

Pursuant to Article 19a, paragraph 3 of the Law on Regional Development (*Official Gazette of Montenegro*, no. 20/11, 26/11 and 20/15), at its session held on 28 December 2015, the Government of Montenegro issued the

## **DECREE ON DIRECT INVESTMENT INCENTIVES**

(published in *Official Gazette of Montenegro*, no. 80, dated 31 December 2015)

### **Subject** Article 1

This Decree shall govern the conditions for and method of advancing development by attracting direct investment in the manufacturing or services sectors, criteria for the award of financial incentives for encouraging direct investment (hereinafter: **Investment Incentives**) and the schedule of disbursement of such Incentives.

### **Direct investment** Article 2

Direct investment, in the meaning of this Decree, shall be an investment in tangible and intangible assets of newly established business entities, expansion of the capacity of existing business entities or diversification of their output to new products and manufacturing processes.

Acquisition of a share or stocks in a business entity shall not be considered as direct investment in the meaning of this Decree.

### **Meaning of terms** Article 3

The terms used in this Decree shall have the following meanings:

- 1) **Infrastructure** means public infrastructure necessary for the implementation of an investment project, which may be accessed by unlimited number of users and the construction and/or reconstruction of which may be reimbursed under this Decree, on the basis of the infrastructure project;
- 2) **Investment Project** means a project, on the basis of which direct investment is made;
- 3) **Investor** means a domestic or foreign legal entity (hereinafter: **Business Entity**), which submits an investment project and participates in the procedure of awarding direct Investment Incentives;
- 4) **Capital Investments** mean investments of at least 10 million euros that provide job creation for at least 50 new employees within the time specified in the Agreement on the use of financial Incentives for encouraging direct investment (hereinafter: **Direct Investment Incentive Agreement**);
- 5) **Incentive Beneficiary** means a business entity, which is an investor or directly dependent on the investor, i.e. majority owned by the investor, and which is awarded the Investment Incentives in accordance with this Decree;
- 6) **Investment Project Implementation Period** means the project implementation period defined by the Direct Investment Incentive Agreement;
- 7) **Small Business Entity** means a company, which has less than 50 employees

and annual turnover or total annual balance sheet not exceeding 10 million euros, in accordance with the regulation governing the criteria, conditions and method of awarding state aid;

- 8) **Medium Business Entity** means a company, which has from 50 to 250 employees and annual turnover not exceeding 50 million euros or total annual balance sheet not exceeding 43 million euros, in accordance with the regulation governing the criteria, conditions and method of awarding state aid;
- 9) **Large Business Entity** means a company, which has more than 250 employees and total annual balance sheet exceeding 43 million euros, in accordance with the regulation governing the criteria, conditions and method of awarding state aid.

### **Usage of gender-sensitive language**

#### Article 4

The terms that are used in this Decree for natural persons of masculine gender shall include the same terms of feminine gender.

### **Sources and purpose of Investment Incentives**

#### Article 5

The Investment Incentives shall be provided from the Budget of Montenegro.

The Investment Incentives may be used for financing the Investment Projects that provide job creation and contribute to the economic and regional development of Montenegro.

The Investment Incentives may not be used for financing investment projects in the sectors of: primary agricultural production; synthetic fibre production; transport including the transport of passengers by air, sea, road or rail and by inland waterways or commercial transportation of cargo services; games of chance; trade; primary production of coal and steel; production of electricity; oil and gas; tobacco and tobacco products; weapons and ammunition; production of genetically modified organisms and hazardous waste.

### **Requirements for the award of Investment Incentives**

#### Article 6

Investment incentives may be awarded to the Business Entity which:

- 1) is registered in the Central Registry of Business Entities (hereinafter: **CRBE**);
- 2) has submitted an investment project that is eligible under this Decree;
- 3) is not under bankruptcy or liquidation, except for reorganization in accordance with the law governing insolvency of business entities;
- 4) has not been convicted of a crime that is prosecuted *ex officio*;
- 5) has settled all liabilities for taxes and contributions up to and including the month preceding the month of Application;
- 6) has not reduced the number of employees in Montenegro by 10% and more in the last 12 months preceding the Application;
- 7) has not used any state aid for the same investment project that is the subject-matter of the Application;

- 8) has not been in distress under the state aid legislation and
- 9) is not under obligation to return illegally received state aid.

Notwithstanding paragraph 1, item 7 above, Investment Incentives may be awarded to a Business Entity that used state aid for the investment project for which the Application is submitted on several grounds, in an amount of maximum 50% of the Investment Project value for Large Business Entities, 60% for Medium Business Entities or 70% for Small Business Entities.

Evidence of compliance with the requirements referred to in paragraph 1, items 5, 6, 7, and 9 above shall be obtained *ex officio* by the authority in charge of development projects (hereinafter: **Competent Authority**) during the process of the award of Investment Incentives.

Evidence referred to in paragraph 1, item 8 above shall be provided by the Business Entity by means of signing a statement under a criminal and financial liability, to the effect that the Business Entity is not in distress under the state aid legislation.

The form of the statement referred to in paragraph 4 above shall be defined by the Competent Authority and published on their website.

If an investor intends to carry out an Investment Project via another business entity, the investor shall establish a company domiciled in Montenegro and majority owned by the investor, before submitting the Application for participation in the procedure of awarding the Investment Incentives (hereinafter: the **Application**), for the purpose of participating in such procedure.

In the case referred to in paragraph 6 above, evidence of compliance with the requirements referred to in this Article shall be supplied both for the investor and the newly established company domiciled in Montenegro.

### **Award of Investment Incentives**

#### Article 7

Investment Incentives may be awarded for Investments Projects with a minimum investment value of EUR 500,000 that will provide jobs for at least 20 new employees within a period of three years from the day of concluding the Direct Investment Incentives Agreement.

For investment in Investment Projects carried out in the territory of local self-government units in the northern and central regions, excluding the Capital City of Podgorica, Investment Incentives may be granted for Investment Projects with a minimum investment value of EUR 250,000 that will provide jobs for at least 10 new employees within a period of three years from the date of signing the Direct Investment Incentive Agreement.

The Investment Project Implementation Period and the period for reaching the employment referred to in paragraphs 1 and 2 above may be extended, if the Incentive Beneficiary was unable to complete the Investment Project within the time specified in the Direct Investment Incentive Agreement for reasons that could not have been

foreseen at the time of the conclusion of the Agreement, for no longer than five years from the date of the Agreement.

The amount of Investment Incentives shall be determined on the basis of the criteria defined by this Decree, in relation to the number of new employees that will be hired on the jobs created by the Investment Project.

### **Value of investment in Investment Project**

#### Article 8

Value of investment in the meaning of this Decree shall be the value of investment in tangible assets and the value of intangible investment.

Investment in tangible assets shall mean investment in land, buildings, production plants, machines and equipment, and shall also include the cost of lease of business premises in which the Investment Project is implemented and investment in leased land, buildings and production plants, provided that the lease period is not shorter than ten years from the date of signing the Direct Investment Incentive Agreement.

Intangible investment shall mean investment in patents and licences in accordance with legislation governing state aid, which is subject to calculation of depreciation and which is used by the Incentive Beneficiary and recorded in the Incentive Beneficiary's balance sheet.

The value of investment shall not include the cost of setting up a distribution network connected to exports, pursuant to the legislation governing state aid.

### **New employees**

#### Article 9

New Employee, in the meaning of this Decree, shall be a person permanently employed on jobs in the activities for which the Investment Project is carried out, thereby increasing the number of employees with the Incentive Beneficiary in Montenegro.

The New Employee referred to in paragraph 1 above shall not be a person employed on the basis of reorganization of the Incentive Beneficiary or reassignment from parent company or subsidiary company or other related parties of the Incentive Beneficiary.

Parent company shall be a legal entity that has control over one or more legal entities (subsidiaries).

The Incentive Beneficiary is obligated to retain the relevant number of New Employees for at least three years in continuity for Small and Medium Business Entities and at least five years in continuity for Large Business Entities, after the completion of implementation of the Investment Project.

The Direct Investment Incentive Agreement particularly stipulates the obligation for the Incentive Beneficiary who fails to retain the relevant number of New Employees for at least three years in continuity for Small and Medium Business Entities and at least five years in continuity for Large Business Entities, after the completion of implementation

of the Investment Project, to repay all the Investment Incentives received to the Budget of Montenegro, plus the default interest.

### **Amount of Investment Incentives that can be awarded**

#### Article 10

The amount of the Investment Incentives that can be awarded based on the award criteria shall be as follows:

- 1) EUR 3,000 per new employee, for the score from 76 to 85;
- 2) EUR 4,000 per new employee, for the score from 86 to 95;
- 3) EUR 5,000 per new employee, for the score from 96 to 105;
- 4) EUR 6,000 per new employee, for the score from 106 to 115;
- 5) EUR 7,000 per new employee, for the score from 116 to 125;
- 6) EUR 8,000 per new employee, for the score from 126 to 135;
- 7) EUR 9,000 per new employee, for the score from 136 to 145;
- 8) EUR 10,000 per new employee, for the score from 146 to 150.

The amount of Investment Incentives that may be awarded to a Large Business Entity cannot exceed 50% of the total value of investment in the Investment Project, 60% for Medium Business Entities and 70% for Small Business Entities.

Notwithstanding paragraph 2 above, for capital investments, financial incentives for encouraging direct investment amounting to up to 17% of the total value of the Investment Project may be awarded without conducting the project scoring procedure, in accordance with the award criteria and methodology.

### **Criteria for the award of Investment Incentives**

#### Article 11

The criteria for the award of Investment Incentives are the following:

- a) references of the Business Entity;
- b) extent of participation of other business entities from Montenegro during and after the completion of the Investment Project;
- c) value of the Investment Project;
- d) Investment Project impacts related to research and development;
- e) Investment Project impacts on human resources;
- f) Investment Project impacts on the environment;
- g) volume of international turnover;
- h) economic effects of the Investment Project;
- i) Investment Project impacts on the regional development and
- j) letter of intent from the local self-government unit in the territory of which the Business Entity intends to invest.

The total sum of points under the criteria referred to in paragraph 1 above may be maximum 150 points.

## **References of the Business Entity**

### Article 12

References of the Business Entity shall be scored as follows:

- 1) a Business Entity that has international reputation (recognition, image and respectability in the region and in the world) and experience in the implementation of Investment Projects - 25 points;
- 2) a Business Entity that has experience that includes two or more Investment Projects of a similar volume and type as the project for which the Investment Incentives are to be awarded - 20 points; or
- 3) a Business Entity that has successfully completed two or more Investment Projects - 10 points.

In the event referred to in Article 6, paragraph 6 above, the references of the investor shall be scored.

## **Extent of participation of other business entities from Montenegro during the implementation and after completion of Investment Project**

### Article 13

Extent of participation of other business entities from Montenegro during the implementation and after the completion of the Investment Project shall be scored in such a way that a participation exceeding:

- 1) 70% . will give 20 points;
- 2) 40% to 70% . 15 points;
- 3) 10% to 40% . 10 points; or
- 4) if lower than 10% . 5 points.

## **Value of Investment Project**

### Article 14

The value of investment in the Investment Project referred to in Article 7, paragraph 1 above exceeding:

- 1) seven million euros . will give 15 points;
- 2) three million euros . 10 points; or
- 3) one million euros . 5 points.

## **Investment Project impacts related to research and development**

### Article 15

Investment Project impacts related to research and development shall be evaluated according to the proportion of high technology in the Investment Project. If:

- 1) the Investment Project concerns the processes that involve high technology or the Investment Project entails the use of a new technology in the territory of Montenegro (telecommunications, micro-electronics, information technology, biotechnology, new materials, etc.) . 15 points will be allocated;
- 2) the Investment Project includes the technology of a medium level of development . 10 points shall be allocated.

If the Investment Project refers to the construction of a hospitality or tourism facility, the impacts referred to in paragraph 1 above shall be evaluated according to the category of the hospitality facility in the following way:

- 1) for a 5\* hospitality facility . 15 points;
- 2) for a 4\* hospitality facility . 10 points; or
- 3) for a 3\* hospitality facility . 5 points.

### **Investment Project impacts on human resources**

#### Article 16

Investment Project impacts on human resources shall be scored in relation to the level of knowledge and skills to be acquired through the implementation of the Investment Project, as well as in relation to the possibility of using such knowledge and skills on other jobs in Montenegro. Therefore, if the project provides for:

- 1) the trainings for acquiring specific knowledge and skills that lead to higher competitiveness of employees within a certain trade . 10 points will be allocated; or
- 2) the acquisition of general knowledge and skills, for which special trainings are planned, to be conducted by either by the employer or in cooperation with business entities or institutions, and they will lead to increased competitiveness of employees at the labour market . 5 points will be allocated.

### **Investment Project impacts on the environment**

#### Article 17

Investment Project impacts on the environment shall be scored according to the impact of the investment on the exploitation of natural resources. More precisely, if the Investment Project consists of the activities that:

- 1) do not significantly affect natural resources . 10 points will be allocated; or
- 2) affect natural resources, but do not jeopardize their sustainable development . 5 points will be allocated.

### **Volume of international turnover**

#### Article 18

Volume of international turnover shall be scored according to the volume of products, and/or services that will be delivered outside of the Montenegrin market. Hence, if:

- 1) the Business Entity will sell its products, and/or services at the markets outside of Montenegro in the proportion higher than 50% of the total output and/or all services . 15 points will be allocated;
- 2) the Business Entity will sell its products, and/or services at the markets outside of Montenegro in the proportion lower than 50% of the total output and/or all services . 10 points will be allocated; or
- 3) a product and/or service is intended for domestic market only . 5 points will be allocated.

### **Economic effects of Investment Project**

## Article 19

Economic effects of the Investment Project shall be scored according to the data contained in the business plan and projected balance sheet and income statement, as follows:

- 1) for the indicator of cost-effectiveness which represents the total revenues to total expenses ratio for the period of six years from the beginning of the investment project implementation, amounting to:
  - a) over 1.5 . 10 points,
  - b) over 1 up to 1.5 . 5 points,
  - c) up to 1 . no points;
- 2) for net profit ratio which represents the ratio of average net income in an investment cycle for the period of six years from the beginning of the investment project implementation to total investment, amounting to:
  - a) over 20% . 10 points,
  - b) over 5% up to 20% . 5 points,
  - c) up to 5% . no points; and
- 3) for the investment payback period, which represents the ratio of total investment to average net profit in the period of an investment cycle, amounting to:
  - a) up to five years . 10 points,
  - b) from five to ten years . 5 points,
  - c) over ten years . no points.

On the basis of the criteria from paragraph 1, items 1, 2 and 3 above, the Business Entity may be allocated up to maximum 30 points.

### **Investment Project impact on regional development**

#### Article 20

Investment Project impacts on regional development shall be scored according to the region in which the Investment Project will be implemented, as follows:

- 1) for the northern region and central region, excluding the Capital City of Podgorica . 10 points; and
- 2) for the coastal region and the Capital City of Podgorica . 5 points.

### **Letter of intent of the local self-government**

#### Article 21

If the Business Entity possesses a letter of intent from the local self-government on their readiness to support the investment in line with the development plans of the local self-government . 5 points will be allocated.

### **Public Notice**

#### Article 22

Investment Incentives shall be awarded on the basis of a public notice of participation in the procedure of award of financial incentives for encouraging investment



(hereinafter: **Public Notice**), which will be published in one print media that is distributed throughout Montenegro and on the websites of the Government and the Competent Authority.

The Competent Authority may issue a notification on the Public Notice in an international economic magazine.

The Competent Authority shall prepare the proposal of the Public Notice and perform other matters related to the Public Notice.

The proposed Public Notice prepared by the Competent Authority shall be submitted to the Government for review and adoption.

The Public Notice shall include, *inter alia*:

- 1) the name and seat of the authority publishing the Public Notice;
- 2) the subject of the Public Notice;
- 3) conditions for awarding the Investment Incentives, defined by this Decree;
- 4) criteria for awarding the Investment Incentives;
- 5) deadline, method and address for submitting Applications;
- 6) a person in charge of providing information related to participation in the procedure of awarding the Investment Incentives;
- 7) the date, place and method of opening the Applications;
- 8) the amount, type and validity period of the Bank Guarantee for the Application;
- 9) the amount, type and validity period of the Performance Guarantee issued by a bank (hereinafter: the Performance Guarantee).

The Competent Authority shall prepare the draft Direct Investment Incentive Agreement and Instructions on submission of applications for the award of financial incentives for direct investment, and publish them on its website.

The Competent Authority may hire experts (of financial, legal, technical and other profession) for provision of technical assistance in the procedure following the Public Notice.

## **Application**

### Article 23

Applications shall be submitted to the Competent Authority within the time limit and in the language determined by the Public Notice.

Along with the Application, the Applicants shall submit the following documents:

- 1) Investment Project for the funding of which incentives for direct investment are being sought (textual and graphical representation with the data necessary for evaluation of the criteria listed in Article 11 of the Decree); and business plan which must include indicators of cost-effectiveness, net profit ratio and payback period, with projected balance sheet, income statement and cash flow for a period of six years from the beginning of the Investment Project implementation;
- 2) balance sheet and income statement for the previous three years of operation,

- or for the period from Business Entity registration to the submission of the Application in accordance with the Public Notice, together with the audit report issued by an authorized auditor, in accordance with the law governing accounting and auditing;
- 3) extract from the Central Registry of Business Entities (hereinafter: **CRBE**) or a certificate from the relevant registry of the state of domicile of the Business Entity, which may not be older than 60 days before the date of submission of Application;
  - 4) evidence of settlement of all liabilities arising from taxes and contributions;
  - 5) certificate stating that no insolvency proceeding has been initiated against the Business;
  - 6) certificate confirming that the Business Entity and/or the authorized officer in the Business Entity has not been convicted by a final and binding decision of a criminal offence prosecuted *ex officio*; and
  - 7) other evidence confirming compliance with the requirements laid down by this Decree.

Documents submitted by a foreign Business Entity must be certified in accordance with the legislation of the state in which they were issued and translated into Montenegrin by a certified translator.

The forms of the Application and the Business Plan shall be defined by the Competent Authority and published on their website.

### **Opening of Applications**

#### Article 24

The Applications shall be opened in the premises of the Competent Authority at the time specified in the Public Notice.

The opening of Applications shall be public.

The Application opening may be attended by the Applicants, their representatives or attorneys.

Minutes shall be taken of the opening of the Applications.

Notwithstanding paragraph 2 above, for the purpose of protecting business, military or state secret, the Public Notice may stipulate the opening of Applications will not be public.

### **Review and evaluation of correctness of Applications**

#### Article 25

The Competent Authority shall evaluate the correctness of Applications.

Correctness of an Application shall be evaluated by inspecting whether the Application meets the conditions determined by the Public Notice and this Decree.

The Competent Authority shall compile a report on the evaluation of the applications' correctness.

An Application that does not meet the conditions determined by the Public Notice and this Decree shall be rejected by means of a decision as incorrect.

The Decision rejecting of and incorrect Application shall be submitted to the Applicant within three days from the day of issuing it.

### **Analysis of Investment Projects**

#### Article 26

The Competent Authority shall perform the analysis of Investment Projects submitted together with correct Applications, after obtaining the opinion of the public administration authorities and local self-government authorities on the alignment of the Investment Project with the planning documents and development plans of Montenegro.

On the basis of the analysis referred to in paragraph 1 above, the Competent Authority shall compile a report.

The Competent Authority may also perform other analyses of the Applications.

The Competent Authority shall submit the report on evaluation of the Applications' correctness and the report referred to in paragraph 1 above, along with correct Applications and supporting documentation, to the Committee for the Evaluation of Applications (hereinafter: the **Committee**).

### **Committee**

#### Article 27

The Committee shall perform the evaluation of Investment Projects and prepare the evaluation report with a proposed decision for the award of Incentives, which shall be submitted to the Government by the Committee for review and adoption.

The Committee shall be established by the Government, upon a proposal by the head of the public administration authority in charge of economic affairs, after obtaining the opinion of the public administration authority in charge of financial affairs, sustainable development, agriculture, transport and of the Deputy Prime Minister for Economic Policy and Financial System.

The Committee shall have a chairman and at least six members, taking into account that the number of the Committee members with the chairman must be odd.

The Committee shall decide by the majority vote of the total number of its members.

The Committee shall have a Secretary.

Chairman and Secretary of the Committee shall be appointed by the Government, upon proposal of the Minister in charge of economic affairs.

The Competent Authority shall perform administrative and technical tasks for the needs of the Committee.

Representative of the Competent Authority shall be present at the Committee sessions, without a right to vote.

### **Evaluation of Investment Projects**

#### Article 28

Investment Projects shall be evaluated according to the criteria established by this Decree.

In the process of evaluating Investment Projects, the Competent Authority may, at the request of the Committee, hire experts (of financial, legal and technical profession) to provide technical assistance, or it may request an opinion or additional data from the relevant public administration authorities and local self-government authorities.

If the proposed Investment Project does not receive a sufficient number of points in the evaluation procedure, according to the Article 10 of this Decree, or if it is not in line with the planning documents and development plans, the Competent Authority will reject the Application by means of a decision, upon the proposal of the Committee.

The Government shall pass the decision on the award of Investment Incentives.

The decisions referred to in paragraphs 3 and 4 above shall be final and binding.

### **Extension of Investment Project implementation**

#### Article 29

The Government may extend the Investment Project Implementation Period, at the proposal of the Committee, upon obtaining an opinion of the Competent Authority.

In the event referred to in paragraph 1 above, the investor, i.e. the Incentive Beneficiary shall submit a Performance Guarantee or other security, in proportion to the extension of the Investment Project Implementation Period.

### **Direct Investment Incentive Agreement**

#### Article 30

Direct Investment Incentive Agreement shall regulate mutual rights and obligations of the Government and the Incentive Beneficiary, as well as the time frame for the Investment Project Implementation Period.

### **Termination of Agreement**

#### Article 31

Direct Investment Incentive Agreement may be terminated at the Competent Authority's proposal, if the Incentive Beneficiary fails to meet the obligations stipulated in the Agreement.

Decision on termination of the Agreement referred to in paragraph 1 above shall be made by the Government.

In the event of termination of the Agreement referred to in paragraph 1 above, the repayment of the amounts disbursed by the Incentive Beneficiary plus the statutory default interest shall be charged against the presented Performance Guarantee and promissory notes.

### **Incentive Disbursement Schedule**

#### Article 32

The awarded Investment Incentives shall be paid to the Incentive Beneficiary upon the conclusion of the Direct Investment Incentive Agreement, in instalments equal to one-third of the overall amount awarded, as follows:

- 1) the first instalment shall be paid after the submission of the Performance Guarantee;
- 2) the second instalment shall be paid after the Incentive Beneficiary has submitted independent auditor's report confirming that 50% of Eligible Investment Costs of the Investment Project have been expended;
- 3) the third instalment shall be paid after reaching full employment foreseen by the Investment Project and completing the Investment Project, in accordance with the Direct Investment Incentive Agreement.

The Investor, i.e. the Incentive Beneficiary, shall submit the Performance Guarantee referred to in paragraph 1, item 1 above, within three months from the day of the conclusion of the Direct Investment Incentive Agreement.

Disbursement of the amount awarded shall be made on the basis of an orderly Disbursement Request, submitted by the Incentive Beneficiary together with the documents proving the fulfilment of the conditions referred to in paragraph 1 above and the Performance Guarantee pursuant to Article 34 below.

The Incentive Beneficiary shall submit the Disbursement Request referred to in paragraph 3 above to the Competent Authority.

Upon receipt of the Disbursement Request referred to in paragraph 3 above, the Competent Authority shall verify whether the conditions for the disbursement of funds under paragraph 1 above have been fulfilled

Disbursement of the Incentives upon the approval of the Competent Authority shall be made by the state authority responsible for finance.

Notwithstanding paragraph 1 above, the Direct Investment Incentive Agreement shall define the disbursement schedule and the time frame for submission of the Performance Guarantees in the case of capital investments.

### **Bank Guarantee for the Application**

#### Article 33

Bank Guarantee for the Application shall be bank guarantee issued in favour of the Government for " 5,000, payable at first call and issued by a commercial bank, with a validity of 180 days from the date of opening of Applications.

Business Entity shall extend the validity period of the bank guarantee, at the request of the Competent Authority.

Expenses of obtaining and extending the bank guarantee shall be borne by the Business Entity applying under the Public Notice.

The Bank Guarantee for the Application shall be called in case that the Incentive Beneficiary:

- refuses to sign the Direct Investment Incentive Agreement or
- after having concluded the Direct Investment Incentive Agreement, fails or refuses to provide the Performance Guarantee in accordance with the conditions from the Direct Investment Incentive Agreement and this Decree.

### **Performance Guarantee**

#### Article 34

Together with each Disbursement Request referred to in Article 32, paragraph 3 above, the Incentive Beneficiary shall submit to the Competent Authority an unconditional bank guarantee in favour of the Government, payable at first call, without protest, and issued by a commercial bank registered in Montenegro

Performance Guarantees submitted with the Disbursement Requests for the first and second instalments shall be for the amounts to be granted by the first and second instalments, with a validity of three years from the date of issue.

For the disbursement of the last instalment, the Incentive Beneficiary shall submit the Performance Guarantee for the overall amount awarded, with a validity of three years and six months from the date of issue, i.e. from the date of meeting the requirements referred to in Article 32 paragraph 1 item 3 above.

Upon submission of the Performance Guarantee referred to in paragraph 3 above, the Competent Authority shall return the Performance Guarantees referred to in paragraph 2 above to the Incentive Beneficiary.

Together with the Performance Guarantee issued for the first instalment, the Incentive Beneficiary shall deliver two signed blank promissory notes with the signed authorization to pay, for the purpose of payment of statutory default interest in the case of default under the Agreement and a call on the Performance Guarantee/s under the Agreement.

Statutory default interest shall be calculated for the period from the date of disbursement of each instalment paid until the date of repayment of the total amount disbursed.

If the Incentive Beneficiary fails to provide the Performance Guarantee referred to in paragraph 1 above and/or two signed blank promissory notes with the signed authorization to pay referred to in paragraph 5 above, the Agreement shall be terminated.

The form of the Performance Guarantee shall be defined by the Competent Authority

and published on its website.

### **Investment Project Implementation Report**

#### Article 35

The Incentive Beneficiary shall report to the Competent Authority on the implementation of the Investment Project for which Investment Incentives have been awarded.

In the course of the Investment Project implementation, the Incentive Beneficiary shall submit to the Competent Authority yearly independent auditor's reports that will contain information on:

- 1) the Incentive Beneficiary's operations;
- 2) the value of investment in the Investment Project and
- 3) the number of employees.

After completion of the Investment Project, the Incentive Beneficiary shall deliver to the Competent Authority independent auditor's report on the completion of the Investment Project and on the fulfilment of Investment Commitment and Employment Commitment, in accordance with the Direct Investment Incentive Agreement and this Decree.

Upon the request of the Competent Authority, the Incentive Beneficiary shall also supply other documents and additional information concerning the implementation of the Investment Project.

The Competent Authority shall once a year submit the report on the implementation of the Investment Project to the Government

### **Reimbursement for infrastructure**

#### Article 36

If it is necessary to invest additional funds in the construction or reconstruction of infrastructure for the purposes of the Investment Project implementation, the Incentive Beneficiary may submit request for the reimbursement of partial and/or total amount of the mentioned funds to the Competent Authority.

The request for the reimbursement of the amount spent for infrastructure referred to in paragraph 1 above shall include: the value of the approved Investment Project, the infrastructure project, assessment of the value of works on the infrastructure project performed by an authorized assessor, the number of new employees at the moment of submitting the request, the number of planned new employees according to the investment project, evidence that the proposed infrastructure project is necessary for the Investment Project implementation and the agreement or other document signed between the Incentive Beneficiary and the Contractor of the works.

The value of the infrastructure project, in the meaning of this Decree, shall include the cost of:

- 1) creating and obtaining planning and project documentation;
- 2) construction and
- 3) engaging expert supervisor.

The reimbursement of the amount referred to in paragraph 1 above may not be allowed for the Incentive Beneficiary who intends to construct or reconstruct infrastructure for the purpose of making profits.

### **Acting upon the reimbursement request for infrastructure**

#### Article 37

The Competent Authority shall evaluate the compliance of the reimbursement request for infrastructure with the conditions stated in Article 36 above.

The Competent Authority shall submit the request referred to in paragraph 1 above, which fulfils the prescribed conditions, to the Committee for the purpose of evaluation of the fulfilment of the conditions for reimbursement of funds.

### **Award of funds in reimbursement**

#### Article 38

The decision on the award and amount of funds in reimbursement of the funds spent for construction or reconstruction of infrastructure, or the decision rejecting such reimbursement request shall be made by the Government, upon the proposal of the Committee.

### **Reimbursement Agreement**

#### Article 39

Mutual rights and obligations of the Government and the Incentive Beneficiary and the implementation schedule of the infrastructure project shall be regulated by the reimbursement agreement.

Funds intended for the reimbursement of the infrastructure construction shall be disbursed on the basis of the submitted invoices paid to the contractor.

The reimbursement agreement may be terminated in all phases of implementation upon the proposal of the Competent Authority, if the Incentive Beneficiary to whom the reimbursement for infrastructure was approved, does not perform the obligations set forth in the Direct Investment Incentive Agreement or the reimbursement agreement.

### **Implementation Supervision and Monitoring**

#### Article 40

The Supervisor (Engineer) in charge of supervision over the performance of works on the infrastructure shall submit the infrastructure project implementation report and the received interim certificates to the Competent Authority.

### **Ownership of infrastructure**

#### Article 41

The infrastructure constructed using the funds in accordance with this Decree shall be the state ownership, in accordance with the law.



## **Retention of documentation**

### Article 42

The Competent Authority shall keep the submitted applications, agreements, performance bonds and other documents from the procedure conducted upon the public announcement, in its archive for at least ten years from the day of concluding the agreement on use of funds.

Submitted Applications, agreements, Performance Guarantees and other documents related to the procedure conducted under the Public Notice shall be retained by the Competent Authority, in their file room, for at least ten years from signing of the Direct Investment Incentive Agreement.

## **Pending procedures**

### Article 43

Procedures for awarding the Investment Incentives commenced up to the day of this Decree entering into force, shall be finalized in accordance with the Decree on direct investment incentives (*Official Gazette of Montenegro*, no. 8/15).

## **Cessation of validity**

### Article 44

The Decree on direct investment incentives shall cease to exist on the day of this Decree entering into force (*Official Gazette of Montenegro*, no. 8/15).

## **Entry into force**

### Article 45

This Decree shall enter into force on the day of its publishing in the *Official Gazette of Montenegro*.

Number: 08-3213

Podgorica, 28 December 2015

**Government of Montenegro**

Prime Minister,

**Milo Djukanovic**