

Participation of the Private Sector for the Delivery of Public Services Republic of Montenegro

CHAPTER ONE GENERAL PROVISIONS

Article 1 Purpose of the Act

The purpose of this act is to improve the participation of the private sector for the delivery of public services and, while taking into account the need for good governance and economic growth.

Article 2

Application

This Act shall apply to delivery of public services related to:

- Leasing and management contracts
- Concessions
- Built-operate transfer arrangements (hereinafter: BOT)
- Regulatory bodies defined under this Act.

This Act shall apply to all public entities, as defined under this Act.

Article 3 Interpretation and Definitions

Where the context so permits words importing the singular shall be deemed to include the plural and *vice versa* and words importing the masculine shall be deemed to include the feminine and *vice versa*; words importing persons or parties shall include firms and companies and any person having legal capacity. The meanings which shall apply to this Act are:

"Build, Operate and Transfer, B.O.T.": a contract arrangement, under a franchise, whereby a private investor and /or operator is obliged to build and operate a public utility and, after a determined period, transfer the ownership thereof to a public entity; B.O.T. arrangements shall include build-lease and transfer, build-transfer-and-operate, develop-operate-and-transfer, rehabilitate-operate and transfer; tariffs payable by the clients shall be regulated by the contract entered into and shall be subject to the decision, after public hearings, of the regulatory body for the tariffs payable and the quality of the services delivered;

"concession": a repetitive contract arrangement offered under a license, to a private investor and / or operator for the proper extraction or exploitation of natural resources or raw materials for a determined period of time; such arrangement may include investment or rehabilitation by the private sector; in contract in which a public entity of the Republic of Montenegro transfers some rights to a local or foreign firm or company which then engages in an activity subject to the terms of the contract and in

return provide revenues to the Government of the Republic of Montenegro (hereinafter Government) or to a Self-Local Government per unit exploited or extracted;

"contingency liability": a liability that may occur only if a specific event happens; a liability that depends on the occurrence of a future and uncertain event;

"franchise": a revocable right, under B.O.T. arrangements, conferred by the Government of the Republic of Montenegro or in a similar manner by a self local government to a provider of services to engage in a specific business or to exercise corporate powers; the rights necessary for public utilities companies to carry on their operations shall be designated as a franchise, under wherewith substantial rights may be granted, contrary to a license wherewith less or limited rights are granted;

"Government-owned company or firm": refers to any company or firm, whether performing governmental or proprietary functions, owned at majority or otherwise controlled by the Government of the Republic of Montenegro;

"investor": a person, natural or corporate, who invests money with an expectation of earning profit;

"invitation for seeking offers": a solicitation for offers as a preliminary step to forming a contract;

"leasing": granting the possession of movable or immovable properties to another in return for rent;

"license"; a revocable permission granted by the regulatory body, established under this Act, to operate a concession;

"license fee": a monetary charge imposed by a public entity for the privilege of pursuing a particular occupation, business or activity; a charge of this type is accompanied by a requirement that the licensee takes some action or be subjected to regulation or restriction;

"management contract": a contract to engage the services of the people in a company, or in a firm, who are responsible for its operation;

"natural resource": any material from nature having potential economic value or providing for the sustenance of life, such as timber, minerals, oil, water and wildlife; features of nature that serves a community's well-being or recreational interests, such as parks;

"offer": a display of willingness to enter into a contract on specified terms, made in the way that would lead a reasonable person to understand that acceptance, having been sought, will result in a binding contract;

"operator": a company or a firm responsible to operate on behalf of an investor;

"privatization council": the council established under the article 2A of the Privatization of Economy Act (Official Gazette of the Republic of Montenegro 23/96, 6/99, and 59/00).

"public entity": public entities are courts, bodies of local government, all organizations designated as such by the Decree on organization and methods of works for public administration / Official Gazette of Montenegro no. 8/93, 39/93, 19/95, 13/96, 24/96, 7/97, 13/98, 27/98, 38/98, 18/99, 31/99, 59/00, 31/01, and 33/01 and public entities which performs social duties pursuant to the rules of Social Activity Act (Official Gazette of Montenegro No. 19/90, 25/90, 6/91, 27/91, 21/95 as well as any other entity which will be established and will utilize public funds;

"public services": a project or any kind of services normally financed and operated by the public sector, such as power plants, highways, ports, airports, canals, dams, hydropower projects, water supply, irrigation, telecommunications, railroads and railways, transport systems, housing, government buildings, tourism projects, markets, solid waste management, education and health facilities and any others as may be determined by the Government;

"raw material": substances that are in their natural state before being processed or used in manufacturing;

"regulatory body": refers to an independent body established under this Act that is responsible for issuing licenses or authorizing franchises, regulating tariffs charged for public services and guaranties that the private operator and/or investor ensures the qualities level of services;

"rules": refer to the rules and the necessary forms made under this Act by the Privatization Council or by the regulatory body; where rules introduce a standard form, such form shall be mandatory.

CHAPTER TWO SELECTING THE TYPE OF PARTNERSHIP

Article 4 Background document

For selection of any of the contractual arrangements authorized under this Act, leasing, management contract, concessions or B.O.T. arrangements, that may be proposed to the private sector in compliance with this Act, a public entity shall prepare, as a first step, a background document, submitted to the approval of the authorities established under the Privatization of the Economy Act, detailing:

- (1) the public entity who will be responsible for the project;
- (2) what will be the object and scope of the contract;
- (3) what will be the duration of such contract, and what circumstances will give rise to early termination;
- (4) what will be the obligations and rights of the parties;
- (5) where applicable, the key regulations that will be proposed;

- (6) who will manage identifiable key risks, such as design and development, construction, operating, revenue, financing, *force majeure*, insurance and environmental risks;
- (7) how will performance be measured and monitored;
- (8) where applicable, how will assets be transferred;
- (9) where applicable, who will be responsible for past or future environmental liabilities;
- (10) how disputes will be resolved; and,
- (11) for transparency, what kind of solicitation methods will be utilized and the type of contract to be offered.

Article 5 Approval

After having obtained license in compliance with the article 4 of this Act, contractual arrangements become the part of a privatization plan and are subject to all the duties which stem from this Act.

Article 6 Selecting leasing

A public entity, in addition to the requirements under the article 4 of this law may propose a leasing arrangement, as an alternative to public investment, where -

- (1) there is an evident situation of lack of funds for such public investment;
- (2) the beneficiaries are suffering from lack of public services; and,
- (3) the funds can be properly appropriated for the private investor or operator to meet its obligations under such contract arrangement.

Article 7 Selecting management contract

A public entity, in addition to the requirements under the Article 4 of this law may propose a management contract as an initial measure toward more private sector involvement in the Republic of Montenegro (hereinafter Republic) or in the cities where -

- (1) there is evidence made whereby initial conditions are not conducive to private sector investment and risk taking;
- (2) where tariffs are below cost recovery levels; or
- (3) where there is a need to administer and manage a complex arrangement, whether financial or technical.

Article 8 Selecting Concessions

A public entity, in addition to the requirements under the Article 4, may propose a concession agreement where -

- (1) natural resources such as minerals or such as any activity thereof such as for tourism activities, and potentialities thereon, are not exploited properly therein;
- (2) revenues may be generated therefrom;
- (3) major private financial or technical inputs are necessary therefore;
- (4) economic growth results are determined by a valuation made thereof;
- (5) a regulatory body can, under a license, control the quality level of services and the applicable tariffs.

Article 9 Selecting B.O.T. arrangements

A public entity, in addition to the requirements under the Article 4, may propose a B.O.T. arrangement, as defined under this Act, where -

- (1) major new capacity for public services is needed and based on expert estimate or elaborateness;
- (2) no divestiture of existing publicly owned companies or firms can permit hereunder proper investment for the new capacity required therein; and,
- (3) after a determined period of operation, enough for the private investor to recover the investment and the costs of operating, the transfer of the properties, movable or immovable, is made thereafter.

Article 10 Combination

(1) A public entity may propose a combination of arrangements provided for in article 4 of this Act, in which case such a combination must include conditions for each separate arrangement that is being proposed.

(2) The Government may decide to, in view of liberalization of economy, permit the inclusion of private sector in performing public services by applying different contractual arrangements not provided for by article 4 of this Act, according to the conditions provided by a separate Act.

Article 11 Objectives

Pursuant to article 4, where proposing a private sector partnership, the public entity, or many public entities together, such as a group of self-local governments, shall, for any proposed partnership, demonstrate the need to -

- (1) bring technical, financial, or managerial expertise and new technology in the sector;
- (2) improve economic efficiency in the sector, operating performance and the use of capital investment;
- (3) inject large scale investment capital into the sector or gain access to private capital markets;
- (4) where applicable or otherwise doable, reduce public subsidies to the sector;
- (5) make the sector more responsive to consumers' needs and preferences;
- (6) the tentative schedule of tariffs to be paid;

- (7) competitive pressures deriving from markets for returns on the capital to be invested; and,
- (8) competitive pressures deriving from similar services.

Article 12

Preparing the seeking of offers

Upon approval, pursuant to article 4 of this law a public entity shall prepare the solicitation documents in compliance with this Act, and shall, before initiating solicitation, obtain a prior endorsement by the authorized organs on the contents of the solicitation documents; after solicitation, the public entity shall examine, evaluate and compare offers and obtain approval from the same organs before awarding the contract; copy of the contract shall be made available to the relevant regulatory body.

Article 13

Duration

Any contract offered under a solicitation exercise or otherwise entered into under this Act shall be subject to maximum duration:

- (1) lease agreement shall not exceed a period of two (2) years, but might be subject to renewal every year, in compliance with the terms and conditions of the contract, but the total period, including renewal, shall be subject to a maximum period of five (5) years;
- (2) management contract shall not exceed a period of five (5) years;
- (3) concessions or B.O.T. contracts shall not exceed a period of (30) thirty years or, where the contract is based on recovery of investment, shall not exceed the period necessary for the recovery of investment only where the determined recovery is based thereunder on a determined percentage of the tariffs paid by the beneficiaries; nevertheless, where the period may exceed (30) thirty years under such contract, the period shall be, at time of contract signature, based on a probable recovery not to exceed (30) thirty years; where an extension is necessary for recovery and part of the terms and conditions of a contract, such extensions shall be permitted strictly on the terms and conditions stipulated in the contract entered into;
- (4) the period for which a concession or a B.O.T. has been granted may be extended in exceptional case because of a substantial change in the conditions under which the concession or the B.O.T. was granted;
- (5) the duration of preparatory work shall be specified in the concession as well as in a B.O.T. agreement.

Article 14

Commencement

Pursuant to article 13 of this law, the commencement of the period shall not include the period for construction or rehabilitation; therefore, the period shall start, in any case, on the day the operations start; for avoidance of doubt, the day the operations start shall prevail on the date -

- (1) the contract was signed therefore and,
- (2) where applicable, of entering into effect of the contract.

CHAPTER THREE SEEKING OFFERS FOR LEASING OR MANAGEMENT CONTRACT

Article 15 Soliciting

Subject to articles 4 and 12 of this law, a public entity or more public entities may enter into solicitation to seek offers from private sector in compliance with the law.

Article 16 Proposals for management contracts and bids for leasing

A management contract being a contract whereby consulting services are delivered, and a leasing contract being a public procurement activity, the relevant articles of the public procurement law shall apply.

Article 17 Rules and forms for management contract or leasing contract

Subject to article 16 of this law, for management contract, any request for proposals and, for leasing contract, any bids solicited, therefore any procurement undertaking thereof, shall be in compliance with the public procurement rules and the standard forms approved by the Public Procurement Commission.

Article 18 Pre-investment Committee

Pursuant to the articles 15, 16 and 17 of this law where a construction or rehabilitation, resulting from such management or leasing contract, therefrom, therein, thereunder or thereafter, is planned for a building in public property and where its design is delivered by the private sector, the prior approvals of the Pre-Investment Committee established in conformity with the Public Procurement law.

CHAPTER FOUR PREQUALIFICATION OF INVESTORS AND SEEKING OF OFFERS FOR CONCESSIONS OR B.O.T

Article 19 Unsolicited offer or direct agreement for concession or B.O.T.

Except for and not including any fair dialogue between investors and public entities prior to a solicitation exercise or permitted dialogue before award of a contract not resulting in unfair advantage, no unsolicited offer and any form of direct agreement without pre-qualification or solicitation shall be permitted. Therefore, to ensure transparency and fair competition, for concessions or B.O.T. arrangements,

any unsolicited offer or direct agreement shall, upon receipt, be rejected and not be considered further.

Article 20
Project assessment unit for concession or B.O.T.

Subject to article 4 of this law, for a concession or a B.O.T. project, the public entity responsible for the project shall establish a project assessment unit of five members having the proper expertise whereby the combination of legal, technical, financial, environmental and other relevant expertise is made available; selection of the members shall be subject to endorsement by -

- (1) the Government, in the case of Ministries, Departments or Secretariats;
- (2) their respective municipal assembly, in the case of a Self-Local Government or organs of Self-Local Governments; or,
- (3) the parent ministry, for the publicly-owned companies or firms.

Article 21
Solemn statement

Subject to article 20 of this law, members shall not be elected persons and shall be subject to the solemn statement made by public procurement officers under the public procurement law.

Article 22
Authorities and responsibilities of the project assessment unit

Subject to articles 4, 12, 20 and 21 of this law and to the rules made under this law, the members shall be responsible to supervise and manage -

- (1) the pre-qualification of investors;
- (2) the seeking of offers from them;
- (3) the receiving and opening of offers;
- (4) the examination, comparison and evaluation of offers;
- (5) the preparation of an evaluation report;
- (6) the undertaking of dialogue with investors before award; and
- (7) the preparation of a final recommendation.

Article 23
Use of consultants or consulting firms

Pursuant to article 22 of this law, a project assessment unit may, where necessary, seek assistance from consultants to assist in the undertaking of any activity. The consultants shall be selected in compliance with the Public Procurement Law.

Article 24
Dialogue

The undertaking of dialogue, pursuant to sub-article (22) 6 s of this law shall be only for improvement of the understanding of the offer, before award, and shall not

result in negotiation so as to alter substantially an offer or to render it substantially responsive to the solicitation documents.

Article 25 Endorsement

Before award the endorsement is given by:

- (1) the Government, in the case of Ministries, Departments or Secretariats;
- (2) their respective municipal assembly, in the case of a Self-Local Government or group of Self-Local Governments; or,
- (3) the parent ministry, for the publicly-owned companies or firms.

Article 26 Pre-qualification of investors

For concessions and B.O.T. contracts, except for concessions and B.O.T. based on article 138 of this law, open and international pre-qualification of investors shall be undertaken, prior to the seeking of offers, after international advertising is made, as per the rules and the standard forms approved by the Privatization Council under this Act.

Article 27 Criteria for pre-qualification

(1) Evaluation for pre-qualification shall be effected strictly according to pass or fail criteria stipulated up-front in the pre-qualification documents.

(2) Any pre-qualification exercise shall be completed within the period stipulated in the solicitation documents.

(3) The investors shall furnish all such information, documents and provide such evidence as are required for the purpose.

Article 28 Selection investors

Shall be selected the investors on the basis of the information given by them in the request made pursuant to Article 26 of this law, subject to verification before award.

The results of the pre-qualification exercise shall be determined by an ad-hoc Evaluation Committee, set up by the project assessment unit; members of the project assessment unit shall not be members of the ad-hoc evaluation committee.

The evaluation shall be undertaken as per the rules and forms approved under this Act by the Privatization Council.

Subject to any fresh verification of information, no investor who has met the criteria set out shall, at selection, be disqualified.

The criteria for selection shall be -

- (1) the cost and the magnitude of the financing offered;
- (2) the performance specifications of the facilities offered;
- (3) the cost chargeable to the users, beneficiaries or consumers;
- (4) other income generated for the public entity or the purchaser by the facility;
- (5) the period of facility depreciation;
- (6) in addition to the conditions to post-qualify, the investor shall evidence that its investment by its available capital will not be less than 25 % of the capital invested.

Article 29 **Report on pre-qualification**

The report of the ad-hoc Evaluation Committee shall be signed by all persons who formed part of the evaluation process; the report shall include - (i) introduction to the project; (ii) copy of the opening report; (iii) details on investor examination and rejects; (iv) list of pre-qualified investors who pass all criteria and who will be, for a given period, eligible investors; (v) copy of the pre-qualification documents; and (vi) the list of investors under conditional pre-qualification and the criteria to be met within a set deadline.

Article 30 **Notice to pre-qualified investors**

An investor shall be notified in writing of the result of his pre-qualification; investors who have not been selected under a pre-qualification exercise shall be entitled to be given the reason for their disqualification and the criteria on which they failed.

Article 31 **Verification of information**

Verification of the information provided by investors in the submission for pre-qualification shall be confirmed at the time of award of contract; therefore, award shall be denied to an investor who no longer meet one or more of the criteria or resulting in a lack of capability or resources to successfully perform the contract; any substantial information found false with evidence made at verification shall result in disqualification of the investor or rejection of his offer.

Article 32 **Seeking offers from pre-qualified investors**

For seeking offers from pre-qualified investors, all project assessment units shall use the forms provided under the rules approved by the Privatization Council.

A non-reimbursable fee may be charged to investors for solicitation documents; the amount of the fee shall be solely determined by the cost of their production and delivery; the fee shall not be so high as to discourage a qualified investor.

Article 33 Language

Any response by investors and any kind of document provided by them shall be in one of the languages authorized by the solicitation documents. If another language is utilized the certified translation in one of the language authorized shall be submitted.

Article 34 Request for additional information

Where an investor requests additional information on the pre-qualification documents or on the solicitation documents, such information shall be communicated to all investors provided with the documents, without identification of the source of the request; any additional information, correction of errors or alteration of contents thereof shall be sent immediately and in the same manner by issuing an addendum made available to all those who requested the original documents.

Article 35 Site visit

Where a site visit is convened, minutes shall be prepared to record any request for additional information, and, without identifying the source thereof, the minutes shall be made available by an addendum issued to all those who requested the original pre-qualification or solicitation documents.

Article 36 Binding addendum

The additional information provided by addendum as stipulated in articles 34 and 35 of this law shall be binding on the investors and shall be communicated to all investors within the period specified under the rules, before the submission of pre-qualification or offers so as to enable the investors to make a timely pre-qualification or offer.

Article 37 Time for pre-qualification and preparation of offers

The time allocated to investors to prepare the pre-qualification documents shall be not less than forty-five working days, starting on the day the advertisement is published, and for the preparation of their offers, not less than sixty working days shall be allocated.

Article 38 Receiving and opening of offers

The time for opening of pre-qualification documents or offers shall be the same as for the deadline for receipt or promptly after the deadline for receipt, only to allow sufficient time to the ad-hoc opening committee to take the envelopes safely to the location stipulated for the opening; the solicitation documents shall indicate the location, the date and the time for the opening; envelopes received after the time stipulated for submission as well as those not opened and read out at the occasion of an opening shall not be considered; save in cases of *force majeure*, postponement of proceedings shall not be permitted.

Article 39 Modification or withdrawal

Where an investor wishes to amend his pre-qualification or his offer he shall not be allowed to retrieve his original sealed envelope, but shall only be allowed to send another envelope equally sealed, properly identified and linked to his original envelope and marked as "modification" or "withdrawal" as the case may be.

Article 40 Receiving of pre-qualification documents or offers

A pre-numbered receipt shall be given for any envelope or package containing pre-qualification documents or offers delivered by hand, after ensuring that it is correctly sealed; a member of the ad-hoc Opening Committee shall be responsible for the issuance of receipts and the safeguarding of all offers related to a solicitation exercise; the name of the member shall be stipulated in the solicitation documents.

Electronic communication shall be in compliance with the law and be permitted only where authorized in the solicitation documents.

Article 41 Safeguarding of pre-qualification documents or offers

Unless the solicitation documents require otherwise, ad-hoc opening committees shall use containers of a size and type capable of receiving pre-qualification documents or offers safe and sound therein, with a sleeve and a door with locks, of which could, for reasons of security and confidentiality, be suitably controlled by such number of different keys entrusted to senior officers.

Article 42 Rejection of all offers

Rejection of all offers shall be allowed only when there is lack of effective competition or when all offers are not substantially responsive; however, lack of competition shall not be determined solely on the basis of the number of investors; when all offers are rejected, the project assessment unit shall review the cause justifying the rejection and consider making revisions to the conditions of contract, design and specifications, scope of the contract, or a combination hereof, before

inviting new offers; when the rejection of all offers is due to lack of competition, wider advertising shall be considered; when the rejection is due to most or all of the offers being substantially not responsive, new offers may be invited from the same investors who were originally invited.

In case of rejection of all offers, the notice of the overall rejection shall be given promptly to all investors who submitted offers and in all cases, before the end of the validity period; any public entity shall not thereby incur any liability nor assume any obligation to inform any investor of the grounds for the rejection or the cancellation of the process.

For a B.O.T., where the most responsive offer, offering the best business plan exceeds the estimate for payable tariffs, the project assessment unit shall investigate causes for the excessive tariffs and shall consider requesting new offers; alternatively and after the approval of the Privatization Council, the project assessment unit may, instead of calling for new offers and without changing the substance of the solicitation, offer to the winning investor a reduction on the scope and / or a reallocation of risk and responsibility which can be reflected in a reduction of the tariffs payable.

Article 43 Securities

To afford reasonable protection against irresponsible offers, bid security may be required, but it shall not be set too high as to discourage investors; the bid security shall be in the form of a manager's or certified check, a letter of credit or a bank guarantee; the bid security shall remain valid for a period stipulated in the solicitation documents which period shall be beyond the validity period for the offers; the bid security shall be released to unsuccessful investors immediately upon determination that they will not be awarded with a contract.

Solicitation documents may require security in an amount sufficient to protect the interests of the Republic of Montenegro in case of breach of contract by an investor; this security shall be provided by a performance bond or a bank guarantee in an appropriate standard form and in an amount specified in the solicitation documents.

Article 44 *Force majeure*

The conditions of contract shall stipulate that failure on the part of the parties to perform their obligations under the contract shall not be considered a default if such failure is the result of an event of *force majeure* as defined in the conditions of contract.

Article 45 No collusion

The pre-qualification and the solicitation documents shall include a standard form to be signed by an investor certifying that his offer has been prepared

independently and whereby he will accept to comply with any obligations under the law of the Republic for Montenegro, including anti-corruption.

Article 46 **Examination of offers**

All offers shall be first examined to determine if they (i) meet the minimum eligibility requirements stipulated in the solicitation documents; (ii) have been duly signed; (iii) are accompanied by a valid security, where requested in the solicitation documents; (iv) are substantially responsive to the solicitation documents; and (v) are generally, otherwise, in order; the following shall not be sought, offered or permitted: (i) changes in prices, subject to this Act; (ii) changes of substance in an offer; and (iii) changes to make an unresponsive offer responsive.

A major deviation shall result in a rejection of an offer while a minor deviation shall be subject to clarification.

The following shall be considered as major deviations:

- 1) with respect to clauses in an offer: (i) improper arbitration, (ii) unacceptable sub-contracting, (iii) unacceptable time schedule, only where time is of essence, and, (iv) unacceptable tariffs adjustment mechanism;
- 2) with respect to the status of an investor: (i) the fact that he is ineligible or not pre-qualified; and (ii) the fact that he is uninvited;
- 3) with respect to documents of an offer - (i) an unacceptable or missing security, or (ii) an unsigned offer;
- 4) with respect to time, date and location for submission: (i) any offer received after the date and time for submission stipulated in the solicitation documents; and (ii) any offer submitted at the wrong location.
- 5) In cases of major deviations, offers shall not be considered any further and, where unopened, shall be returned as such to the investor; in all cases of rejection, a letter stipulating the reasons for rejection shall be sent, and the investor shall not be permitted to amend his bid to become compliant.
- 6) The following shall be considered as minor deviations: (i) the use of codes; (ii) the difference in standards; (iii) the difference in materials; (iv) alternative design; (v) alternative workmanship; (vi) modified liquidated damages; (vii) limited liability and insurance; (viii) omission in minor items; (ix) discovery of arithmetical errors; (x) sub-contracting that is unclear and questionable; (xi) different methods of construction; (xii) difference in final delivery date; (xiii) difference in delivery schedule; (xiv) completion period where these are not of essence; (xv) non-compliance with some technical local regulation; payment terms; and

(xvi) any other condition that has little impact on the offer in cases not mentioned above.

- 7) Where there exists a doubt as to whether a particular condition in a bid is a major or a minor deviation, the following rules shall apply: where the impact on the tariffs is major, it shall be regarded as a major deviation; and where the impact on the tariffs is minor, it shall be regarded as a minor deviation.
- 8) In cases of minor deviations, written clarification may be obtained from the investor and, where applicable, a counter offer made for the correction of the minor deviation; where an investor does not accept the correction of a minor deviation under the counter offer, his offer shall be rejected; at the stage of evaluation and comparison, all minor deviations shall be quantified in monetary terms.
- 9) For the rejection of an offer, a written notice shall be given promptly to the investor.

Article 47 **Validity period and extension**

When determining the duration of the validity period of an offer, a project assessment unit shall ensure that it is sufficient to enable the investors to respond to the solicitation, to allow time for evaluation and comparison of offers and, where applicable, for any authorized organ to review the recommendation of award and give the necessary approval so that the contract can be awarded within that period.

All reasonable steps shall be taken to avoid any situation where an extension of the initial period of validity becomes necessary; a project assessment unit may extend the validity period, if justified by exceptional circumstances, by requesting in writing such extension from all investors before the expiry date; where given, the extension shall be for a minimum period required to complete the evaluation, obtain the necessary approvals and award the contract; whenever an extension of validity period is requested, investors shall not be allowed to change the quoted price or conditions of the offer.

Investors shall have the right to refuse to grant such an extension without forfeiting their security; those investors who are willing to extend the validity of their offer shall be required to provide a suitable extension of security.

Article 48 **Evaluation and comparison of offers**

The purpose of evaluation of offers shall be to determine the best business plan that permits comparison on the basis of calculated costs; subject to any verification of the capabilities of the investor, the offer with the best business plan, but not necessarily the lowest submitted tariffs, shall be selected for award.

For the evaluation and comparison of offers that have been adjudged as valid for the purposes of evaluation and comparison, no other methods or criteria shall be used except those stipulated in the solicitation documents; all relevant factors, in addition to tariffs, that will be considered for the purposes of evaluation and the manner in which such factors will be applied shall be stipulated in the solicitation documents.

When bid prices are expressed in two or more currencies, the prices of all offers shall be converted in the official currency of the Republic of Montenegro, according to the rate and date of rate and source specified in the solicitation documents.

Article 49 Confidentiality

After opening of offers, information relating to the examination, clarification and evaluation of offers and recommendations concerning the award shall not be disclosed to the investors or to persons not officially concerned with the process until the successful investor is notified of the award.

Article 50 Evaluation report

Any evaluation and comparison of offers shall be reported in the manner and in the format laid down in the rules provided that the report shall always be signed by all evaluators and the supervisor confirming the correctness of the report and the compliance with this Act.

Article 51 Contract award and entry into force of the contract

Subject to the approvals required under this Act, the public entity responsible for the project shall award the contract within the period of the validity of offers, to the investor who met the appropriate standards of capability and resources and his offer has been determined (i) to be substantially responsive to the solicitation documents and (ii) to offer the best business plan.

The investor shall not be required, as a condition of award, to undertake responsibilities not stipulated in the solicitation documents or otherwise to modify substantially the offer as originally submitted.

The signatory of the contract, on behalf of the public entity, shall be provided with all offers, the reports on opening and evaluation and shall examine them to determine their compliance with this Act; the signatory shall verify the validity of the offer recommended for award and refuse to sign a contract with a supplier if his offer is not valid; the signatory shall have immediate access to any document of the solicitation exercise that are directly or indirectly related to the contract to be signed.

The signatory shall be responsible to ensure that he is officially granted with the authority to sign such a contract on behalf of a public entity.

Article 52

Undertaking evaluation

Any evaluation exercise undertaken under this Act shall be made by a ad-hoc Evaluation Committee. Chairperson of the project assessment unit shall appoint the members of the Ad Hoc Evaluation Committee.

A ad-hoc evaluation committee shall be comprised of a Supervisor and five evaluators, who shall not have been involved in the opening of offers to be evaluated and shall not be members of the project assessment unit.

The Supervisor or any member shall be public servants selected on the basis of the their necessary specialized expertise.

The Supervisor and the members shall not be elected persons.

When deemed necessary by the Supervisor, he may seek to obtain the following preliminary information (i) a preliminary assessment report on the offers received from any expert in the area; and (ii) a preliminary examination of the offers; where the necessary expertise is not available in the public entity responsible for the project, such expertise may be sought from any other public entity or from any other sources.

The members of a ad-hoc evaluation committee shall continue in their functions until the evaluation report is submitted.

The supervisor shall be solely responsible for the supervision and co-ordination of the evaluation process but, in any case, shall not be involved directly in the evaluation process or in rejection of offers.

The supervisor shall be responsible to take any action necessary to ensure the confidentiality of the offers, their evaluation and of the overall process until completion.

He shall safeguard all offers and any documents related thereto which shall be transferred together with the evaluation report to the authorized organs.

Each evaluator shall make his own individual evaluation without undue influence; thereafter, the supervisor shall determine the average, in the presence of the evaluators from individual results obtained.

The evaluation shall be completed within the validity period so as to leave enough time for contract award.

Any recommendation for award made thereof, under any evaluation undertaken, shall be final; therefore, an evaluation exercise cannot be re-conducted, except where there is an evident situation of non compliance with this Act; after evidence is made on non compliance, another similar evaluation shall be conducted by another ad-hoc evaluation committee; the second committee shall not be provided

with the first evaluation report which shall remain secret until the second evaluation exercise and report thereof completed.

Article 53 Joint venture

Investors established in the Republic of Montenegro shall be encouraged to participate to any solicitation whereon the Republic of Montenegro encourages the development of the economy; they may offer independently or in joint venture with other investors established in the Republic of Montenegro or abroad, but such joint venture shall not be, under any solicitation exercise, mandatory or be a condition for eligibility.

Article 54 Eligibility

Natural persons, companies or firms shall not be eligible for the award of contracts for concessions or B.O.T. where (i) they are bankrupt, (ii) payments to them have been suspended in accordance with the judgment of a court other than a judgment declaring bankruptcy and resulting, in accordance with their national laws, in the total or partial loss of the right to administer and dispose of their property; (iii) legal proceedings have been instituted against them involving an order suspending payments and which may result, in accordance with their national laws, in a declaration of bankruptcy or in any other situation entailing the total or partial loss of the right to administer and dispose of their property; (iv) save after the completion of any punishment upon them, they have been convicted, by a final judgment, of any crime or offence concerning their professional conduct, except after the enforcement of the punishment against them; (v) they are guilty of serious misrepresentation with regard to information required for participation in an invitation to offer; (vi) they are in breach of contract on another contract with the contracting public entity, only where a final judgment by a court is made that the breach of contract is the responsibility of the investors and, (vii) they are found guilty of bribery or kickbacks under international treaties or conventions or, they are ineligible on the same grounds and evidence by any bank, institution or organization providing funds for general development, public investment or reconstruction (viii) and, they have engaged in corrupt or fraudulent practices in competing for the contract in question.

To be eligible for participation in invitations to pre-qualify or to offer and thereafter to be a contracting party, participating investors shall provide evidence satisfactory to the authorized organ of their eligibility under this Article, proof of compliance with the necessary legal, technical and financial requirements and of their capability and adequacy of resources to carry out the contract effectively.

To this end, any offer submitted shall include the following information:

- 1) a document, dated less than 90 days previously, drawn up in accordance with the investors' national law or practice certifying that (i) he meets the conditions laid down in this Article, and (ii) none of the situations referred to in this Article applies to him;

- 2) copies of original documents defining the constitution and/or legal status, and establishing the place of registration and/or statutory seat and, if it is different, the place of central administration of the company, firm or partnership or, if a joint venture, of each party thereto constituting the participating investor;
- 3) details of the experience and past performance of the investor (or of each party to a joint venture) on contracts of a similar nature within the past five years, and details of other contracts in hand including details of the actual and effective participation in each such contract;
- 4) where applicable, the major items of equipment proposed for use in carrying out the contract;
- 5) the qualifications and experience of key personnel proposed for administration and performance of the contract, at and away from the place of performance of the contract;
- 6) information relating to the nature, conditions and modalities of subcontracting wherever the subcontracting of any elements of the contract amounting to more than 10 % of the offer price is envisaged;
- 7) reports on the accounting and financial standing of the investor (or of each party to a joint venture) such as profit and loss statements, balance sheets and auditor's reports for the past five years, an estimated financial projection for the next two years, and an authority from the participating investor (or authorized representative of a joint venture) to seek references from the bank of the investor;
- 8) information regarding any current legal or arbitration proceedings or dispute in which the investor is involved; the information referred to shall be confined to matters of direct interest to the award or performance of the contract; and,
- 9) for companies or firms established in the Republic of Montenegro, evidence that previous payments were made or in process to be made for any taxes, customs duties and any other payment due to the Government or to a Self-Local Government.

CHAPTER FIVE LEASING

Article 55 Leasing of public facilities

Subject to the articles 6, 11 and to chapter Three of this law, leasing shall be permitted for existing public facilities, to be rehabilitated or not, or for new public facilities, or for the use of an existing private facility to be utilized for public uses.

Article 56 Existing public facilities

Pursuant to article 55 of this law, where a public entity prefers leasing to the owning a public facility, the public entity shall -

- (1) determine the market value of the facility by using the service of an independent valuator who shall be selected in compliance with the law;
- (2) clarify property titles;

- (3) seek the authorization, in compliance with the law, to dispose the existing public facilities, by public offer, whereby the disposal is accompanied by an offer from the seller to lease for a given period the public facilities that are offered;
- (4) seek the authorization, in compliance with the law, to enter into such agreement and therefore obtain yearly appropriations to meet the obligations created thereunder; and,
- (5) where a rehabilitation is needed resulting in an investment needed prior to the leasing, detailed drawings and budget estimates shall be prepared and be part of the solicitation documents.

Article 57 **New public facilities**

Pursuant to article 55 of this law, where a public entity prefers leasing to building a public facility, the public entity shall, prior to any solicitation, in compliance with the law -

- (1) obtain prior approval of the design by the Pre-Investment Committee of the Department for public works; where applicable, clarify land titles where the new facility is needed; and,
- (2) seek the authorization, in compliance with the law, to enter into such agreement and therefore obtain yearly appropriations to meet the obligations created thereunder.

Article 58 **Use of existing private facility for public use**

Pursuant to article 55 of this law, where a public entity prefers leasing a private facility for public use, the public entity shall, prior to any solicitation, in compliance with the law -

- (1) stipulate in the solicitation documents the standards for public facilities as approved by the Pre-Investment Committee of the Department for public works; and,
- (2) seek the authorization, in compliance with the law, to enter into such agreement and therefore obtain yearly appropriations to meet the obligations created thereunder.

Article 59 **Insurance costs**

Under any leasing agreement, all insurance costs shall be on the private investor or the private operator; copy of the insurance contract shall be part of the leasing contract, and evidence of payment for renewal shall be conditional to the maintaining in force of the contract.

Article 60 **Maintenance costs**

Under any leasing agreement, the maintenance costs of the facilities, other than daily cleaning of interior shall be a responsibility on the private investor or of the operator.

Article 61
Maximum leasing fees payable

Under any leasing agreement, the increase of the fee payable, for renewal, shall not be higher than the yearly inflation as per indices on inflation published by an official statistic office; the name thereof shall be stipulated in the solicitation documents and thereafter be part of the leasing contract.

Article 62
Subsidy and contingent liability

Under the provisions of this Chapter, the private sector investor or operator shall not be allowed to obtain any kind of benefits, directly or indirectly, from any kind of subsidy, or otherwise obtained by the use of any public funds for reconstruction or rehabilitation, or otherwise requires guarantees other than usual guarantees under a normal leasing agreement in the private sector; except in the case of gross negligence, or under a court decision, any provisions of a leasing agreement entered into, whereby any contingent liability is created on any public entity, shall be deemed to be null and void.

Article 63
Procurement by the private sector

For avoidance of doubt, for investment made by a private sector investor or operator under this chapter, the procurement activities by him shall be undertaken as per the best recognized procurement practices in the private sector.

CHAPTER SIX
MANAGEMENT CONTRACT

Article 64
Consultants or consulting firms

Subject to the articles 7, 12, 13 and to the chapter three of this Act, management contract may be entered into, whereby the management, legal, financial, technical or supervisory services are delivered by private consultants or private consulting firms.

Article 65
Terms of reference

Pursuant to article 64 of this law, management contracts being utilized under this Act for preparatory actions or control of activities for the privatization of the economy, any public entity, in addition to all requirements of the public procurement law, shall utilize the standard format for terms of reference as approved by the privatization Council for -

- (1) Economic consultants;
- (2) Experts for formulating policy in the adequate field of expertise;
- (3) Legal counsel;
- (4) Technical (Engineering) Consultants;
- (5) Financial Advisors;
- (6) Procurement expert;
- (7) Management, supervision expert;
- (8) Experts for corporate governance;
- (9) Expert for environmental protection; and,
- (10) Any adviser for privatization, as may be determined by the Privatization Council.

Article 66

Monitoring of consultants under management contract

Any public entity entering into management contract under this Act whereby the services are linked to a privatization exercise, shall appoint a monitoring committee of three members, subject to articles 67 and 68 of this law.

Article 67

Endorsement

Selection of the members of the monitoring committee shall be endorsed by -

- (1) the Government, in the case of Ministries, Departments or Secretariats;
- (2) their respective municipal assembly, in the case of a Self-Local Government or group of Self-Local Governments; or,
- (3) the parent ministry, for the publicly-owned companies or firms.

Article 68

Membership and powers

The members of a monitoring committee shall not be elected persons and shall be public servants having the relevant expertise to make decision, made on majority, on behalf of the public entity to determine if services are delivered timely and satisfactorily or otherwise in compliance with the terms of reference and the contract entered into.

Article 69

Reports by consultants

Under the provisions of this Chapter, any report made by consultants under management contracts shall be in the format approved by the monitoring committee, and copies thereof shall be made available to the Privatization Council.

CHAPTER SEVEN CONCESSIONS

Article 70

Usage compensation

Besides the particular set under this Act for taking part in the preparation of offers, the application for taking part in the solicitation exercise shall -

- (1) be filed together with particulars relating to the duration of usage conditions and modality of usage compensation for the use of the natural resources of goods in general use;
- (2) conditions for the hand-over at the termination of usage;
- (3) credit rating of the investor or operator; and,
- (4) particulars about other conditions concerning the rights and as particulars about other conditions concerning the rights and duties of the contracting parties.

Article 71 Special conditions

Subject to issuance of a license, a concession may be granted on the condition that the utilization of the natural resources or goods in general use or performance of activity provides for

- (1) the maintenance of the technical and technological unity for the system;
- (2) its efficient operation and rational management; and,
- (3) protection of the environment.

Article 72 Contract offered

A concession contract shall especially include -

- (1) contracting parties;
- (2) subject matter on concession;
- (3) duration of preparatory operations;
- (4) duration of concession;
- (5) modality of and time-limits for securing funds for financing;
- (6) conditions of usage;
- (7) compensation for usage;
- (8) rights and duties concerning the application of measures for general safety and protection of the environment;
- (9) conditions for terminating the contract;
- (10) settlement of disputes; and,
- (11) other matters the contracting parties may agree upon.

Article 73 Transfer

Subject to article 74 of this law, alternatively to re-seeking offers, a concession may be transferred to another person, foreign or not, partly or wholly, with the approval of the authorized organ.

Article 74 **Validity of contract**

Any contract of concession transfer as referred to in article 73 of this law which is concluded without approval of the grantee of concession, without publication in the Official Gazette of the Republic of Montenegro, without public hearings and without any requirements for award under this Act, shall be null and void.

Article 75 **Conditions for the granting of the concession**

- (1) A concession may be granted in order to provide for -
- (a) rational exploitation of natural resources or goods in general use;
 - (b) technical and technological advancement of the business constituting the subject matter of a concession;
 - (c) technical and technological uniformity of systems in the field of infrastructure;
 - (d) efficient operation and rational control of such systems; and,
 - (e) protection and improvement of the environment in conformity with the environmental protection regulation;

(2) Natural resources and goods in general use as well as building devices and installation exploited by public enterprise founded by the state or a self-local government unit may be conceded to another person provided that such public enterprise are unable to provide for the rational exploitation or trouble-free operation in conformity with the regulation governing the conduct of the business of such enterprise.

Article 76 **Subject Matter**

The Subject matter of a concession may be -

- (1) prospecting or exploitation of natural resources or raw materials with the aim to create employment opportunities and to generate revenues to an investor / operator and to the Government, or otherwise, as the case may be, to the self-local governments;
- (2) construction, maintenance and exploitation of facilities for prospecting or extracting, natural resources or raw materials;
- 3) construction of facilities, remodeling, modernization or rehabilitation of existing facilities, for exploitation of water having natural curative properties and other similar item for the purpose of their exploitation;
- 4) construction, maintenance, exploitation of facilities, or rehabilitation of existing facilities, on natural sites, wildlife, or national parks in the view to attract more tourists;

- 5) any other raw material or natural resource of the Republic of Montenegro, where improved exploitation by a private sector investor or operator results in a possibility to generate revenues therefrom for the Government or to the Self-Local Governments, whereon there is an evident situation resulting in financial, social, environmental or economical improvement, or any combination thereof.

Article 77

Recommendation for awarding a concession contract

The recommendation for granting a concession shall be submitted to the Cabinet through the relevant Regulatory Body (hereinafter regulatory organ) established under this law and shall include the following :

- 1) the subject matter of the concession;
- 2) the size of investment;
- 3) the duration of the recommended concession;
- 4) the basic conditions for the utilization of the concession;
- 5) compensation purpose of exploiting the subject matter of concession;
- 6) the information on the interested contracting parties; and,
- 7) any other information as may be requested by the Cabinet.

Prior to submitting a recommendation to the Cabinet, a Regulatory Body shall ensure that inputs were already obtained from any other public entity, wherefrom improvement of a concession may result.

A Regulatory body shall notify the investor or the operator of the position taken by the Cabinet on the presented recommendation.

Article 78

Decision to grant of the concession

Pursuant to the recommendation to grant a concession the Government adopts a decision on the granting of a concession.

Decision to grant a concession especially includes the following -

- 1) reasons wherewith the concession should be granted thereunder;
- 2) where applicable, in addition to any private sector investment or involvement, the necessary funds, resources and time limits for raising them, that are necessary thereto;
- 3) anticipated income and expenditure associated with the concession for the whole duration, resulting therefrom;
- 4) the technological capacity of parties for the utilization of concession, and the risks thereafter;
- 5) particulars on the effects on the overall infrastructure and other economic areas, as well as on the uniformity of technical and technological systems, their efficient operation and control to be rational thereafter;
- 6) duration of concession thereat;

- 7) modality of payment and issuance of guarantees or other sureties for the performance of duties and the amount therefor;
- 8) environmental impact studies undertaken and responsibilities resulting therefrom;
- 9) employment estimates, number of employees and qualifications needed thereto; and,
- 10) any relationships for property, movable or immovable, thereunder; and,
- 11) permits, licenses, registration or any other requirements by law, whereby operation is to be permitted theretofore.

Article 79
Enactment of a concession decree

The Government shall adopt a decree regulating the details and conditions for granting a concession.

Article 80
Concession contract

Any concession contract shall be -

- 1) made in writing;
- 2) concluded in conformity with the terms and conditions set out in the concession decree; and,
- 3) in compliance with this act and with the law *infra civitatem*.

Article 81
Contents of the contract

Where authorized by a concession decree, any concession contract shall be concluded by the public entity responsible of the concession, shall be subject to endorsement by a regulatory body and, shall include provisions relating to, but not limited to, the following -

- 1) the name of the contracting parties;
- 2) the subject matter of concession;
- 3) the duration of preparatory operations and the duration of the concession;
- 4) the conditions under which the duration of concession may be extended or modified;
- 5) modality of a time-limit for raising funds;
- 6) the schedule of investment;
- 7) the amount and modality for guarantees on the performance of the activities;
- 8) where applicable, standards of the products or services as well as the criteria for setting the prices, rates or tariffs payable by the end-users;
- 9) compensation paid for the concession license, terms and conditions for payment;

- 10) rights and duties concerning the application and consequences thereof;
- 11) modality for disputes settlement;
- 12) the application law;
- 13) time and modality of handing over the building installation or plant and state in which it has to be application of ruling law;
- 14) modalities of mutual reporting;
- 15) modalities for monitoring by the regulatory body;
- 16) rights and duties of contracting parties;
- 17) determination of risks and responsibilities resulting from the contract; and,
- 18) any other matters mutually agreed upon by the contracting parties or otherwise stipulated in the concession decree.

Article 82 Registration

Any concession contract concluded with a foreign party shall be reported and registered in the manner provided by the law governing foreign investment.

Article 83 Payment obligation

The compensation for any concession granted, hereinafter the concession compensation, shall be payable in conformity, in order of precedence, with the concession decree, the concession contract, the license issued by the regulatory body and any decision made by the regulatory body after public hearings, in compliance with this Act.

Article 84 Criteria for setting the concession compensation

The concession compensation shall be determined by taking into account, but not limited to -

- 1) the kind, category or quality of the natural resource of the raw material;
- 2) the market price of the natural resource or raw material;
- 3) the general market conditions and trends;
- 4) the duration of concession;
- 5) the contracted risks;
- 6) the coverage of investment costs;
- 7) the anticipated profit; and,
- 8) any other item governing the contract entered into.

Article 85 Allocation of the concession compensation

Concession compensation shall be regarded as revenues for the Republic of Montenegro except where revenues shall be on a public entity, as defined under this Act.

Article 86
Conditions for and modality of pursuing a concession activity

Any concessionaire shall build, maintain and exploit facilities and pursue the concession activities and exploit natural resources or raw materials in compliance with -

- 1) the regulations governing the regional and town planning;
- 2) the terms and conditions stipulated under the concession contract;
- 3) the standing environmental protection regulations;
- 4) the concession decree; and,
- 5) the law in force *infra civitatem*.

Article 87
Concession assignment

Any concessionaire shall not assign to some other party the concession; therefore any such assignment shall be null and void.

Article 88
Increase in the value of the subject matter of concession

Except as otherwise stipulated in the concession decree, any increase in the value of a publicly owned installation of any type, exploited as the subject matter of a concession or which is contributing to the exploitation which has arisen in the performance of the concession activity shall be the property of the Republic of Montenegro or the public entity, as the case may be.

Article 89
Discoveries

Anything of historical, cultural, natural value, or other interest or of significant value unexpectedly discovered on a site shall be public property; therefore, the concessionaire shall notify, upon discovery, the regulatory body and carry out instructions for dealing with them.

Article 90
Protection of the concessionaire rights

In addition to rights, absolute and accessory, any concessionaire shall be guaranteed the rights stipulated under -

- 1) the concession contract;
- 2) the concession decree; and,
- 3) where applicable, the co- financing agreement.

Where no specific provisions are made under the law of the Republic of Montenegro for specific rights of the concessionaires, provisions made under international treaties or otherwise the best international practices shall be applied.

In the event of a change in the Republic of Montenegro law or regulations on the basis of which a concession contract has been concluded, the law and regulations which were in force on the contract conclusion date shall apply to the relations, or otherwise the most favorable to the concessionaire shall apply.

Where in any concession contract under this Act, investment is required for prospecting before exploiting, the same concession agreement shall include the exploitation of the result of the prospecting.

The contractual rights of any concession enterprise shall include the following -

- 1) Performance of all operations associated with opening, development and exploitation for the construction of facilities necessary for the exploitation of raw materials or natural resource;
- 2) Exploitation of all of the mineral raw materials or natural resources specified in the concession contract;
- 3) Utilization of other natural resources and conditions in conformity with the concession contract and the applicable law; and,
- 4) Sale of the mineral raw materials or natural resources, produced from the exploitation of a concession, in local and international markets in conformity with law.

Article 91 Other rights and duties

Should it be necessary to expropriate and/or develop building or land in connection with the granting of a concession, the costs for any expropriation and/or development of building or land shall be charged to the concessionaire and the concession contract shall provide the costs thereof and the terms and conditions for the payment of such costs.

In a case as that referred to in sub-article 1 of this article, the determination of public interest and the expropriation shall be carried out in compliance with the law.

If a public entity or the regulatory body issues, pursuant to the expropriation regulations, any legal instrument forfeiting or limiting any right of use in relation to built any facility constituting, directly or indirectly, the subject matter of a concession, the concessionaire concerned shall be entitled to a compensation which may not be lower than the market value, as determined by an independent financial adviser to be paid by the public entity.

Article 92 Formation, organization and operation

For the purpose of pursuing a concession activity, the concessionaire concerned shall establish an enterprise within 60 days from the date of the

concession contract and the head office of such enterprise shall be in the Republic of Montenegro, unless the concessionaire concerned has already an enterprise established and registered for activities of a similar nature; therefore, the enterprise shall be operated and be otherwise organized and operated in conformity with the law of the Republic of Montenegro.

Article 93 Changes

The head office or status of a concession enterprise may be changed only after a prior approval by the regulatory body issuing the license for concession.

Article 94 Dissolution of a concession activity

In the event of dissolution of a concession enterprise, any private assets, property, movable or immovable, for the concession shall be offered to the public entity at the fair market value determined by a financial adviser; where, after sixty days of such offer, the public entity did not proceed with the buying, the private assets may be liquidated, or otherwise disposed by the concession enterprise in compliance with the law.

Article 95 Expiration of a concession

Any concession partnership may be terminated, as per the terms and conditions of the concession contract and by issuance of a decree, in the following cases -

- 1) Expiration of the concession contract;
- 2) Redemption of the concession;
- 3) Forfeiture of the concession;
- 4) For any other reason stipulated in the concession contract; or,
- 5) By mutual agreement.

Article 96 Decision on the conditions for and modality of letting mineral raw material deposit

1) For the purposes of this Act, the deposits shall be classified as follows -

- 1) Deposits whose exploitation was under way on the effective date of the concession agreement;
- 2) Deposit existing in the exploitation was under way on the effective date of this decision but not subjected to exploitation;
- 3) Investigated deposits in the exploitation fields which are not being exploited; or,

- 4) Deposits which have not been subjected to geological prospecting and which in the opinion of the ministry responsible for mining are suitable for being prospected and exploited on the basis of a concession contract.

The subject matter of any concession contract may be granting of the right of exploitation of the mines in which the exploitation of mine waste dumps has ceased.

The ministry responsible for mining shall present to interested legal entities and to the regulatory body the particulars about the deposits.

Where of public interest and where initiated by the regulatory organ, decision on sites may be subject to public hearings in compliance with this Act.

Article 97

Crude oils or gas, under land or sea

In the case of prospecting for, exploitation of crude oil and gas in the land and seabed exploratory location within the territory of the Republic of Montenegro, the special character of these types of operations, the operating continuity and the specific conditions necessary to result in investment, local or foreign, shall be taken into consideration.

Article 98

Deposit under way

In case of deposits whose exploitation was under way or deposits existing in the exploitation fields of mining enterprises, but not exploited on the effective date of this Act, the ministry responsible for mining shall have the right of offering mineral raw material to obtain offers for concession in compliance with this Act.

Article 99

Geological prospective

The ministry in charge of mining shall open competition for award of concessions in compliance with this Act, for the investigated deposits located outside the existing exploitation fields and for the deposits which have not been subjected to detailed geological prospective, which in the opinion of the ministry responsible for mining, may be suitable for prospecting, exploitation on the basis of concession contract.

Article 100

Approval for deposit site

In addition to the requirements under this Act, approval for deposit site shall be obtained from the ministry responsible for mining, prior to any seeking of offers, and the request for approval shall include the technical and financial information on the deposit constituting the subject matter of the concession to be offered.

Article 101

Technical requirements for deposits

In any technical report on any deposit that may constitute the subject matter of a concession, shall be included the following -

- 1) indication of the mineral raw materials involved;
- 2) name of the locality;
- 3) indication of the deposit together with a layout of the exploitation field involved at the scale of 1;10,000 delineated by control points;
- 4) coordinates and area particulars, proprietary situation particulars, on the infrastructure surrounding and any building located in the exploitation field;
- 5) deposit evidence of basic and detailed geological field;
- 6) deposit evidence of basic and detailed geological prospecting;
- 7) particulars on the quality and quantity of the mineral raw materials appraisal;
- 8) the cost effectiveness of exploitation;
- 9) duration of planned prospecting, exploitation;
- 10) expected compensation to be paid by the private investor or operator;
- 11) any requirements for any public entity to participate in the construction of infrastructure and acquisition of equipment;

The report on the deposit constituting the subject matter of concession shall be prepared by the ministry responsible for mining; where a concession is offered for prospecting and exploitation, the same report requirements shall apply, but shall be based on preliminary findings that are available before prospecting.

Article 102 Technical commission

The ministry responsible for mining shall establish a special technical commission responsible of examining the technical information submitted by participating investors and prepare a technical assessment report to be made available to all evaluators, prior to their undertakings of the examination, evaluation and comparison of offers in compliance with this Act.

Article 103 Technical and financial reports

In addition to the requirements under this Act and under the concession contract, any concession enterprise shall report by 15 March of each year a status report on technical and financial results of the concession.

CHAPTER EIGHT BUILT-OPERATE-TRANSFER

Article 104 Build-Operate-Transfer, B.O.T.

Any natural or corporate person, national or foreign, may be permitted to build-operate and transfer (B.O.T.) a specified facility, installation or plant or infrastructure set out under a franchise regulated by the regulatory body established under this Act.

Article 105
Type of permitted arrangements for B.O.T.

Are hereby permitted under this Act, Build, Operate and Transfer, B.O.T. contract arrangement, under a franchise authorized by a regulatory body, whereby a private investor and /or operator is building and operating a public utility and, after a determined period, is transferring the ownership thereof to a public entity; B.O.T. arrangements shall include Build-Lease and Transfer (BLT), Build-Transfer-and-Operate (BTO), Develop-Operate-and-Transfer (DOT), Rehabilitate-Operate and Transfer (ROT); tariffs payable by the clients shall be regulated by the contract entered into and shall be subject to the decision, after public hearings, of the regulatory body for the tariffs payable and the quality of the services to be delivered.

Article 106
B.O.T. System

For the purpose of this Law B.O.T. arrangements shall be understood to mean the letting of the construction of building, installation or plant on the basis of the B.O.T. system (build-operate- transfer) under an agreement concerning the construction and financing of a complete building installation or plant, its operation and transfer to a public entity of the Republic of Montenegro within the contracted term.

Article 107
Eligible types of project

The construction, rehabilitation, improvement, betterment, expansion, modernization, operation, financing and maintenance, of the following type of projects which are normally financed and operated by the public sector which may be, under this Act, wholly or partly financed, constructed and operated by the private sector, including other infrastructure and development projects as may be authorized in compliance with this Act.

The following infrastructure or projects and related facilities shall be permitted:

- 1) highways including expressways, roads, bridges, interchanges, tunnels;
- 2) railways or rail-based projects packaged with commercial development opportunities;
- 3) non-rail mass transit;
- 4) port infrastructures like piers, wharves, quays, storage, handling, ferry services;
- 5) power generation and transmission;
- 6) telecommunications;
- 7) information technology;
- 8) water supply, sewerage and drainage;
- 9) education and health infrastructure;
- 10) tourism facilities and sites;
- 11) government or self-local government buildings;
- 12) housing projects for social security;
- 13) public markets;

- 14)warehouses and post-harvest; and,
- 15)environmental and solid waste management including collection equipment, composting plants, recycling and, incinerators.

Article 108

Transfer

After the expiration of the franchise period and upon recovery of the investment, the project company shall transfer, in compliance with the terms and conditions of the B.O.T. contract, the entire facilities of such B.O.T. project to the public entity in good condition and without any claim.

Article 109

Payments from beneficiaries

Within the B.O.T. contract period, or otherwise extended sufficiently for the recovery of investment, the project company shall operate lawfully and independently, and recover and obtain returns on its investment through payments received from the beneficiaries.

Article 110

Minimum capital of an investor

The registered capital of an investor shall not be less than 25% of its total investment.

The project company shall be entitled to the ownership and management rights of such facilities during the franchise period as determined under the B.O.T. contract.

Article 111

Examination and prior approval of projects

Subject to article 4, prior to initiating any seeking of offers, a feasibility study report of a B.O.T. project shall be proposed by the public entity for the examination and approval by the Privatization Council.

Article 112

Preparation of documents

Pursuant to article 111 of this law, upon obtaining approval for a B.O.T. project, the public entity authorized to issue such B.O.T. project shall start to prepare the pre-qualification documents and the bidding documents and submit such documents, for examination and approval, by the Privatization Council.

Article 113

Pre-qualification of investors

Before the seeking of offers, a pre-qualification of investors, local or foreign, or in joint venture, shall be conducted to invite investors intending to submit offers. For pre-qualification, an investor intending to submit an offer shall provide, in addition to the requirements under this Act, at least the following documents:

- 1) A legal background on their on-going operations;
- 2) Certification of experience and performance of similar contracts in nature and complexity;
- 3) Ability to organize and manage the B.O.T. project; and,
- 4) Financial and credit status and evidence of available assets for the project.

Article 114 Bidding for B.O.T.

In addition to the requirements under this Act for solicitation documents, shall be include herewith at least -

- 1) Feasibility study report of the B.O.T. project;
- 2) Proposed schedule of the construction of the project; and,
- 3) Proposed billing standards and adjustment formula.

Article 115 Feasibility study report

Subject to article 111, the feasibility study report of the project shall include -

1. Survey of the project and target;
2. Assessment of the effects of the project on the environment;
3. Market demand for the project, as well as its costs and charges;
4. Description of project engineering and technical index, including the technology to be adopted;
5. Description of the project company, including engineering, construction and operation plans;
6. Financial analysis, including total investment, cost of labor and materials, financing scheme and cost, cash flow, internal rate of return, inflation rate, supposed foreign exchange rate and interest rate, analysis of risks and sensitivity; and,
7. Other items included in the feasibility study report.

Article 116 Examination before award

The B.O.T. agreement shall be concluded in accordance with this Act; therefore, the public entity shall submit the outcome of the evaluation of offers and the B.O.T. agreement, with the feasibility study report of the investor's project attached thereto, to the Privatization Council for examination and approval; after approval of the privatization Committee, the same documents along with the recommendation of the Privatization Council shall be made available to Cabinet for final approval before award of the contract.

Article 117
The B.O.T. contract agreement

B.O.T. agreement shall be in compliance with the laws and other regulations in force and should at least include the following -

- 1) the names, places of residence and representatives of the legal persons of the relevant parties of the B.O.T. agreement;
- 2) The content, conditions and terms of the B.O.T.;
- 3) The duration of the B.O.T. and the terms for the recovery of investment by the investor;
- 4) Project design, construction, operation and maintenance standards;
- 5) The schedule and extension of the project, and the outcome of termination;
- 6) The construction price of the project and the billing plan;
- 7) The criteria and procedure for handing the project over to the Government after the expiration of the term of the B.O.T.;
- 8) The rights and responsibilities of the governmental organs;
- 9) The rights and responsibilities of the B.O.T. project company;
- 10) The risk-sharing by category of risks; and,
- 11) The transfer of the rights and responsibilities of the project company.

Article 118
Establishment of the B.O.T. project company

The investor approved to win the contract shall establish the B.O.T. project company in accordance with the relevant laws and regulations of the Republic of Montenegro.

Article 119
Franchise registration

The Public Entity shall carry out franchise registration with the regulatory body for all B.O.T. project agreements concluded pursuant to the provisions herein. To be a registered B.O.T. agreement, a franchise shall be issued by the regulatory body; therefore an investor issued with the franchise shall be protected by the laws and regulations of the Republic of Montenegro.

Article 120
Market demands

Except in cases where the existing B.O.T. project is unable to satisfy market demands, the governmental organs shall not approve any new competitive projects.

Article 121
Supervision, examination and auditing

The regulatory body shall be entitled to conduct supervision, examination and auditing of the B.O.T. project company's operational activities.

Article 122 Guarantees

Except in the case of public private co-financing scheme, any governmental organ or any public entity shall provide any form of guarantee regarding the rate of return of the project investment. B.O.T. contract arrangements shall be based on identified returns sufficient to reimburse investment, and where such returns are insufficient at expiration, extension shall be allowed for full recovery of the investment made by the private investor.

Article 123 Customs and taxes

The B.O.T. project company shall pay customs and taxes in accordance with the provisions of laws.

Article 124 Training, technology and data

The project company shall be responsible for the training of the personnel required to assume independent responsibility for the operation and maintenance of the project after the transfer of the project. After the expiration of the term of B.O.T. agreement, the project company shall, without reservation, hand over the technology and data of the operation and maintenance of the project to the government organs without any compensation.

Article 125 Changes in policy

The B.O.T. project company shall be responsible of commercial risks such as project financing, construction, operation and maintenance through methods such as adjustment of the billing standards and the extension of the B.O.T. term, authorized by the regulatory body; the public entity shall be responsible of the risks of the B.O.T. project that are directly due to material effects resulting from changes in policy.

Article 126 Applicable law and the settlement of disputes for B.O.T.

The B.O.T. agreement's execution, performance, and interpretation, as well as the settlement of disputes, shall be in accordance with the laws of the Republic of Montenegro; in issues not yet regulated by the laws of the Republic of Montenegro, the best international practices such as the ones made under international convention or the latest "Acquis Communautaire" of the European Union shall prevail.

Article 127

Court proceedings for B.O.T.

Any disputes arising during the performance of the B.O.T. agreement or having connection with the this agreement shall be settled through consultation between the parties to the agreement in the presence of the regulatory body. If a settlement cannot be reached through consultation after 30 days, such disputes shall be submitted to a Court of the Republic of Montenegro and the latest UNCITRAL Arbitration Rules shall be applied, supplemented by the Supplemental Rules of the International Center for the Settlement of Investment Disputes (ICSID).

CHAPTER NINE REGULATORY BODY

Article 128 Powers

Pursuant to this law the Government shall establish a regulatory body as an organ having powers to -

- 1) issue license for concession;
- 2) authorize franchise for B.O.T. arrangements;
- 3) determine allowable increases, decreases or no change in tariffs payables;
- 4) determine and control quality standards of public services delivered;
- 5) promote operating efficiency of investment made by private investors;
- 6) monitor the private company performance and contractual compliance;
- 7) ensure public satisfaction of clients, receive complaints;
- 8) arbitrate disputes with consumers and ensure responsiveness to final customer needs;
- 9) impose sanctions on private investors for failure to meet regulated quality standards;
- 10) ensure assets serviceability; and,
- 11) organize and monitor public hearings.

For B.O.T. or Concessions contract arrangements entered into under this Act, all functions and powers of the regulatory body herein established shall be, *mutatis mutandis*, on the regulatory body established by law to regulate for a specific sector.

Where no such regulatory body for a specific sector is established by law, the regulatory body herein established shall exercise all the powers and duties as imposed under this Act.

Article 129 Members

The members of the regulatory body shall ensure that the licenses and franchises permit the conduct of activities for development with the up-most transparency and integrity in full compliance with this Act.

The regulatory body shall comprise four permanent members and one ad-hoc member

- 1) a Chairperson who shall represent the Cabinet and who shall be a judge or an ex-judge;
- 2) a member who shall represent the Ministry of Finance;
- 3) two members who shall represent the Self-Local Governments; and,
- 4) an ad-hoc member from the public entity initiating a B.O.T. or concession project;

and, decision shall be made on majority of votes, each member having one vote; quorum for decision and public hearings shall be 3 members; in case of equality of vote, the Chairperson shall have a casting vote.

Except for the ad-hoc member from the public entity initiating a project who shall be appointed by the head of the public entity, the members of the Regulatory Body, who shall not be elected persons, shall be appointed by the Cabinet, in consultation with the President of the Republic and with the leader of the opposition parties, and on such terms and conditions as may be determined by the Prime Minister. Every member shall hold office for a period not exceeding 3 years and shall be eligible for one re-appointment.

The Cabinet may, in consultation with the President of the Republic and with the leader of the opposition parties, at any time terminate the appointment of a permanent member who has been guilty of (i) any misconduct, default or breach of trust in the discharge of his duties and, (ii) an offence of such nature as renders it desirable that his appointment should be terminated.

The Regulatory Body may engage in compliance with the law, such number of persons as may be necessary, capable of assisting it with expert advice; such expert shall not have, in any matter, right to vote.

The Regulatory Body shall meet at such time and place, as the Chairperson deems fit and undertake public hearings in compliance with this Act and the rules made under.

Subject to article 132 of this law, the Government of the Republic of Montenegro shall determine the remuneration of the members of the Regulatory Body, for carrying out their duties under this Act.

Article 130 **Harmonization**

To maintain national harmonization, fair competition and for proper governance on decisions made, the regulatory body shall -

- 1) train regulatory staff;
- 2) publish local and regional performance indicators;
- 3) publish locally monitored activities and regulatory decisions; and,
- 4) report and monitor guidelines for comparable reports.

Article 131 Criteria for selection

Members and staff of the regulatory body shall be impartial and criteria for their selection shall be determined by the Cabinet; the selection shall be made so as to ensure -

- 1) the protection of the legitimate interests of investors and freedom from political influence;
- 2) the protection of consumers' rights to receive public services from the operation at the level of quality expected and to complain when services are not delivered as expected;
- 3) that regulators be devoted to the responsible discharge of their regulatory functions;
- 4) that the regulatory body remains true to its mandate and fully accountable; tenure may be given for a fixed period and provide protection from arbitrary removal from office.

Article 132 Funds and personal interests

Except as otherwise authorized by the Cabinet, the regulatory body shall be funded through direct levies on concession and B.O.T. operations and not from public budgets; regulators shall have no personal, directly or indirectly, financial interest in any of the operations to be regulated; in addition, members shall have no personal interests for a period of three years on any B.O.T. or concession contracts, after termination of contract and for a period of two years after termination of office.

Article 133 Minimum tariffs payable by clients

Notwithstanding any mutual agreement resulting to the contrary, for B.O.T. arrangements, the tariffs payable by the clients or the consumers shall not be less than the tariffs determined under the B.O.T. contract.

Notwithstanding any mutual agreement resulting to the contrary, for concession contract, the compensation payable by the investor or operator shall not be less than the compensation determined under the concession contract.

Article 134 Accountability

Any person may participate in the public hearings organized by the regulatory body; the public hearings shall be organized to permit the investors, the operators

and the consumers to express their views before determining tariffs charged by the investors and operators for the public services provided to the consumers.

The regulatory body shall report annually to the Cabinet on all their activities, including outcomes of public hearings.

Article 135 **Public hearings**

After a license or a franchise is authorized under this Act, public hearings shall be conducted in compliance with the rules made under this Act for tariffs or fees under B.O.T. and Concession arrangements and for the compliance with standards on the quality of the services delivered, as determined by the contracting arrangements.

Article 136 **Appeal on decision**

Any investor, operator, consumer, client, group of clients or group of consumers may appeal a decision made by the regulatory body by a written request to the regulatory body for a final public hearing; where such request for appeal is made, the proceedings of the final public hearing shall be held not later than one month after receipt of such appeal request; decision made under such appeal shall not limit in any manner any decision made by a court.

Article 137 **Co-financing schemes for investment**

This article shall refer to major infrastructure projects B.O.T. or Concession by a private sector investor and / or operator co-financed by a public entity, on prior approval of the Minister responsible for finance and the Regulatory body.

For co-financing schemes, the public entity shall collaborate with the Regulatory Body and the Ministry responsible for finance who shall be the organs for the preparation and approval of any co-financing scheme.

Where appropriate, the Ministry responsible for finance and the regulatory body may seek the participation of development banks or any other financial institutions for loans, credits or grants to be offered to a private investor without governmental or public entity guarantee.

Where risk capital is to be made available by a public entity or by the Government in the form of shares for a corporate body to be established for such a project, the Ministry of Finance and the Regulatory Body shall also seek the approval of the Cabinet and ensure appropriation is made by the public entity or by the government to meet obligations.

Notwithstanding any conditions under loan, credit or grant of a banking institution or any condition under any co-financing agreement, the investor or the operator shall be

authorized by a regulatory body to procure the goods, works and services required for the facility, using its own procurement procedures applicable by the private sector.

Where the goods, works or services required for the facility and to be financed partly by public or wholly by local, regional or international public funds, such goods, works or services shall be procured in accordance with the provisions of the public procurement law or of any treaty or agreement entered into with a co-financing development institution.

Where, exceptionally and after approval of the Cabinet, a public entity contributes directly by risk capitals to own shares of an enterprise created for B.O.T. or concession, a divestiture plan not exceeding fifteen years shall be proposed by the investor, as part of his offer, in the view that only the investor or the operator will own shares at time of the transfer of the facilities for B.O.T. and at termination of the concession.

Article 138

Competition for small projects

Where projects of low complexity are prepared by a public entity and approved in compliance with this Act, with the aim to promote the participation of the private sector for the delivery of public services of such low complexity, competitive licenses, concession or competitive franchises for B.O.T may be offered by the regulatory body under open and fair competition, and after advertising for pre-qualification and offering in compliance with this Act, among investors and / or operators, only where the value of the total investment for such low complexity projects does not exceed 1 million DEM and the duration does not exceed ten years.

Article 139

Competitive tariffs and fees for services

Tariffs or fees for public services delivered shall be competitive with tariffs in force in the territory of the Republic of Montenegro.

Costs of licenses offered shall not be higher than licenses issued for similar services obtained in the territory.

Except in co-financing scheme, the project shall not create or result in public debt or any contingent liability on the part of the public entity and / or the Government.

Article 140
Priority for project approval

Special priority shall be given by the public entities and the regulatory body to not serviced localities and to indispensable public services contributing to economic stability or growth; for local development projects, the regulatory body and the self-local governments shall promote the use and the development of small scale B.O.T. or Concession enterprise; under this section; in addition, any offer for any concession or B.O.T. contract shall include subcontracting arrangements using such small scale enterprises for at least ten per cent (10 %) of the estimated total value of the contract.

CHAPTER TEN
FINAL PROVISIONS

Article 141
Rules, regulations and forms

The Privatization Council and the Regulatory Body pursuant to provisions of this law shall make such public solicitation rules, regulations under the guiding principles of accountability and transparency for purposes of this Act.

Article 142
Transparency

(1) Any person who directly or indirectly, in any manner influences, or attempts to influence any officer or member taking part in any seeking of offers, whether or not his role is critical to the decision-making, with the object of obtaining an unfair advantage under this Act, shall commit an offence; any evaluator, supervisor of an ad-hoc evaluation committee, members of the regulatory body who directly or indirectly, in any manner influences, or attempts to unduly influence a supervisor, an evaluator, shall commit an offense.

(2) The permanent members of the Regulatory Body, on assumption of duty shall take their respective solemn statement of office specified in the form set out in the regulations made under this Act; all experts or consultants engaged to deliver services that include access to confidential information shall comply with confidentiality obligations as set out in the contract documents and under this Act; all persons involved in seeking of offers shall be guided by the rules and by the code of ethics as laid down under this Act; the solemn statement taken under this article shall include an undertaking to be bound by the Code of Ethics under this Act.

(3) The permanent members of the Regulatory Body shall file with the State Prosecutor a written statement of assets and liabilities not later than 30 days after appointment and upon termination of appointment; where, subsequent to a declaration made therefore, the state of assets and liabilities is so altered as to be

reduced or increased in value by a prescribed amount, as set out by the State Prosecutor, a up-dated declaration shall be made; no declaration of assets and liabilities filed shall be disclosed to any person except with the express consent of the person concerned or by order of a Judge on reasonable cause shown.

(4) Subject to a reasonable administrative fee, the public shall be given prompt access by the Regulatory Body to this Act, to up-dated provisions of this Act, to any legal instruments made under, to standard documents and forms, and to the annual reports; accessibility shall also be made possible by electronic mode of communication.

(5) The Regulatory Body shall publish in the Official Gazette -

- a) information on Concession license and on B.O.T. franchise being authorized,
- b) any change made on tariffs or fees,
- c) not later than 45 days after such authorization or any changes made thereof.

(6) Any public entity and the regulatory body involved in any seeking of offers or in any activity under this Act shall record and safeguard all relevant documents issued and received where they directly or indirectly relate to any activity undertaken under this Act; any person who, willfully or negligently, by any action or omission resulting in the non availability of any document or evidence shall commit an offense; all documents, of any type, shall be kept in safe condition for a minimum period of ten years after completion and payment of contracts and, be available instantaneously for review or audit or by any expert hired therefore in compliance with this Act; except for records, directly or indirectly, related to the national security, contractual documents for which the obligations are fully fulfilled, shall be made accessible to any person interested within two weeks from receipt of a written request; where the request concerns viewing only the documents, it shall be in the presence of an officer; where the request is to obtain copies thereof, it shall be subject to payment of reasonable fee.

(7) Consultants, or any of their affiliates, shall not be hired for any assignment that would be in conflict with their previous and current assignment, and prior obligations to other clients, or that may place them in a position of not being able to carry out the assignment in the best interest of the public entity.

(8) All private investors and operators, shall, under this Act, include in their offers a declaration that the content of their offers have been independently raised and prepared by certifying that no consultation has been made by other investors or operators and consequently that no unfair advantage is taken from unfair and non equitable competition.

(9) For information, the regulatory body shall make available, at least once a year, a technical and financial report to the Government of the Republic of Montenegro on the implementation of each of any concession or B.O.T. agreement, on any investment related thereto, and the any activities initiated by the Regulatory Body, including its own activities, and financial results therefrom.

Article 143

Code of ethics

The prime concern of all persons involved in solicitation activities shall be governed by principles of transparency and accountability.

All persons shall handle public solicitation by (i) ensuring adequate time for preparing offers, (ii) complying with this Act; (iii) maintaining strict confidentiality as requested under this Act and (iv) maintaining ethical practices by developing and maintaining honest and professional relations with investors and third parties, by having an attitude that shall reflect this Act.

No person involved, directly or indirectly, in public solicitation shall accept any type or form of advantage from an individual or any type of organizations; any person, organization, entity, association or any other group of persons who is offered or received such gratuities shall refuse it and return it to the giver in a dignified manner, advising him in writing that this Act prohibits such reward or gift.

All persons involved, directly or indirectly, in matters of public solicitation shall be expected to be free from interests or relationships which are actually or potentially inimical or detrimental to the best interests of the Republic of Montenegro and shall not engage or participate in any commercial transaction involving the Government or a public entity in which they have any kind of financial interest.

A conflict of interest exists where a person:

- (1) possesses an interest outside his official duties that materially encroaches on the time or attention which should otherwise be devoted to affairs of Government;
- (2) possesses a direct or indirect interest in or relationship with an outsider which is inherently unethical or that may be implied or inferred to be, or make possible gain or advantage due to the person's ability to influence dealings;
- (3) entertains relations which are unethical, rendering his attitude partial toward the outsider for personal reasons or otherwise inhibit the impartiality of the person's business judgments;
- (4) presents, by acts or omissions, the public entity he represents or the Government in an equivocal, embarrassing or ethically questionable position;
- (5) entertains relations compromising the reputation on the integrity of the public entity he represents or the Government;
- (6) receives benefits by taking advantage of an opportunity that properly belongs to the public entity he represents or the Government;
- (7) creates a source of revenue or advantage by using public property which comes into his hands either in course of his work or otherwise; and,
- (8) discloses confidential information of his public entity to a supplier or to unauthorized persons.

Article 144 Repeal

The law on concession (Official gazette RCG 13/91) shall be repealed as of the application date of this law.

Article 145 **Transitory provisions**

(1) Any right or obligation subsisting at the commencement of this Act in favor of, or against any of the public entities shall, on commencement of this Act, be a right or obligation in favor of the same public entities.

(2) Any situation which came into being but were not exercised before the entry into effect of this Act, shall remain in full force in conformity with the old legislation; but their exercise, duration and procedure to enforce them shall be regulated by this Act and by the Rules of Court; if the exercise of the right or of the action was commenced under the old laws, but is pending on the date this Act takes effect, and the rules and regulations were different from that established in this Act, the rules and regulations made under this Act shall apply.

(3) Rules and regulations laid down or made under this Act which may prejudice or impair vested or acquired rights in accordance with the repealed legislation shall have no retroactive effect.

Article 146 **Commencement**

This Act shall take effect after eight (8) days following its publication in the Official Gazette of the Republic of Montenegro, and shall be applied of 1 July 2002 .