

LAW ON CONCESSIONS

I GENERAL PROVISIONS

Subject matter of the Law

Article 1

This Law shall govern requirements, method, and procedure for awarding concessions, the subject matter of concessions, period for which are awarded, and other matters of relevance to effectuate the concession.

Purpose of the Law

Article 2

- (1) Concessions shall be awarded under the equal, transparent and non-discriminatory requirements, for the usage of natural wealth, goods in general use and other goods of general interest, performing activities of the public interest, and enabling infrastructure development and functioning.
- (2) Concessions shall be awarded in order to:
 - 1) achieve relevant public interest; enable higher employment, introduce new technologies and providing for an accelerated economic development; and provide revenues for a grantor;
 - 2) provide for rational, cost-effective, proper, and efficient usage of natural wealth, goods in general use and other goods of the general interest;
 - 3) provide for technical and technological advancement, and provide for the unity of infrastructure system;
 - 4) improve the activity being the subject matter of the concession;
 - 5) provide for construction, reconstruction, and modernization of the structures of importance for the provision of public services;
 - 6) enable the competition in the field wherein the concessions are being awarded;
 - 7) provide for protection and improvement of the environment.

Principles

Article 3

- (1) Awarding concessions shall be grounded on the principles of transparency, non-discrimination, and competitiveness.
- (2) The exercise of the principle of transparency during the procedure for awarding concession shall ensure that all parties to the procedure for awarding concession shall have complete, accurate, and timely information about: the very procedure, standards, and criteria for a selection of the concessionaire, a tenderer that has been awarded with a concession, and the requirements under the submitted tender thereof.

- (3) The exercise of the principle of non-discrimination in the procedure for awarding concession shall ensure that all tenderers equal treatment in the procedure for awarding concession.
- (4) The exercise of the principle of competition in the procedure for awarding concession shall ensure that a higher number of tenderers will participate therein.

Meaning of Terms

Article 4

For the purpose of this Law, the certain terms shall have the following meaning:

- 1) **Concession** shall mean the right:
 - to use the state owned natural wealth, goods in general use and other goods of the general interest, or to perform activities of the public interest, subject to the payment of a concession fee by a concessionaire, or the delivery of a financial compensation or other support to a concessionaire for achieving relevant public interest,
 - to fund, explore, design, construct or reconstruct, use, maintain, recover or sell structures, facilities and plants owned by a grantor within a stipulated period, including also other similar forms thereof.
- 2) **Concession contract** shall mean a contract in writing concluded for a defined period of time, which governs mutual rights and obligations between a grantor and a concessionaire;
- 3) **Grantor** shall mean the Parliament of Montenegro (hereinafter referred to as: the Parliament); the Government of Montenegro (hereinafter referred to as: the Government); local self-government, the Administrative Capital, and the Historical Capital (hereinafter referred to as: the Municipality);
- 4) **Concessionaire** shall mean a national or a foreign business organization or another legal entity, entrepreneur or natural person that acquired a concession right, as well as consortium or other form of business associations that regulate their mutual relations under a separate contract;
- 5) **Competent authority** shall mean a state administration authority (a ministry or an administration authority) for concessions the awarding of which is within the competence of the Parliament or the Government, or a local government authority for concessions the awarding of which is within the competence of the Parliament or the Municipality, in accordance with law;
- 6) **Tenderer** shall mean a national or a foreign business organization or another legal entity, entrepreneur or natural person, consortium or other form of business association that participates in the procedure for awarding concession;
- 7) **Concession Act** shall mean the fundamental document based on which the procedure for awarding concession shall be initiated.

II SUBJECT MATTER AND TERMS OF CONCESSION AWARD

Requirements for Awarding Concession

Article 5

A concession may be awarded to a tenderer in the manner and under the requirements set forth under this Law.

Subject Matter of the Concession **Article 6**

- (1) In accordance with law, a concession subject matter may be:
- 1) exploration or exploitation, or exploration and exploitation of mineral resources;
 - 2) usage of watercourses and other waters or the parts or certain quantities thereof, for the purposes provided for under a separate law;
 - 3) construction or reconstruction, maintenance and usage of water-related facilities;
 - 4) forests exploitation;
 - 5) use of radio frequencies;
 - 6) construction of hydro-amelioration systems and extraction of materials from waterlogged land;
 - 7) construction, maintenance, and usage, or reconstruction, modernization, maintenance, and usage, or use of:
 - roads, road-related and the accessory structures thereof,
 - railroads,
 - air traffic facilities and airports,
 - water transport facilities and ports,
 - telecommunication facilities,
 - oil pipelines, gas pipelines, warehousing structures, structures for oil and gas transport and distribution,
 - health and education institute buildings,
 - structures of public utility services, for the delivery of public utility services;
 - 8) designing, constructing, maintaining and using of the energy-related and other structures for generation, transmission, and distribution of electrical energy, thermal energy, and gas or the reconstruction, modernization, maintenance, and usage thereof;
 - 9) use of the river banks and lake shores;
 - 10) carrying out state educational curricula ;
 - 11) organizing lottery games of chance and specific games of chance in casinos;
 - 12) construction, maintenance, and usage of sport and recreation facilities, sport grounds and spaces designated for sport, recreational and cultural activities;
 - 13) construction, maintenance, and usage of facilities, or reconstruction, modernization, maintenance and usage of the existing structures in the areas with natural healing features and other natural values.
- (2) In addition to the subject matter of concession referred to in paragraph 1 of this Article, the usage of other natural wealth, goods in general use and other state owned goods of the general interest may also be the subject matter of concession, in accordance with law, as well as the performance of other activities provided for under law as activities of the public interest.

Notification on Concession Subject Matters and Fields of Concessions **Article 7**

- (1) Concessions shall be awarded pursuant to an annual plan adopted by the Government or the Municipality, and published on the Web Site of the Government or of the Municipality.
- (2) The plan referred to in paragraph 1 of this Article shall be adopted for individual areas, upon a public debate that is conducted by the authority competent to deal with a corresponding area, by no later than the expiration of a current year for the next year.
- (3) The public debate referred to in paragraph 2 of this Article shall also be deemed to be a public debate held during the procedure of adopting a development strategy for the specific area.
- (4) The plan of awarding concessions shall stipulate the areas - localities, or the areas for which concession are to be awarded, the concession subject matter, guiding time-lines for publication of public notices for awarding concessions.

Term of Validity of the Concession

Article 8

- (1) A term for which a concession shall be awarded shall be set depending on the public interest, the subject matter of the concession, time needed for the return on investment and realization of an adequate profit from the concessionary activity.
- (2) The term referred to in paragraph 1 of this Article may not exceed 30 years in case the decision on awarding concession is adopted by the Government and the Municipality, nor it may exceed 60 years in case the decision on awarding concessions is adopted by the Parliament.
- (3) The duration of the concession period may be extended following the expiry of initially contracted period and thus for a maximum of a half of the already contracted period which is prescribed by the Concession Contract.

III INSTITUTIONAL STRUCTURE

Competence to Award Concessions

Article 9

- (1) The Government or the Parliament, pursuant to Article 8 paragraph 2 of this Law, shall adopt a decision to award a concession for the concession subject matter of which the ownership rights and authorisations are exercised by Montenegro.
- (2) The Municipality shall adopt a decision to award a concession for the concession subject matter of which the Municipality exercises the ownership rights and authorisations.
- (3) A decision to award a concession for the concession subject matter, which exceeds the value established under law, shall be adopted by the Parliament upon a proposal of the Government and after the procedure conducted in accordance with this Law.

- (4) The appraisal of the value of immovable that is the subject matter of the concession referred to in paragraph 3 of this Article that shall be conducted by the administrative authority competent for property-related matters.
- (5) For the concession referred to in paragraphs 1 and 3 of this Article, the procedure for awarding concession for the subject matters of which ownership rights and authorisations are exercised by the Government or by the Municipality, shall be conducted by the competent authority.
- (6) In the procedure for awarding concession, the competent authority shall draw up a concession act, prepare and publish a public notice, prepare tender documentation; compose a tender committee, and perform other duties, in accordance with this Law.

Establishing and Competency of the Concession Committee

Article 10

- (1) The Concession Committee of Montenegro (hereinafter referred to as: the Committee) shall be autonomous and independent in performing the duties set forth under this Law.
- (2) The Committee shall have a chairperson and eight members.
- (3) The Committee's chairperson and members shall be appointed by the Government and so as follows:
 - the chairperson and one member upon a proposal by the ministry competent for economic development;
 - two members upon a proposal of the Parliament from among the reputable expert;
 - one member upon a proposal by the ministry competent for finances;
 - one member upon a proposal by the ministry competent for transportation, maritime affairs and telecommunications;
 - one member upon a proposal by the ministry competent for agriculture, forestry and water management;
 - one member upon a proposal by a union of employers;
 - one member upon a proposal by the Union of Municipalities.
- (4) The Committee's chairperson and members may be only the citizens of Montenegro.
- (5) A person that has been convicted of a crime by a final and binding judgment against property, economy, constitutional order, and of abuse of office may not be appointed to the Committee.
- (6) Members of the Parliament, members of a municipal parliament; public administration authorities, organisations or institutes' heads; chief administrator or local self-government authorities' heads may not be appointed to the Committee either as the chairperson or as members.
- (7) The chairperson shall represent the Committee and chair the work of the Committee.

- (8) The chairperson and a member of the Committee shall be appointed for a five-year term of office and they may be appointed for one additional term-of office.
- (9) If the function of the chairperson or a member of the Committee expires prior to the expiration of the term of office, the Government shall appoint a chairperson or a member to the Committee for the period up to the expiration of such term of office in accordance with paragraph 3 of this Article.
- (10) The Committee may engage experts and professional institutions for certain areas, if the Committee deems that such professional assistance is required.
- (11) Professional and administrative duties for the needs of the Committee shall be performed the administration authority competent to deal with the property.

Competency of the Committee **Article 11**

- (1) The Committee shall:
 - 1) act upon appeals presented by the participants in the procedure for awarding concessions, with regard to the evaluation and the ranking list of tenderers, and it shall decide thereupon;
 - 2) keep the register of concession contracts;
 - 3) approve the carrying out of the procedure to extend the term of the concession award or to expand the location of concessionary activity, as well as approve the procedure for awarding concessions for the exploitation of accessory mineral resources within an approved exploitation field without public competition procedure referred to in Article 20 paragraph 2 items 1, 2 and 3 of this Law;
 - 4) adopt the rules of procedure;
 - 5) perform also other duties as set forth under this Law.
- (2) The Committee shall make decisions by a majority of votes of the total number of votes.
- (3) The Committee's decisions shall be final and no administrative dispute may be initiated against them.

Conflict of Interests **Article 12**

- (1) The Committee member must not have direct or indirect interests in the subject matter of the concession award, which could cause a conflict between his/her personal and business interests in awarding concession.
- (2) In case the chairperson or a member of the Committee is in a conflict of interests, he/she shall be under an obligation to inform the Government thereof, and the Government shall appoint a person to replace such chairperson or member of the Committee having the conflict of interest.

Termination of the Term of Office and Revocation from Duty

Article 13

The term of office of the chairperson or a member of the Committee shall terminate:

- upon a revocation proposed by the entity that proposed his/her appointment;
- upon a personal written request;
- if being convicted of crime by a final and binding judgement against property, economy, constitutional order and of abuse of office;
- if his/her business capacity has been permanently lost;
- if he/she performs the duties negligently and incompetently;
- due to an unexcused absence from three consecutive meetings of the Committee;
- if he/she was appointed to any of the duties referred to in Article 10 paragraph 6 of this Law.

Financing of the Committee

Article 14

The funds for the work of the Committee shall be allocated from the Budget of Montenegro.

Register of Concession Contracts

Article 15

- (1) Concession contracts shall be registered in the Register of Concession Contracts kept by the Committee.
- (2) All changes relating to the concluded concession contracts shall be entered in the Register of Concession Contracts, in a chronological order.
- (3) The register of Concession Contracts shall include the data on: the name of the Concessionaire; the name of the Grantor; the subject matter of concession; the date the concession contracts was concluded; and the term of validity of the concession.
- (4) Detailed contents and method of keeping the Register of Concession Contracts shall be established by the regulation of the ministry competent for economic development.
- (5) The Register of Concession Contracts shall be published on the Web Site of the Committee.

Annual Report on Operations

Article 16

- (1) No later than 31 March of a current year, the Committee shall table/submit to the Government an annual report on its operations in the previous year.
- (2) The Committee shall submit for consideration the report referred to in paragraph 1 of this Article to the Parliament and municipalities.

IV PROCEDURE FOR AWARDING CONCESSIONS

Initiative to Commence the Procedure

Article 17

- (1) The procedure for awarding concession shall be initiated by the competent authority upon a development of a concession act, in accordance with the plan referred to in Article 7 of this Law.
- (2) The procedure referred to in paragraph 1 of this Article may also be initiated upon an initiative presented by an interested party.

INITIATIVE OF THE COMPETENT AUTHORITY

Concession Act

Article 18

- (1) The competent authority shall submit the concession act referred to in Article 17 paragraph 1 of this Law to the Government, or to the competent authority of the Municipality, in accordance with law.
- (2) Along with the concession act, the following shall also be submitted:
 - analysis of justifiability of achieving the public interest by awarding a concession, containing the indicators that such concession is capable of providing the public interests and the analysis of the possible alternatives in delivering the services concerned;
 - indicators that a planned concession is capable of ensuring an appropriate value for money;
 - analysis of the assessments and balance of risks between the Grantor and the Concessionaire;
 - consideration of the need that the Grantor has to have a stake in the concession company concerned (type and proportion of such stake);
 - report from the public debate.
- (3) Prior to sending a concession act to be adopted, the competent authority shall organize and carry out public debate, within 15 to 30 days as of the day of submission of the public notice to such public debate.
- (4) The competent authority may engage professional legal entities or natural persons to deliver support in drafting or for drafting of the proposal of concession act and tender documentation.
- (5) The persons referred to in paragraph 4 of this Article may not be tenderers in any procedure for awarding concessions for which they have delivered support in development of the concession act or they have drafted the concession act.

- (6) The concession act shall be adopted by the Government, or by the competent authority of the Municipality.

Contents of the Concession Act

Article 19

- (1) According to the subject matter of the Concession, the concession act shall include the following:
- 1) description of a subject matter of concession; boundaries of the region, district, area and locality whereon the concessionary activity will be performed;
 - 2) basic parameters for evaluation of the cost-effectiveness of the investment;
 - 3) minimum or maximum term of validity of the concession;
 - 4) list of necessary technical documentation accompanied by the requirements for development thereof, permits, approvals and consents that should be acquired prior to the commencement of the concessionary activity, in accordance with law;
 - 5) excerpt from spatial planning documentation; ownership structure and the manner of solving ownership rights; as well as the data on infrastructure and other facilities that are situated within the area for performance of the concessionary activity;
 - 6) requirements the Concessionaire is obliged to meet regarding technical equipping, financial standing, and other references and evidences on the fulfilment of such requirements;
 - 7) fundamental elements of tender documentation (notice, documents related to the tender)
 - 8) draft concession contracts and other accessory contracts required for execution of the concession;
 - 9) criteria for the selection of the most economically advantageous tender;
 - 10) requirements and the method of performing the concessionary activity, and particularly the conditions, the manner and the quality and scope of delivery of services to the users;
 - 11) environmental protection measures and measures for the improvement of energy efficiency, in accordance with regulations;
 - 12) initial amount of a concession fee;
 - 13) the method of setting tariffs for the delivery of services;
 - 14) list of regulations that are applicable to the procedure for awarding concession and concessionary activity performance;
 - 15) other elements of importance for awarding concession.
- (2) If the subject matter of a concession is the exploitation of mineral resources, the concession act shall also contain the data on completed geological explorations and data concerning the established quantities and the quality of mineral resource.
- (3) If the subject matter of a concession is the reconstruction or modernization of the existing structures, the concession act shall also contain the estimates of investments amount to be determined against the value of such structure the reconstruction or modernization thereof is the subject matter of the concession, as well as the condition of the structure at the event of the turnover upon the expiry of the concession period.

Method for Awarding Concessions

Article 20

- (1) A concession shall be awarded based on a public notice, by:
- 1) Open procedure public competition (hereinafter referred to as: the open procedure),
 - 2) Two-stage procedure public competition (hereinafter referred to as: the two-stage procedure),
 - 3) Accelerated procedure public competition (hereinafter referred to as: the accelerated procedure).
- (2) Notwithstanding the provision of paragraph 1 of this Article, the public competition procedure based on a public notice may be excluded in the cases of:
- 1) an extension of the period for awarding concession referred to in paragraph 3 of Article 8 of this Law;
 - 2) an expansion of the area designated for concessionary activity, that, due to technical and technological requirements, may not be established as a separate exploitation field for carrying out concessionary activity by another concessionaire;
 - 3) use of other mineral resources as the accessory ones within the approved exploitation field, provided that the concession period may not be longer than the period stipulated under the concession contract for the exploitation of the primary mineral resource within such exploitation field;
 - 4) when public competition would endanger national defence and security;
 - 5) tender that includes a project of technical and technological design and other elements based on which it is possible to consider the public interest and cost-effectiveness of the development of infrastructure and other needs having strategic importance for Montenegro, in case of the subject matters of the concession referred to in Article 6, paragraph 1, items 7 and 8 of this Law which are not established under the plan referred to in Article 7 of this Law, and awarding of concession in this manner would accelerate the execution of the project;
 - 6) carrying out of the concession which is performed pursuant to the international agreement or contract entered between Montenegro and one or more countries or international organisations, whereby joint carrying out of the concession by the parties to the agreement is envisaged.
- (3) Extension of the period, expansion of area designated for concessionary activity, or using other mineral resources as the accessory ones, within the approved exploitation field, referred to in paragraph 2 items 1, 2 and 3 of this Article, shall be carried out upon entering into an annex to the contract, after obtaining prior consent of the Committee and a decision of the Government, or of the competent authority of the Municipality.
- (4) Exclusion of a public competition based on a public notice referred to in item 3 in paragraph 2 of this Article shall be done upon consent of the Government.
- (5) In a case referred to in paragraph 2 item 5 of this Article, the tender of any interested party must also contain the elements referred to in Article 19, paragraph 1, items 1, 2, 3, 5, 8, 10, 11, 12, and 13 of this Law.

- (6) The decision referred to in paragraph 2 items 5 and 6 of this Article shall be adopted by the Government, with a consent of the Parliament.
- (7) If the Parliament does not give its consent to the decision referred to in paragraph 6 of this Article, the party submitting the request shall not be entitled to reimbursement of expenses incurred during the preparation of the tender.

OPEN PROCEDURE

Public Notice Article 21

- (1) The competent authority shall publish a public notice upon the adoption of the concession act.
- (2) The Notice shall be published in the *Official Gazette of Montenegro*, at least one daily printed media that is circulated within the entire territory of Montenegro and on the Website of the competent authority; and in case a subject matter of concession is of strategic importance for Montenegro, for the subject matter of concession referred to in Article 6, paragraph 1, items 7 and 8 of this Law it shall also be published in one representative international economic printed media.
- (3) The public notice shall include, depending on the subject matter of concession, the following:
 - 1) description of the subject matter of the concession; boundaries of the region, district, area and locality whereon the subject matter of the concession is located;
 - 2) fundamental elements of the concession act;
 - 3) address and time-limit for the submission of tenders to a public notice;
 - 4) criteria for participation in the public notice and possibility to submit a joint tender;
 - 5) rules according to which a public notice is carried out;
 - 6) method of submitting tenders;
 - 7) possible time for visit to the locality whereon a concessionary activity will be performed;
 - 8) date, time and place for opening of the received tenders to a public notice;
 - 9) the deadline within which a tender to a public notice may be withdrawn;
 - 10) defining the type of the tender (technical and financial, or only financial tenders);
 - 11) data on the amount and the format of deposit and guarantee and the period for which are requested;
 - 12) requirements, deadline and method of returning deposit and guarantee ;
 - 13) the amount and the type of the stake of the Grantor and share of the Concessionaire in the ownership structure of a concession company;
 - 14) name of a person in charge of giving relevant information during the procedure of public notice;
 - 15) time and place where concession act and tender documentation can be obtained; as well as the price of tender documentation in the amount of costs of its development.
- (4) A public notice may also include a financial support offer to the Concessionaire for performing non-profitable and insufficiently profitable activities of the public interests

(payments for activities of the public interests; giving guarantees; financial support; donations, and alike).

- (5) The time-limit for submitting tenders referred to in paragraph 3 item 3 of this Article shall be defined according to the time required to prepare tender and it shall run as of the day of publication of the public notice in the Official Gazette of Montenegro and may not be shorter than 30 days.
- (6) Expenses of publishing a public notice shall be borne by the authority publishing the notice.

Changes Article 22

- (1) Upon its publishing, a public notice may be changed by the competent authority, except for the elements stipulated under a concession act.
- (2) A change of the public notice must be published in the manner in which the original text of such public notice was published; subject that the time-limit for submitting tenders must be extended for the time that has expired since the original public notice was published.

Eligibility to Participate Article 23

- (1) The following shall be considered as ineligible to participate in a public competition for concession award:
 - 1) business organizations, other legal entities and entrepreneurs against which bankruptcy or liquidation procedure was initiated, except for the reorganization procedure in line with the law that governs insolvency of business organizations;
 - 2) business organizations, other legal entities, entrepreneurs, and natural persons that were convicted by a final and binding judgment for a crime in performance of the professional practice;
 - 3) business organizations, other legal entities, entrepreneurs, and natural persons that have unsettled tax liabilities in a period of at least five years prior to publishing of public notice.
- (2) Eligibility to participate in a public notice for awarding concessions shall be evidenced by tenderers upon submission of evidence issued by competent authorities, evidence not being issued more than 90 days prior to the day of publishing of a public notice.

Submission of Tenders Article 24

A business organization, other person, entrepreneur or natural person may submit only one tender, independently, under a consortium or other form of business association.

Security

Article 25

- (1) A tenderer shall be obliged to submit, along with the tender, evidence on money deposit payment or secured bank guarantee, in the amount and for the period that are defined under public notice.
- (2) The amount of the deposit and the bank guarantee referred to in paragraph 1 of this Article, and the period for which collateral shall be given, shall be set commensurate with the value of the subject matter of concession.

Tender Committee

Article 26

- (1) The procedure of public competition, based on a public notice, shall be conducted by an *ad hoc* tender committee composed of an odd number of members that are appointed by the competent authority.
- (2) In the procedure of public competition, such Tender Committee shall carry out the following procedures: opening of tenders; evaluation and verification of eligibility of the tenderers to participate in public notice; verification of the authenticity of tenders as regards the requirements prescribed under public notice and tender documentation; evaluation of tenders and composing a ranking list of tenderers.
- (3) The Tender Committee shall consist of a chairperson and a minimum of four members that are appointed from among the professionals in the area dealing with the subject matter of the concession (technical, law, finances, and other professions).
- (4) One member of the Committee, for concessions falling within the competency of the Government, shall be appointed upon a proposal by a municipality within the territory of which the concession is executed.
- (5) If the concession referred to in paragraph 4 of this Article is executed within the territory of two or more municipalities, one member to the Tender Committee shall be proposed by the Union of Municipalities, in cooperation with the municipalities within the territories of which the concession is executed.
- (6) The costs of the Tender Committee work shall be borne by the authority that has appointed the Tender Committee.
- (7) A member of the Tender Committee must not have any direct or indirect interests that, during the work of the Tender Committee, could cause the conflict of his/her personal or business interests with his/her tasks in the Tender Committee.
- (8) The chairperson and a member of the Tender Committee shall be obliged to inform the competent authority of a conflict of interests.

- (9) In the case that a member of the Tender Committee has a conflict of interests, the competent authority shall appoint another member.
- (10) A detailed method for conducting public competition procedure referred to in paragraph 2 of this Article shall be governed by the regulation of the Government.

The Tender Committee Work

Article 27

- (1) Only timely submitted tenders shall be taken into consideration in a public competition procedure, accompanied by the required documentation. The Tender Committee shall compile a ranking list of tenderers, pursuant to the criteria prescribed under public notice, tender documentation and submitted tenders.
- (2) Untimely tender, as well as tender not accompanied by the documentation required under public notice and by the tender documentation referred to in paragraph 1 of this Article, shall not be taken into consideration in public competition and shall be returned unopened to the tenderer.
- (3) The Tender Committee shall take the minutes of the course of public competition, and the Tender Committee's members and the authorized representatives of tenderers shall sign it.
- (4) Upon completion of a public competition, the Tender Committee shall approach to the evaluation of tenders, based on the criteria prescribed under public notice and tender documentation, and it shall compose a ranking list of bidders.
- (5) The Tender Committee shall make decisions by the majority of votes of the total number of members.

Verification of tenders

Article 28

Tenders shall be verified prior to evaluation thereof, for the purpose of establishing possible shortcomings and discrepancies from the requirements prescribed under public notice and tender documentation.

Tender Evaluation Criteria

Article 29

- (1) The criteria based on which evaluation of tenders shall be done, depending on the subject matter of concession, shall be as follows:
- 1) term of the requested concession;
 - 2) offered amount of the concession fee;
 - 3) offered price or tariff for delivery of services;
 - 4) references of the tenderer (technical and/or financial standing, track record in concession activity performance and alike);

- 5) quality of services;
 - 6) the level of achievement of the public interest;
 - 7) the extent to which natural wealth will be used;
 - 8) effects on employment, infrastructure and economic development;
 - 9) programme and extent of environmental protection, and measures for improving energy efficiency;
 - 10) the scope and the amount of the expected financial assistance and support by the Grantor;
 - 11) other criteria established by the Grantor.
- (2) The value of points shall be set under the tender documentation per each selected criterion for evaluation, subject that the sum of all points shall be 100.

Ranking List of Tenderers **Article 30**

- (1) The Tender Committee shall evaluate tenders by attributing certain number of points based on each criterion prescribed under tender documentation, and it shall produce a ranking list of tenderers based on the completed evaluation.
- (2) The Tender Committee shall be obliged to deliver to the competent authority a ranking list of tenderers within 30 days as of the day of opening of tenders, the report on the conducted procedure with the explanatory notes for the ranking list of tenderers, the minutes on the course of the procedure that shall mandatory include data on the conformity with the requirements prescribed to be met by a concessionaire and the fundamental elements from tenders as per the structure of criteria based on which the evaluation of tenders was performed.
- (3) Public notice may set a longer time-limit than the time-limit referred to in paragraph 2 of this Article.
- (4) The competent authority, upon a proposal by the Tender Committee, may extend the time-limit referred to in paragraphs 2 and 3 of this Article.

Right of Access and Appeal **Article 31**

- (1) A ranking list of tenderers shall be posted on the bulletin board or on the Web Site of the competent authority.
- (2) Bidders shall be entitled to examine the documentation referred to in Article 30 paragraph 2 of this Law, within eight days as of the day of the publishing of the ranking list of tenderers on the Web Site of the competent authority, upon a written request.
- (3) Tenderer shall be entitled to lodge an appeal about the ranking list of tenderers within 15 days as of the day of the publishing of the ranking list of tenderers on the Web Site of the competent authority

- (4) The Committee shall act upon the appeal of the tenderer within 30 days as of the day of the expiration of the deadline referred to in paragraph 3 of this Article.
- (5) Tenderer shall lodge the appeal referred to in paragraph 2 of this Article in two identical copies, of which the Committee without any delay shall deliver one copy to the competent authority.

Acting upon Appeals **Article 32**

- (1) Upon an objection of the Tenderer, the Commission shall :
 - 1) examine whether the Tender Committee performed properly the evaluation of tenders and ranking of tenderers;
 - 2) examine whether the Tender Committee applied properly the criteria for evaluation of tenders and ranking of tenderers.
- (2) If the Committee finds a violation of the procedure or that criteria were inappropriately applied, the ranking list of tenderers shall be returned to the Tender Committee for the elimination of the established irregularities.

Proposal to Award Concession **Article 33**

- (1) The competent authority shall deliver to the grantor a proposal to award concession, with explanatory note, the ranking list of tenderers, the report on the conducted evaluation procedure together with the explanatory note for the ranking list of tenderers, the minutes of the Tender Committee on the course of the procedure, a proposal of a concession contract, a possible appeals by the tenderers if any, and the decision taken by the Committee upon such appeals.
- (2) The Competent authority shall be also obliged to deliver, upon a request by the Grantor, other documentation.

Decision on Determining the Concessionaire **Article 34**

- (1) A grantor shall decide on awarding concession within 30 days as of the day of the receipt of the proposal referred to in Article 33 paragraph 1 of this Law if no appeals were presented about the ranking list of tenderers or about the procedure of evaluation.
- (2) If the complexity of a concession requires so, the Grantor may extend the time-limit referred to in paragraph 1 of this Article for a maximum of 30 days, or 90 days if an administrative dispute has been initiated, of which it shall inform the tenderers.
- (3) If a grantor has abandoned concession award, the grantor shall be obliged to compensate the first ranked tenderer the actual expenses of the participation in the public notice, unless otherwise prescribed under public notice.

Withdrawal from Conclusion of the Concession Contract

Article 35

If the first ranked tenderer revokes the conclusion of the concession contract or fails to conclude the concession contract within the time-limit stipulated under the decision on awarding concession, the Grantor may call the tenderers, as per the order on the ranking list, to conclude a contract or may annul the public notice.

Informing of the Result of Public Notice

Article 36

- (1) Within five days as of the day of adoption of the decision on awarding concession, the competent authority shall inform the tenderers in writing of the results of public notice.
- (2) A decision on concession award or a decision on public notice annulment shall be published in the Official Gazette of Montenegro and on the Web Site of the competent authority.

Procedure when there is one Application upon a Public Notice

Article 37

If one tenderer submits the tender upon public notice, and the Tender Committee verifies that such tender meets the requirements and criteria of the public notice, the competent authority may annul the public notice or continue the procedure for awarding concession.

TWO-STAGE PROCEDURE

Implementation of the procedure

Article 38

- (1) The two-stage procedure shall be carried out in the following cases:
 - For granting a concession for projects which are complex from technical, technical and technological, legal, financial and other aspect, or
 - When a large number of tenderers is expected.
- (2) The two-stage procedure shall include:
 - public announcement for pre-qualification;
 - pre-qualification procedure, when the Tender Committee evaluates applications for pre-qualification and accepts or rejects applications based on pre-established pre-qualification criteria;
 - submitting concession act to qualified tenderers, purchase of tender documentation and submitting tenders by qualified tenderers within given time-limit;
 - evaluation and ranking of tenders received from qualified tenderers;

- the proposal for awarding concession with explanatory note and selection of a tenderer as a concessionaire.
- (3) The competent authority shall set, in the notice for a two-stage procedure public competition, pre-qualification criteria which must be met by tenderers in order to qualify for the competition procedure.
 - (4) The pre-qualification criteria must be set in an objective, non-discriminatory and transparent manner.
 - (5) The pre-qualification criteria are determined in line with the subject of the concession and shall contain, including but not limited to:
 - capacity to execute the concession (technical and/or financial requirements);
 - professional references, or experience in carrying out the concessionary activity.
 - (6) Public notice shall determine documentation which is necessary for pre-qualification, which proves that pre-qualification criteria are met.
 - (7) The time-limit for submitting documents for pre-qualification cannot be shorter than 20 days, as of the day of publishing of the public notice.
 - (8) Provisions for an open procedure referred to in Articles 21 to 37 of this Law, unless otherwise determined by this Article, shall apply accordingly in the procedure referred to in paragraph 2 of this Article.
 - (9) If only one bidder applies in prequalification who meets the pre-qualification criteria, the competent authority may decide to continue or annul the concession awarding procedure.
 - (10) Details for implementation of the two-stage procedure, documentation that are to be enclosed with the tender, the manner in which tender opening and tender evaluation procedure is carried out in prequalification procedure shall be determined by a regulation of the Government.

Competitive Dialogue

Article 39

- (1) Competitive dialogue for awarding concession shall be carried out if a competent authority does not have a solution for realisation of technical, technical and technological, legal, financial or other aspects of a complex project, in order to determine the best technical, technical and technological, legal, financial or other solution for the realisation of the project.
- (2) Criteria for choosing a tenderer for a competitive dialogue and the subject of concession with necessary elements for its realization for which it is necessary to choose an appropriate solution shall be determined in a public notice for pre-qualification.

- (3) After carrying out the pre-qualification procedure referred to in Article 38 of this Law, qualified tenderers shall be invited to initiate a competitive dialogue during which an appropriate solution for realisation of a concession will be defined.
- (4) Competent authority shall be obliged to organise the competitive dialogue in an objective and non-discriminatory manner and must not reveal to other tenderers, without the approval of the tenderer, offered solutions and information obtained during such dialogue.
- (5) The competent authority shall carry out competitive dialogue until a solution which matches the needs expressed in a public notice is determined. The competent authority may determine in the public notice for pre-qualification that the procedure for the selection of an appropriate solution will take place in several stages, throughout which the number of tenderers can be reduced.
- (6) By determining an appropriate solution referred to in paragraph 5 of this Article, the competent authority shall inform tenderers that the competitive dialogue is concluded and shall proceed with development of a concession act in line with this Law.
- (7) Competent authority shall submit to qualified tenderers, with whom the competitive dialogue was completed, the concession act referred to in paragraph 6 of this Article and purchased tender documentation so that they can submit their final tenders for the concessions, in line with this Law.

ACCELERATED PROCEDURE
Concession Awarding Procedure
Article 40

- (1) Concessions with the term of validity of the award of up to three years shall be awarded in the procedure which is determined in Articles 17 – 37 and Article 40 of this Law, whereas in the procedure for awarding concession:
 - the public debate referred to in Article 7 of this Law does not need to take place,
 - a concession act is prepared which, depending on the subject of concession, includes items 1, 3, 8, 9, 10, 11, 12, and 13 of paragraph 1 of Article 19 of this Law, as well as other elements as determined by the competent authority,
 - the time-limit for submission of tenders is determined, which cannot be shorter than 15 days as of the day of publication of a public notice in the Official Gazette of Montenegro.
 - ranking list of tenderers which is determined by the tender committee referred to in Article 26 of this Law is submitted to the competent authority by no later than 20 days as of the day of opening of tenders.
- (2) If the Government, or the municipality, at the proposal of the competent authority, determines a model of the draft concession contract for certain subjects of concession, initial amounts of concession fee and other elements of importance for awarding concession referred to in paragraph 1, indent 2 of this Article, the competent authority shall prepare a concession act in line with the elements determined by the Government or the Municipality.

- (3) In the case referred to in paragraph 2 of this Article, the Government or the municipality does not adopt a concession act in line with Article 18 of this Law, for each individual case of concession award referred to in paragraph 1 of this Article, but it shall be regarded as adopted.

THE INITIATIVE OF AN INTERESTED PARTY
Initiating a Procedure
Article 41

- (1) An interested party may submit an initiative to the competent authority to commence the procedure of awarding concession which is not included in the plan referred to in Article 7 paragraph 1 of this Law.
- (2) The initiative shall be submitted to the competent authority and shall include data and information necessary for the preparation of a concession act referred to in Article 19 of this Law.
- (3) If the competent authority estimates that the initiative is acceptable it shall determine the deadline for the party submitting the initiative to deposit the estimated amount for the development of the concession act, including the development of tender documentation and draft concession contract, costs for the work of tender committee and the costs for carrying out a public debate.
- (4) Competent authority shall be obliged to, within 15 days as of the day of depositing funds, commence the preparation of documents referred to in paragraph 3 of this Article.
- (5) If, in the implemented procedure, a concession is awarded to a tenderer who is not a party that submitted the initiative for awarding concession, the competent authority shall, without a delay, return to the party who submitted the initiative deposited money, decreased by the amount for the purchase of tender documents, while the costs for development of the concession act shall be collected from the concessionaire.

V PROTECTION OF THE RIGHTS OF PARTICIPANTS IN PUBLIC NOTICE

Rights of the Participants in the Public Notice Procedure
Article 42

- (1) A participant at a public notice, his representative or proxy shall have the right to attend the opening of tenders.
- (2) Participant in a public notice shall have the right, with the request in writing, to withdraw a tender at the latest by the expiration of the time-limit determined by the public notice. The tender shall be regarded as withdrawn upon the receipt of the request in writing for tender withdrawal, which should be without delay returned unopened to the tenderer.

- (3) Tenderer shall have the right to objection to the Committee in relation to evaluation of tenders and ranking list of tenderers.
- (4) Against the Decision on awarding concession, an administrative dispute can be initiated.
- (5) Tenderer shall have the right to reimbursement of the deposit or bank guarantee in the manner and within the time-limit as determined in a public notice.
- (6) No interest shall be calculated for the deposit reimbursed within the time-limit determined in the public notice.
- (7) Tenderer who withdraws from the conclusion of the concession contract shall have no right to reimbursement of the deposit or bank guarantee referred to in paragraph 5 of this Article.

VI CONCESSION CONTRACT

Conclusion and the Contents of the Concession Contract

Article 43

- (1) A Concession Contract shall be concluded within 15 days as of the day of the adoption of the decision, or within the time-limit as determined in a decision on awarding concession, in line with tender documentation, submitted tender and decision on awarding concession.
- (2) The concession contract shall contain, including but not limited to:
 - 1) parties to the contract;
 - 2) rights and obligations of parties to the contract;
 - 3) subject of the concession;
 - 4) requirements and manner of use of subject of the concession;
 - 5) term of use of subject of the concession;
 - 6) amount, deadlines, requirements and the manner of payment of a concession fee;
 - 7) commencement of the concession activity;
 - 8) manner and deadlines for securing funds for financing concession activity (financial plan) and investment schedule;
 - 9) duration of preparatory activities;
 - 10) products and services standards, technology transfer;
 - 11) Funds and property given to use by the Grantor;
 - 12) amount and the manner of providing a guarantees for execution of the concession contract;
 - 13) actions of the concessionaire with regard to objects found during exploitation of subject of the concession, and which represent a historical, cultural, or natural value;
 - 14) The obligation of revitalization of natural wealth, or rehabilitation-reclamation of the areas degraded by the performance of the concession activity;
 - 15) Conditions for amendments or termination of the contract in the case of changed circumstance and force majeure;
 - 16) Description of events which are regarded as changed circumstances and force majeure;

- 17) Conditions for cessation of the concession contract, sanctions and fees in case that parties to the contract fail to meet their obligations;
 - 18) Requirements for carrying out concession activity, criteria and methods for determining prices or tariffs for products and services for end users;
 - 19) rights and obligations in relation to undertaking measures for providing overall safety, health protection and environmental protection, improvement of the energy efficiency as well as responsibility for compensation of damage caused by jeopardising overall safety and environmental protection;
 - 20) provisions on time and manner of transfer of the immovables, structures, devices or plants to the Grantor and the condition in which they have to be transferred;
 - 21) the manner of disputes resolution and exercising applicable law;
 - 22) other elements important for the subject of the concession.
- (3) Prior to concluding the contract on awarding concession, the competent authority shall determine if the tenderer with whom contract shall be concluded still meets the requirements referred to in Article 23 paragraph 1 of this Law.
 - (4) The contract shall also determine the manner of mutual notification on execution of contractual obligations, manner of control of such report and exercise of rights and obligations of parties to the contract.
 - (5) The contract shall be signed by a person who is designated by the grantor as part of the decision on awarding concession and an authorised person of the concessionaire.

Expropriation Article 44

- (1) If expropriation of immovables must be executed in relation to the use of concession or a development of buildable land, the costs, manner and deadline for payment of fee for expropriation of immovables or development of buildable land shall be determined and carried out in accordance with law.
- (2) If the owner of the land referred to in paragraph 1 of this Article is the Grantor, the expropriation shall not be carried out but it shall be regarded as that a concessionaire by getting the concession obtained the consent for its use.

Registration of Notes to the Concession Contract for Immovables Article 45

An encumbrance note shall be registered for the immovable which is the subject of the concession, based on concluded concession contract on, in line with law which governs the registration of the rights on the immovables.

Notification Obligation Article 46

Competent authority shall submit, within 15 days as of the day of concluding a contract, a copy of concluded concession contract to the Committee, administration authority competent for collection of public revenues and administration authority competent for property affairs, for the purpose of registration of an encumbrance note in the cadastre of immovables.

Increase in Value of the Subject of Concession **Article 47**

Unless otherwise determined by the concession contract, any investment of the Concessionaire in devices and plants owned by the state, which are in the function of executing concession activity, shall represent the state ownership.

Discoveries **Article 48**

- (1) Any discovery on the location where the concession activity is performed having historical, cultural or natural value shall be regarded as state property and a concessionaire shall, without delay, inform of the discovery the state authority competent for the protection of historical, cultural and natural values. If the concession activity can jeopardise discovered objects with historical, cultural or natural value, the Concessionaire shall forthwith stop or limit concession activity and without delay inform of that the authority competent for protection of historical, cultural and natural values.
- (2) The competent authority referred to in paragraph 1 of this Article shall forthwith, and no later than 10 days from the day of the receipt of the notification, give instructions to the concessionaire about actions in relation to the discovery referred to in paragraph 1 of this Article, or on the need to stop or limit execution of the concession activity on the location on which objects referred to in paragraph 1 of this Article were found.
- (3) For the period of interruption of concession activities, the time-limits which are determined in the concession contract shall stand still.

Monitoring the Execution of Contractual Obligations **Article 49**

- (1) Competent authority shall monitor and control the execution of contractual obligations from the concession contract.
- (2) The competent authority can engage experts or professional institutions for monitoring the execution of contractual obligations by the Concessionaire.
- (3) Competent authority shall calculate the concession fee.
- (4) Authorities competent for the collection of public revenues shall collect the concession fee.

Concessionaire's Rights

Article 50

- (1) Pursuant to concession contract, a concessionaire shall have the right to carry out a concession activity.
- (2) Concessionaire has the right to use resources and property of the Grantor in line with concession contract.
- (3) Concessionaire shall also realize other rights as determined by this Law and the concession contract.

Concessionaire's obligations

Article 51

- (1) A concessionaire shall meet proscribed requirements for carrying out concession activity.
- (2) Concessionaire shall, within 60 days as of the day of concluding of the concession contract, alone or with another legal entity or natural person or with the grantor, establish and register a business organisation or other legal entity, with registered office in Montenegro, which will carry out the concession activity or extend the registration for carrying out the concession activity.
- (3) The Concessionaire may change the registered office or the status of the business organisation or legal entity referred to in paragraph 2 of this Article with prior approval of the Grantor.

Assigning of the Contract

Article 52

- (1) A concession contract can be assigned to another concessionaire with a prior consent of the grantor; provided that a new concessionaire meets at least the same requirements as the concessionaire.
- (2) Assigning of the concession without the consent of the grantor shall be null and void.

Cessation of the Concession Contract

Article 53

- (1) A concessionary relation shall cease:
 - 1) by expiration of the term for which concession contract was concluded;
 - 2) by revoking concession;
 - 3) by cancellation of the concession contract;
 - 4) based on an agreement between the grantor and the concessionaire.
- (2) Concession shall be revoked if:

- 1) a concessionaire does not carry out a concession activity in line with the schedule and in the scope as determined by a concession contract, except in the case of unforeseen circumstances or force majeure;
 - 2) a concessionaire does not carry out preparatory activities within contracted term or does not start the concession activity in contracted term;
 - 3) a concessionaire does not pay a concession fee;
 - 4) bankruptcy or liquidation procedure is initiated in a concessionaire, except in the case of a reorganization procedure under law which governs insolvency of business organisations;
 - 5) concession is awarded based on false data important for decision making on awarding concession;
 - 6) execution of concession activity endangers the environment and people's health or area and structures protected by law, which could not have been foreseen at the time of awarding the concession, and measures prescribed by special regulations are not sufficient to prevent that;
 - 7) a concessionaire assigns a concession without a consent of grantor.
- (3) Prior to initiating a procedure for revoking a concession, in cases referred to in paragraph 2 items 1, 2 and 3 of this Article, the competent authority shall warn a concessionaire in writing and determine an appropriate deadline to execute contractual obligation.
- (4) In the case of revoking concession referred to in paragraph 2 of this Article, a concessionaire shall not have the right of damage compensation.

Transfer of the Structure Article 54

- (1) Upon termination of a concessionary relation for concessions referred to in Article 4 paragraph 1, item 2 of this Law, a concessionaire shall transfer to the grantor the structures, devices and plants which were built and serve for carrying out the concession activity, after completed restoration, in good functioning state and without encumbrances, in line with the concession contract.
- (2) After termination of a concession contract, the concessionaire shall first offer to the Grantor assets intended for sale which were in the function of concession activity.
- (3) If the grantor fails to respond to the offer within 30 days as of the receipt of the offer, the concessionaire can sell such assets to a third party under conditions which are not more favourable than those offered to the grantor.

Rehabilitation and Reclamation of the Area Article 55

A concessionaire shall carry out rehabilitation or reclamation of the areas which were degraded by the execution of the concession activity, within deadlines and in scope as determined in the concession contract.

Exemption Article 56

Concession cannot be the subject of bankruptcy or liquidation procedure.

Stay of Rights and Obligations from the Concession Contract Article 57

In the case of force majeure or extraordinary event which prevents the execution of the concession activity, which could not have been foreseen at the time the contract was concluded, rights and obligations from the concession contract shall temporarily stay until the force majeure or extraordinary event ceases. Grantor shall, based on the request of the Concessionaire in writing, make the decision on stay of rights and obligations from the concession contract.

VII CONCESSION FEE

Payment of Concession Fee Article 58

- (1) Concession contract may determine payment of a concession fee, which is paid for granted concession in line with regulations and concession contract.
- (2) Concession fee for concessions awarded by the Government shall be the revenue of the Budget of Montenegro.

Allocation a portion of Concession Fee Article 59

A portion of concession fee for concessions awarded by the Government shall be allocated to the municipality at whose territory the subject of the concession is located, in line with the law which governs the manner of financing of local self-government units.

Exemption from Payment of the Concession Fee Article 60

- (1) A concessionaire can be, pursuant to the contract, partially or completely exempted from the payment of concession fee in the cases of unforeseen circumstances or force majeure, while such unforeseen circumstance or force majeure lasts.
- (2) The Grantor shall adopt the decision referred to in paragraph 1 of this Article, which is based on a written request with explanatory note of a concessioner.

Criteria for Determining Minimum Concession Fee

Article 61

- (1) Minimum concession fee shall be determined based on:
- 1) type, category, quantity, quality and market price of a resource which is the subject of a concession contract;
 - 2) type of activity which is the subject of a concession contract and market conditions for its performance;
 - 3) term of validity of the concession;
 - 4) time for return on investment;
 - 5) expected gain;
 - 6) other criteria pursuant to law and the subject of concession.
- (2) Criteria referred to in paragraph 1 item 1 of this Article shall be regulated in details by the regulation of the Government.

VIII TRANSITIONAL AND FINAL PROVISIONS

Transitional provisions

Article 62

Secondary regulations for the implementation of this Law will be adopted within three months as of the day of its entry into force.

Article 63

- (1) The Government shall appoint the Concessions Committee within 60 days as of the day this Law enter into force.
- (2) Until the appointment of the Committee referred to paragraph 1 of this Article, its tasks will be performed by the Commission for Concessions and BOT Arrangements, which is set up by the Decision on founding a Commission for Concessions and BOT Arrangements (Official Gazette of the Republic of Montenegro, number 48/03).

Article 64

Registry of concession contracts referred to in Article 15 of this Law shall be established within 90 days as of the day of adoption of the secondary regulation on keeping of the registry.

Article 65

Procedures for awarding concession which were initiated prior to the entry into force of this Law shall be completed in accordance with this Law.

Article 66

- (1) Competent authorities shall submit to the Committee valid concession contracts within 45 days as of the setting up the Registry for Concession Contracts.
- (2) Concession contracts, which were concluded prior to the entry into force of this Law, will remain valid.

Final provisions

Article 67

On the day of entry into force of this Law, provisions of chapters IV, VII, VIII, IX and Articles 141, 142 and 143 of the Law on the Participation of Private Sector in Delivery of Public Services (Official Gazette of the Republic of Montenegro, number 30/02), as well as provisions of other chapters which refer to concessions and BOT arrangements shall cease to have effect, and provisions of other laws which regulate the procedure of awarding concession shall not apply if they are contrary to this Law.

Article 68

Until the adoption of secondary regulations pursuant to authorisations contained in this Law, the secondary regulations which were adopted based on the Law on the Participation of Private Sector in Delivery of Public Services (Official Gazette of the Republic of Montenegro, number 30/02) shall apply if they are not contrary to this Law.

Article 69

This Law shall enter into force on the eight day of its publication in the Official Gazette of Montenegro.