding the provisions of paragraph (1) of this Article a public-private partnership contract may be amended without the implementation of a new procedure for the award of a public-private partnership contract if:

- 1) the contract value after modifications does not exceed 10% of the net value of the original public-private partnership contract, and
- 2) with the modifications of the contract the nature of the public-private partnership is not altered;

If the value of the public-private partnership contract may be expressed in monetary terms, the public-private partnership contract that has a concession for public services or public works as its subject-matter, may be modified under the condition that the contract value after modifications does not exceed 50% of the net value of the original public-private partnership contract.

In the case of contract modifications referred to in paragraph 3 of this Article, the value of the public-private partnership contract shall be assessed on the basis of the net cumulative value of the all modifications.

The value set out in the paragraph 3 above shall take into consideration the indexation clause, i.e. the average inflation rate in Montenegro.

The public contracting authority shall submit to the Agency and Ministry for opinion a proposal of modifications of the public-private partnership contract.

The decision to amend the contract referred to in paragraph 1 of this Article shall be made by a public partner with the previously obtained opinion of the Agency and the Ministry, in accordance with the criteria referred to in Article 33 of this Law.

The public contracting authority shall submit to the Agency a notice with the contract modification in accordance with the paragraph 1 of this Article, within 15 days from the conclusion of the annex to the contract, to be published on the web page of the Agency and entered into the Contracts Register.

In the procedure of modifying the public-private partnership contract referred to in the paragraph 1 above, the public contracting authority shall assess in particular:

- degree of implementation of the public-private partnership contract by the private partner;
- degree of return on private partner investment;
- manner of the performance of activities or services which are the subject matters of the public-private partnership;
- observance of contractual obligations by the private partner, with particular attention being paid to the payment of concession and other fee, and
- other conditions of importance for the evaluation of the request for the extension of the public-private partnership contract duration.

The decision modifying the public-private partnership contract shall be published in the Official Gazette of Montenegro.

Contract Assignment

Article 72

The public-private partnership contract may be assigned to a third party that meets the same requirements as the private partner, or that meets the public private partnership contract award requirements set forth in the public call and tender documentation.

The public-private partnership contract assignment may not diminish the quality and impair the continuity of the contract performance.

The assigning of the contract on public-private partnership may be permitted in the cases related to the acquisition of ownership over the private partner following the restructuring procedure, through the procedures of merger of the existing private partner with the future private partner, purchases or other forms of acquiring ownership, which result from the implemented restructuring procedure, pursuant to the paragraph 2 above.

The assigning of the public-private partnership contract may be conducted provided that the third party fulfils the capability requirements for a private partner set out in tender documentation.

In case of the failure on the side of the private partner to fulfil the obligations set forth in the public-private partnership contract and the documents on financing, which are integral part of that contract, the financial institution (international financial institution, bank and/or a third party) providing financial means to the private partner with the purpose of implementing the contract on public-private partnership, shall be entitled to step in.

In the case referred to in the paragraph 5 above, the financial institution shall settle its claim by assigning the contract to a new private partner.

The new private partner shall assume all rights and obligations of the previous private partner.

In case of the failure on the side of the private partner to fulfill contractual obligations, the public partner shall notify the financial institution and request from the same to propose new private partner within 86 calendar days.

Contract Assignment Decision

Article 73

Contract assignment decision referred to in the Article 72 of this Law, together with the prior opinions of the Agency and the Ministry assessing in particular fulfillment of the criteria referred to in Article 33 of this Law, shall be passed by the public partner.

The Agency shall submit the opinion set out in paragraph 9 of this Article, within 15 days of the date of delivery of the decision to assign the public-private partnership contract.

The agreement by which the private partner assigns to a third party its rights and obligations under the public-private partnership contract, without the decision set out in paragraph 1 above, shall be null and void.

The decision on assigning the contract set out in the paragraph 1 of this Article shall be published in the Official Gazette of Montenegro.

In the procedure of deciding on the public-private partnership contract assignment set out in the paragraph 1 of this Article, the public contracting authority shall appraise:

- 1) the existing level of the public-private partnership contract performance by the private partner;
- 2) manner of settling any possible outstanding tax and other liabilities by the private partner, ability for further settling and responsibility for settling those liabilities in the event of the public-private partnership contract assignment;
- 3) references of the entity which the public-private partnership contract is being assigned to (technical and financial capabilities, previous experience in performing the activity which is the subject-matter of the public-private partnership, etc.);
- 4) whether the person who the public-private partnership contract is being assigned to meets the requirements set out in the Article 55 herein and the tender documentation on the basis of which the public private partnership contract has been awarded;
- 5) whether the public-private partnership contract assignment is being performed between related parties and the impact of such assignment on the settlement of liabilities set out in the item 2 of this paragraph.

Conditions under which Contract may not be Modified

Article 74

If it is necessary to introduce essential modification to a public-private partnership contract, a public contracting authority shall institute a new contract assignment procedure.

The modification of the public-private partnership contract referred to in the paragraph 1 above shall be deemed essential when one of the following requirements is met:

- 1) the modification introduces the conditions which, had they been part of the initial public-private partnership contract award procedure, would have allowed the acceptance of a tender other than that originally accepted, i.e. selection of another tenderer;
- 2) the modification changes the economic balance of the public-private partnership contract in favour of the private partner in the manner which was not provided for in the public-private partnership contract;
- 3) the private partner is being changed, except in the cases set out in the Articles 72 and 73 herein;
- 4) modifications enlarge considerably the scope of the public-private partnership subject matter so as to include goods, works or services which were not included in the original public-private partnership contract.

Extension of Public-Private Partnership Contract in view of Public Service Provision Article 75

In order to ensure continuous performance of a public interest activity that is the subject-matter of the public-private partnership, the public contracting authority shall initiate the public-private partnership contract award procedure at least six months prior to the expiry of the public-private partnership contract period for the same subject-matter, in accordance with this law.

Where the public-private partnership contract award procedure is not completed within the time limit set out in the paragraph 1 above, the public partner may extend the public-private partnership contract for a period of up to six months if the following conditions are met:

- 1) the service provided on the basis of the public-private partnership is an indispensable condition for the life and work of end-users;
- 2) interruption in the provision of a public service provided on the basis of the public-private partnership would jeopardize the rights of the users of this service enshrined in the law;
- 3) the private partner accepts the rights and obligations arising from such an extension of the public-private partnership contract.

Ending of Public-Private Partnership Contracts Article 76

Public-private partnership contracts shall end:

- 1) upon expiry of the period to which it was concluded;
- 2) through termination for protection of public interest;
- 3) through consensual termination;
- 4) through unilateral termination;
- 5) based on a court decision;
- 6) in cases set forth in the contract;
- 7) in cases set forth in the law.

Termination of Contract Article 77

A public-private partnership contract is terminated by delivering a Notice of Contract Termination if:

- 1) the private partner at the time of the award of the public-private partnership contract was unsuitable in accordance with Article 54 paragraph 1 of this Law, for what reason it should have been excluded from the procedure for awarding a

- public-private partnership contract;
- 2) a private partner cannot fulfil his obligations due to insolvency, thereby jeopardizing the continuity of the contract performance;
 - 3) a bankruptcy or liquidation procedure has been initiated against a legal entity with which a public-private partnership contract has been concluded with, except insofar as other consortium members jointly take on the obligations arising from the public-private partnership contract;
 - 4) the private partner fails to provide financing of the project in accordance with the public-private partnership contract;
 - 5) amendments to the public-private partnership contract referred to in Article 75 of this Law have been made;
 - 6) the financial institution does not propose a new private partner referred to in Article 73 of this Law;
 - 7) the private partner assigns its rights and obligations from the public-private partnership contract to a third party contrary to the Articles 72 and 73 of this Law;
 - 8) there is a change of the seat, status or ownership structure of the company, part of a foreign company or other legal entity in the territory of Montenegro set out in the Article 43 of this Law, without having obtained the prior consent of the public partner;
 - 9) the public partner decides on the termination of the contract for the protection of the public interest
 - 10) in other cases established by the public-private partnership contract.

Termination of the Public-Private Partnership Contract following a Written Caution

Article 78

A public partner may terminate a public-private partnership contract if a private partner:

- 1) did not pay the fee stipulated in the contract and law;
- 2) does not perform public works and/or does not provide public services in accordance with the time limits stipulated in the contract, quality standards specified in the public-private partnership contract, law and other regulations governing the subject-matter of the public-private partnership;
- 3) does not undertake measures for the protection of environment and cultural properties;
- 4) provides in its tender incorrect data that served to ascertain its eligibility to participate in the public-private partnership contract award procedure;
- 5) fails to deliver the instrument of security in accordance with the Article 69 of this Law;
- 6) fails to comply with the provisions of this Law and laws that apply in the public-private partnership contract performance procedure; or

- 7) in the event of force majeure or an extraordinary event which prevents continuous public-private partnership contract performance in accordance with the Article 88, paragraph 2 herein;
- 8) does not fulfil the obligations stipulated in the public-private partnership contract.

Prior to the termination of the public-private partnership contract in accordance with the paragraph 1 above, the public partner shall caution the private partner and the financial institution providing financing of the public-private partnership contract in writing and fix an appropriate time limit on the private partner to eliminate the reason for unilateral contract termination.

If the private partner fails to eliminate the reasons for the termination of the public-private partnership contract within the time limit set out in the paragraph 2 above, the public partner shall issue a decision on terminating the public-private partnership contract.

In the event of termination of the public-private partnership contract set out in the paragraph 2 of this Article, the public partner shall adopt a decision on termination of the public-private partnership contract.

In the event of expiry or termination of the contract in accordance with the provisions of this Law, the private partner shall fulfil its financial obligations, reclaim and rehabilitate areas and meet other obligations that arose prior to the expiry or termination of the public-private partnership contract.

Subcontracting

Article 79

For the purpose of public-private partnership contract performance, the private partner may entrust to third parties certain tasks that serve to perform the public-private partnership activity.

The private partner may only enter into a contract with a subcontractor meeting the economic, financial and technical and functional qualification requirements for the performance of obligations stipulated in that contract, in accordance with the public-private partnership contract, provided such possibility has been provided for in approved public-private partnership project, tender documentation and/or public-private partnership contract.

The private partner shall be jointly and severally liable for the performance of contractual obligations of the subcontractor set out in the paragraph 1 above, unless stipulated otherwise by the contract.

A possibility and conditions for changing the subcontractor referred to in paragraph 1 of this Article shall be regulated by the public-private partnership contract.

Revenues from the fees earned by the subcontractor shall be calculated into the total revenues of the private partner as the fee for using the subject-matter of the public-private partnership contract set out in the Article 86 of this Law.

A contract with a subcontractor may not be concluded for a term longer than the period of the public-private partnership contract.

Dispute Resolution

Article 80

Disputes arising from public-private partnership contracts shall be settled by the competent court in Montenegro, unless otherwise provided by the public-private partnership contract.

Possible disputes arising out of or in connection with the public-private partnership contract may also be settled before domestic or foreign arbitration instances, as provided for in the public-private partnership contract.

In the procedures set out in the paragraphs 1 and 2 above, the applicable law shall be the law of Montenegro.

VI. PROPERTY RELATIONS

Property rights and property management

Article 81

Facilities, equipment and installations built in accordance with a public-private partnership contract, including the increased value of the facility, shall be owned by the state, unless otherwise stipulated in the public-private partnership contract.

Upon termination of the contract, the private partner shall hand over the facility, equipment and installations set out in the paragraph 1 above, as well as all other subject-matters of the public-private partnership owned by the state without any encumbrance and restrictions, in a condition that ensures their unhindered use and functioning.

Where the state owns real property necessary for the performance of a public-private partnership contract, the public partner shall ensure the use of that property in accordance with law and the public partnership contract.

Where it is necessary to acquire the right to use state-owned natural resources, properties used by the general public, goods in general use or other goods of common interest for the performance of the subject-matter of the public-private partnership, in accordance with the a special law, mutual rights and obligations of the public and private partner shall be regulated by the public-private partnership contract in accordance with this Law.

Unless stipulated otherwise in the public-private partnership contract, every private partner's investment in public infrastructure and facilities, and/or equipment and installations owned by the state, that have been created with the performance of the public-private partnership contract, shall be the property of the state.

Expropriation

Article 82

Where expropriation of real properties and/or development of the construction land need

to be done for the public-private partnership contract performance, the costs, manner and time limits for the payment of the real property expropriation fee or development of the construction land fee shall be determined and implemented in accordance with law.

Annotation of the Public-Private Partnership Contract on Real Property

Article 83

An annotation of contract shall be registered on real property, which is the subject-matter of the public-private partnership contract, in line with the law governing the registration of rights over real properties.

Discoveries

Article 84

Any discovery on the site where the activity of the public-private partnership contract is performed, having a historic, cultural or natural value, shall be deemed as state property and the private partner shall immediately inform of such a discovery the state authority competent for the protection of historic, cultural and natural values.

Where the activities aimed at the public-private partnership contract performance may jeopardize the discovered objects that have historical, cultural or natural value, the private partner shall discontinue or restrict these activities without delay and inform thereof the authority in charge of protecting historical, cultural and natural values.

The competent authority set out in the paragraphs 1 and 2 above shall instruct the private partner at the latest within eight days of the receipt of the notice on how to act in relation to the discovery set out in the paragraph 1 of this Article, i.e. of the need to discontinue or limit the activities aimed at performing the public-private partnership contract at the site of the discovery.

In the event of the discontinuance of the activities set out in the paragraphs 2 and 3 of this Article, the deadlines stipulated in the public-private partnership contract shall not run.

Insurance Costs

Article 85

The private partner shall provide the public contracting authority with a proof of insurance against risks (insurance policy) covering the public-private partnership contract period.

The insurance set out in the paragraph 1 of this Article shall be taken out in particular for:

- 1) loss or damage to devices, equipment and other property from the public-private partnership contract;
- 2) potential environmental pollution in connection with the rights and obligations from the public-private partnership contract;
- 3) loss or damage to property or injury suffered by third parties in connection with the rights and obligations from the public-private partnership contract.

The insurance costs set out in the paragraph 1 of this Article shall be borne by the

private partner.

The proof of insurance set out in the paragraph 1 of this Article shall be an integral part of the public-private partnership contract.

Fees

Article 86

The private partner shall pay a concession fee or another statutory fee in the amount and in the manner specified in the public-private partnership contract.

The amount and method of payment of the fee set out in the paragraph 1 of this Article shall be fixed depending on the subject-matter of the public-private partnership contract, estimated value, contract period, risks and costs assumed by the private partner and the expected profit.

The amount and manner of payment of the fee paid by the public partner to the private partner shall be fixed in accordance with the public-private partnership contract and the tender documentation.

The public-private partnership contract may fix a variable fee depending on the subject-matter of the public-private partnership, calculation methodology and payments for certain period of time during the contract term.

Concession fees and fees from other types of public-private partnerships shall be revenues of the budget of Montenegro, that is, of local self-governments in those public-private partnership contracts in which local self-government appears as the public partner.

Dormancy of Rights and Obligations from the Contract

Article 87

In the case of force majeure or extraordinary event preventing the execution of the public-private partnership contract, and which could not have been foreseen at the time of the public-private partnership contract conclusion, the rights and obligations from the public-private partnership contract shall be temporarily dormant until the force majeure or extraordinary event has ceased.

In the event of force majeure or extraordinary event permanently preventing the performance of the public-private partnership contract, the conditions to terminate the public-private partnership contract shall be met.

The public partner shall decide on the dormancy of the rights and obligations from the public-private partnership contract, based on the obtained opinion of the public contracting authority, pursuant to a written request of the private partner submitted at the latest 15 days from the date of the occurrence of circumstances set out in the paragraph 1 above.

The decision on the dormancy of rights and obligations from the public-private partnership contract shall not apply to the claims of the public partner that became due before the occurrence of force majeure or extraordinary event.

Revitalization and Reclamation

Article 88

The private partner shall revitalize and reclaim the areas and facilities which were degraded by the performance of a public-private activity, within the deadlines, extent and in the manner set forth in a separate law and/or the public-private partnership contract.

If the private partner fails to do the revitalization or reclamation set out in the paragraph 1 above, the public partner (or the public contracting authority) may hire persons on its own who will, on behalf of the public partner and for the account of the private partner, revitalize and reclaim the areas and facilities degraded by the performance of the public private partnership activity.

Where the persons set out in the paragraph 2 of this Article are hired, the private partner shall bear all actual and related costs of the persons hired and of the public partner.

VII. RECORDS, REGISTER AND MONITORING PUBLIC-PRIVATE PARTNERSHIP CONTRACT PERFORMANCE

Records of Concluded Contracts

Article 89

The public contracting authority shall keep records of concluded public-private partnership contracts falling within its competence.

The public contracting authority set out in the paragraph 1 of this Article shall deliver a copy of the concluded public-private partnership contract with all attachments to the Agency within 15 days of its conclusion.

The public contracting authority shall permanently keep the documentation relating to a particular public-private partnership project, in accordance with the regulations governing the keeping of archival documents.

Contents and Manner of Keeping the Contracts Register

Article 90

Public-private partnership contracts and documentation that form an integral part of these contracts shall be entered into the Contracts Register.

The Contracts Register shall be kept in electronic form.

The Contracts Register shall be published on the web page of the Agency. The contents of the Contracts Register shall be determined by the Agency.

Monitoring the Performance of the Contract

Article 91

The status and schedule of performing the public-private partnership contract shall be monitored by the public contracting authority for contracts falling within its competence, as well as by the Agency.

The public contracting authority shall, by the expiration of the half-year period as of the day the public-private partnership contract was concluded, submit to the Agency a report on the performance of the contract, which shall contain in particular the data on the following:

- 1) payment of the fee referred to in Article 86 of this Law;
- 2) control of the private partner's operation;
- 3) operations of the private partner, or of the special purpose vehicle, if one has been established;
- 4) performance of contracts with subcontractors concluded by the private partner, based on the public-private partnership contract, as well as
- 5) other important data on the public-private partnership contract performance.

The report set out in the paragraph 2 of this Article shall be submitted on the form adopted by the Agency.

Notwithstanding the paragraph 2 above, the public contracting authority shall submit data on the performance of the public-private partnership contract at the request of the Agency, within 15 days of receiving the request.

In case of termination of the public-private partnership contract, the public contracting authority shall submit a notice of termination to the Agency without delay and at the latest within seven days from the day of termination.

The Agency shall submit to the Government the semi-annual report on the execution of obligations from the public-private partnership contract containing the data referred to in paragraph 2 above.

Fee Collection Control

Article 92

Control of the collection of the concession fee and other fees from the public-private partnership contract shall be performed by the authority competent for collecting public revenues.

The report on the control of the collection of fees set out in the paragraph 1 of this Article shall be submitted by the authority competent for the collection of public revenues to the public contracting authority no later than seven days after the end of the current quarter for the previous quarter.

Entry into the Real Property Register

Article 93

The public contracting authority shall submit the public-private partnership contract, which

includes the use of state-owned real property, to the administrative authority in charge of cadastral affairs in order to enter the annotation of encumbrance in the real property cadastre or other appropriate records, within 15 days as of the day of the contract conclusion.

VIII. SUPERVISION

Supervisory Authorities Article 94

Supervision over the implementation of this Law, other regulations and acts adopted pursuant to this Law shall be carried out by the Ministry.
Inspection over the implementation of this Law shall be exercised by the competent inspection authority.

IX. PENAL PROVISIONS

Offences Article 95

A fine of € 2.000 to € 20.000 shall be imposed on a legal entity for an offence if it:

- 1) performs activities that are not aimed at the performance of the public-private partnership project which it has been founded for (Article 43 paragraph 3);
- 2) executes the takeover of the public-private partnership contract set out in the Article 72 herein, without the consent of the public partner and without previously obtained opinion of the Agency (Article 73 paragraph 1).

Responsible officer of a legal entity shall also be punished for the offences set out in the paragraph 1 of this Article by a fine ranging from € 250.00 to € 2,000.00.

Natural persons shall also be punished for the offence set out in the paragraph 1 item 2 of this Article by a fine ranging from € 50.00 to € 2,000.00.

Article 96

A legal entity shall be punished for an offence by a fine ranging from € 500,00 to € 10,000.00, if it:

- 1) fails to conduct preparatory actions for the approval of the public-private partnership project and conclusion of the contract in line with this Law (Article 27 paragraph 1);
- 2) fails to publish the public call for the awarding of the public-private partnership contract in the manner prescribed in the Article 49 paragraph 1 of this Law;
- 3) discloses information designated as confidential by the tenderer in its tender (Article 50, paragraph 1);

4) fails to exclude a tenderer from the public-private partnership contract award procedure where the tenderer's responsible officer has been sentenced under a final decision for one of the criminal offences set out in the Article 54 paragraph 1 of the present Law;

5) fails to exclude from the public-private partnership contract award procedure the tenderer that has not settled all liabilities for taxes or contributions until the tender submission date in accordance with the law (Article 54, paragraph 3);

6) fails to exclude a tenderer from the participation in the public-private partnership contract award procedure in the cases set out in the Article 54, paragraph 4 of this Law;

7) submit to the public partner the proposed decision on awarding the public-private partnership contract and public-private partnership contract referred to in Article 63 paragraph 1 of this Law with the minutes and evaluation report with determined rankings of tenderers set out in the Article 64 of this Law without previously obtained opinion from the Agency, Ministry and the Protector of Property-Legal Interests of Montenegro (Article 63 paragraph 4);

8) fails to publish the notice on awarding the public-private partnership contract on the web page of the Agency at the latest 7 days of the date of the publication of the decision on awarding the public-private partnership contract in line with the Article 64, paragraph 4 of this Law (Article 65 paragraph 2);

9) submit to the public partner draft modifications of the public-private partnership contract without previously obtained opinion from the Agency and the Ministry (Article 71 paragraph 7);

10) fails to deliver to the Agency and the Protector of Property-Legal Interests a copy of the concluded public-private partnership contract including all of the attachments, within 15 days as of the day of the conclusion (Article 89 paragraph 2);

11) fails to submit to the Agency a report on the performance of the public-private partnership contract at the latest until the 15th day in the first month after the end of the half-year (Article 91 paragraph 2);

12) at the request of the Agency, fails to submit the data on the performance of certain public-private partnership contract within 15 days from the receipt of the request (Article 91 paragraph 4);

13) fails to submit the public-private partnership contract which involves the use of state-owned real estate to the administrative authority competent for cadastral affairs, in order to enter the annotation of encumbrance in the real estate cadastre or other appropriate records within 15 days as of the day of the conclusion (Article 93).

Responsible officer of a state authority, a state administration body, a local self-government authority and a legal entity shall be punished for the offences set out in the paragraph 1 of this Article by a fine ranging from € 250.00 to € 2,000.00.

Article 97

A fine of € 250,00 to € 2,000.00 shall be imposed on a responsible officer in a state administration body if:

- 1) the administrative authority in charge of the collection of public revenue fails to control the collection of concession and other fees from public-private partnership contracts (Article 92, paragraph 1);
- 2) the administrative authority in charge of the collection of public revenue fails to submit a report to the public contracting authority on the control of collection of the concession and other fees from the public-private partnership contract for the previous quarter no later than seven days after the end of the current quarter (Article 92).

Article 98

A fine of € 500.00 to € 5,000.00 shall be imposed on a legal entity for an offence if it:

- 1) fails to enter the approved public-private partnership projects into the Projects Register within 15 days as of the day the project was approved in accordance with Article 33 of this Law (Article 34 paragraph 1);
- 2) fails to enter the approved public-private partnership projects into the Projects Register within 8 days as of the day that contract was concluded (Article 65 paragraph 3);
- 3) fails to submit to the Agency a notice on modifications of the public-private partnership contract within 15 days of the contract annex conclusion, for purpose of its publication on web page of the Agency and entering into the Contracts Register (Article 71 paragraph 9).

Responsible officer of a legal entity shall also be punished for the offences set out in the paragraph 1 of this Article by a fine ranging from € 250.00 to € 2,000.00.

X.TRANSITIONAL AND FINAL PROVISIONS

Initiated Procedures and Concluded Contracts

Article 99

Concession award procedures for the provision of services of public interest, execution of public works, reconstruction, construction and maintenance of public

infrastructure in the fields set out in the Article 13 of this Law initiated before the date of the entry into force of this Law shall be completed in accordance with the regulations under which they had been initiated.

Contracts for the provision of services of public interest, execution of public works, reconstruction, construction and maintenance of public infrastructure concluded before the start date of application of this Law in the areas referred to in Article 13 of this Law shall remain in force until the expiration of the period for which they were concluded.

The provisions of Articles 71 to 74 and Article 91 shall apply to contracts referred to in paragraphs 1 and 2 above.

Deadline to Establish the Council Article 100

The Government shall issue a decision on establishing the Council within 20 days from the day of the entry into force of this Law.

The director of the Agency shall be appointed within 60 days as of the day of the appointment of the Council.

Until appointment of the director of the Agency, pursuant to this Law, the Government shall appoint an acting director of the Agency.

Termination of Operation Article 101

Within 60 days from the date of the establishment of the Council, the Secretariat for Development Projects and the Agency for the Promotion of Foreign Investments of Montenegro shall cease to operate.

Deadline to Takeover Tasks and Employees Article 102

The Agency shall take over, within 60 days of the date of establishment of the Council, the tasks, assets, liabilities, documents and employees of the Secretariat for Development Projects, Agency for Foreign Investment Promotion of Montenegro, as well as of the administrative and technical service of the Privatization and Capital Projects Council.

The employees set out in the paragraph 1 of this Article, who are not reassigned in accordance with the internal organisation and job descriptions act of the Agency,

shall exercise the rights and obligations of the employees proclaimed redundant, in accordance with the regulations on civil servants and state employees.

Deadline to Submit Contracts Article 103

Within three months from the date of the entry into force of this Law, public contracting authorities shall submit to the Agency valid public-private partnership contracts referred to in Article 99 paragraph 1 of this Law, along with the accompanying documentation, for the purpose of the entry into the Concessions Register, in accordance with this law. The Agency shall enter the contracts referred to in the paragraph 1 of this Article in the Register of the Contracts within 60 days as of the expiry of the deadline for their submission.

Deadline to Establish the Register Article 104

The Agency shall establish both Projects Register and Contracts Register within six months from the date of entry into force of this Law.

Deadline to Establish Records Article 105

Public contracting authorities shall establish records set out in the Article 89 of this Law within 60 days as of the date of the beginning of the implementation of this Law.

Deadline for Adopting Regulations Article 106

Regulations for the implementation of this law shall be passed within six months from the date of entry into force of this Law.

Until adoption of the regulations referred to in paragraph 1 of this Article, the regulations that have been applied before beginning of implementation of this Law shall be applied.

Revocation Article 107

On the date of the beginning of the implementation of this Law, the Law on Participation of Private Sector in Delivery of Public Services shall cease to be in force (Official Gazette of the Republic of Montenegro 30/02).

Within 60 days of the date of appointment of the director of the Agency, the provisions of the Articles 15 to 23, Article 24 paragraph 5, Article 25 paragraph 1 and Article 27 paragraph 1 of the Foreign Investments Law (Official Gazette of Montenegro 18/11 and 45/14), the provisions of the Article 2, paragraph 1, indent 6, items 16 and 17 in the area of coordination and directing the process of cooperation with international financial institutions and potential partners and investors, and Article 8 of the Decision on the scope of work and composition of the Privatization and Capital Projects Council (Official Gazette of Montenegro no. 83/09 and 4/11) shall cease to be in force.

**Entry into force
Article 108**

This Law shall enter into force on the eighth day following that of its publication in the Official Gazette of Montenegro, and its implementation shall start upon the expiry of six months as of its coming into force.

No: 05/19-3/8
EPA 827 XXVI

Podgorica, 17 December 2019

Parliament of Montenegro, 26th Convocation
President,
Ivan Brajović, s. r.