

DECREE

**ON TERMS AND CONDITIONS FOR ATTRACTING
DIRECT INVESTMENT**

(Official Gazette of the Republic of Serbia, No. 42/2011 and 46/2011)

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ON TERMS AND CONDITIONS FOR ATTRACTING DIRECT INVESTMENT

Decree contents

Article 1

This Decree governs the terms and conditions for attracting direct investment to the territory of the Republic of Serbia. It details the criteria for awarding funds for attracting direct investment, the dynamics of disbursement of awarded funds, as well as other issues of importance for increasing the competitiveness of the Republic of Serbia through the inflow of direct investment. This program aims to promote investments that have a favorable impact on job creation, promote transfer of new knowledge and technologies, balance the Republic's regional development, revive underdeveloped regions and regions of special state interest, and attract investment in the automotive, electronics, information technology, telecommunications and tourism industries.

Definitions

Article 2

The following terms shall have the following meaning for the purposes of this Decree:

1) *Direct Investments* are new investments into the fixed assets of companies in the manufacturing sector or in the sector of internationally marketable services or in the tourism sector, with which new jobs are created and in cases where:

- (1) new business activities are undertaken,
- (2) existing business activities are expanded,
- (3) existing manufacturing programs are expanded to include new products
- (4) substantial changes in the existing overall production process are undertaken
- (5) (erased).

2) The *Investor* is a company which participates in the procedure related to the awarding of funds;

3) The *Beneficiary of Funds* is a company registered in accordance with the regulations of the Republic of Serbia to whom funds are awarded in accordance with this Decree;

4) *Underdeveloped Regions* are local administrative units whose level of development is lower than 50% of the national average according to official data. These regions include: Merošina, Bojnik, Trgovište, Malo Crniće, Tutin, Bela Palanka, Svrlijig, Knić, Žabari, Bosilegrad, Golubac, Kuršumljija, Ražanj, Gadžin Han, Sjenica, Žagubica, Medveđa, Rekovac, Osečina, Blace, Crna Trava, Žitorađa, Vladičin Han, Mali Zvornik, Plandište, Žitište, Nova Crnja, Preševo, Bujanovac, Kučevo, Babušnica, Vlasotince, Lebane, Mionica, Prijepolje, Krupanj, Rača, Doljevac, Varvarin and Ljubovija;

5) *Regions of Special State Interest* are cities and municipalities with populations of at least 50,000 unemployment rates of at least 20% according to official data, excluding cities and municipalities on whose territory Free Zones have been established in accordance with the law regulating free zones;

6) *Internationally marketable services* are services rendered in the fields of information and communication technology which are or may be exported, unified and/or subcontracted for the administrative processes of corporations, user centers, logistics and distribution centers, and project and design centers;

7) *An Investment of Special Importance* is an investment of at least EUR 200 million that creates at least 1,000 new jobs within a period of three years starting from the day of the beginning of the investment; it contributes to the resolution of the problems of unemployment, increases exports or substitutes imports, and promotes the development of the Republic of Serbia's economy;

8) *The Investor Which Makes an Investment of Special Importance* is a renowned company or consortium of related companies which together form an inseparable manufacturing-technology unit, which fulfills the high standards of the sector in which it operates, in the sense of financial, business, technical and technological capacities;

9) *Public-Private Company* is a company in which the Investor and the Republic of Serbia jointly participate in an investment of special importance;

10) *Strategic projects in the field of tourism* are those which are in accordance with the Strategic master plan or the Program for the development of touristic products or the Program for the development of tourism.

Sources and purposes of funds for attracting direct investment

Article 3

The funds for attracting direct investment (hereinafter "funds") are provided by the budget of the Republic of Serbia and depend on the availability of funds.

The funds may be used for financing investment projects in the manufacturing sector, the internationally marketable services sector and strategic projects in the field of tourism. The funds may not be used financing investment projects in primary agriculture, the hospitality industry, retail, and the production of synthetic fibers and coal.

Level of funds that may be awarded

Article 4

The total funds that can be awarded are determined according to the number of employees hired, and depend on the type of investment, the location of the investment and the degree to which the investment meets the criteria in this decree, namely:

1) for investments in the manufacturing sector, for every new job created:

:

(a) between EUR 4,000 and EUR 10,000 per new job created in underdeveloped regions and regions of special state interest,

(b) between EUR 5,000 and EUR 10,000 per new job created in the automotive, electronics or information technology and telecommunications industries in regions of special state interest,

(c) Between EUR 2,000 and EUR 5,000 per new job created in other regions of the Republic of Serbia;

2) Between EUR 2,000 and EUR 10,000 for every new job created for investments in the internationally marketable services sector;

3) Between €2,000 and €10,000 for each new job created for strategic projects in the field of tourism.

New jobs are considered those which are created by the Beneficiary of Funds within a three year period starting from the day the contract to award funds is signed, or within two years for investment projects which envisage the rental of office space.

Article 5

As an exception to article 4 of this Decree, for investments whose total value is greater than 50 million euros and which create at least 300 new jobs, funds totaling up to 20% of the total value of the investment are awarded.

Disbursement of funds will be carried out in accordance with article 23 of this Decree.

Refund of funds invested in infrastructure

Article 6

Investors whose projects require investment in infrastructure necessary for carrying out the business activity of the Beneficiary of Funds have the right to submit an application for a partial refund of invested funds.

The total amount which may be refunded is determined by the degree to which Article 15 of this Decree has been fulfilled, the justification for the construction of infrastructure, the appraised value of the infrastructure project and the availability of budgetary funding.

Nomination of investment projects

Article 7

Investor submits a proposal for an infrastructure project to the ministry in charge of economy and regional development (hereinafter: Ministry).

The proposal contains the main project, estimated value of the infrastructure project, the business activity of the Investor, the level of investment, number of new jobs created, proof that the activity is being conducted on premises designated for the use, a written statement issued by a local authority stating that needed infrastructure does not exist and that its construction is not planned, i.e. that the proposed construction of infrastructure is to be used exclusively for the realization of the investment in Article 10 Paragraph 2 of this Decree, and the pre contract/protocol signed by the Investor and contractor.

Agreement on the mutual rights and obligations of the ministry and beneficiary of funds

Article 8

The mutual rights and obligations regarding the method and conditions of infrastructure construction and the reimbursement of invested funds are set forth in the agreement which is signed by the Ministry responsible for economy and regional development and the Beneficiary of Funds.

The agreement from paragraph 1 of this article details the timeline of the disbursement of funds, as well as the provision which envisages that the amount of funds to be disbursed is dependent on income earned and the realization of priority commitments of the budget of the Republic of Serbia.

The Ministry may at any time and in any phase of the project if terminate the contract if it determines that the Beneficiary of Funds which undertook the obligation to construct infrastructure does not fulfill the conditions specified in this Decree.

Monitoring and tracking of the realization

Article 9

The Beneficiary of Funds will hire an auditor who monitors the process of infrastructural construction.

The contractor is obliged to submit to the ministry in charge of economy and regional development construction phases (in advance, temporary and terminated) along with the report by the monitoring body.

Right of ownership of constructed infrastructure

Article 10

The infrastructure built with the funds from this Decree is considered public property, in accordance with the regulations by the Republic of Serbia.

An exemption to paragraph 1 of this article, infrastructure built for use by the Investor which invests €10 million and creates at least 500 new jobs, and is used exclusively for the investment project, becomes the property of the Investor.

Eligibility for participating in the procedure of awarding funds

Article 11

Companies with investment projects in the sectors to which funds are awarded have the right to participate in the procedure for awarding funds, in accordance with this Decree on awarding funds.

Exceptions regarding eligibility criteria

Article 12

The following legal entities shall be excluded from the right to receive funds:

- 1) Those who in the past 12 months have reduced their registered equity by more than 50% but not below the legally-mandated minimum;
- 2) Against which bankruptcy proceedings are underway or those who fulfill legally-defined conditions for initiating bankruptcy proceedings;
- 3) Those with outstanding obligations towards the Republic of Serbia;
- 4) Those who have already received funding for the same purpose from the budget of the Republic of Serbia.
- 5) Whose founder or majority owner is the Republic of Serbia.

Conditions for awarding funds

Article 13

Funds are awarded on the basis of the sector and location of the investment:

- 1) Investments into the manufacturing sector whose minimum total investment value is EUR 1 million and create at least 50 new jobs;
- 2) Investments into the manufacturing sector in underdeveloped regions and regions of special state interest whose minimum total investment value is at least EUR 500,000 and create at least 50 new jobs;
- 3) Investments into the internationally marketable services whose minimum total investment value is EUR 500,000 and create at least 10 new jobs, as well as for investments into strategic projects in the field of tourism whose minimum total investment value is at least EUR 5 million and create at least 50 new jobs.

Funding may only be awarded if the following conditions are met:

- 1) property created by the direct investment is used exclusively by the User of Funds;
- 2) the number of jobs created by the User of Funds following the realization of the investment project, i.e. after the last increment of awarded funds is disbursed, is not decreased for a period of at least three years;
- 3) if the investment project envisages the rental of office space, the rental must last for at least three years following the envisaged completion date of the project

Total Value of Investments

Article 14

Investment into fixed assets by the Beneficiary of Funds is taken into account in determining an investment's value as defined in article 13 of this Decree. For the purpose of this decree, fixed assets are defined as:

1) Tangible assets which include: land, buildings, facilities, industrial facilities, machinery and equipment, excluding transportation equipment;

2) Intangible assets which are created by technology transfer, acquisition of patent rights, licenses, knowledge and experience (knowhow) or non-patent-related technical knowledge, which is listed in the User of Fund's final balance sheet, in accordance with international accounting standards.

Excluding land and buildings, costs which are related to the acquiring property which is rented are taken into consideration only in the case of financial leasing and only if the Investor is obligated to purchase the property at the end of the lease period.

An exception to paragraphs 1 and 2 of this article is provided for projects in the internationally marketable services sector, for which the value of the office rental/lease contract ~~may be~~ is considered as part of the investment's value.

Criteria for awarding funds

Article 15

The criteria for funds awarding are the following:

- 1) Investor References;
- 2) Domestic suppliers' level of participation and the effect of the investment on the productivity of other domestic economic associations, enterprises and other legal entities that are active in the same sector;
- 3) Sustainability of a project's investment/longevity;
- 4) The introduction of new technologies and transferability of knowledge and skills to domestic suppliers;
- 5) Effects of investment on human resources;
- 6) Assessment of the environmental impact of the investment;
- 7) Export volume;
- 8) Import substitution;
- 9) Impact of the investment on the economic development of the municipality, city and region in which the investment is being made;
- 10) (erased)

Method and procedure for awarding funds

1. Public announcement

Article 16

Funds are be awarded in a procedure that is carried out in accordance with a public announcement and this Decree.

A public announcement is prepared and published by the Serbia Investment and Export Promotion Agency (hereinafter “the Agency”).

A public announcement is published in at least one daily newspaper that is distributed throughout the entire territory of the Republic of Serbia and on the Agency’s website.

A public announcement should contain the following:

- 1) Information on the funds awarded;
- 2) Conditions for awarding funds;
- 3) Criteria for the assessment of an investment project;
- 4) Deadline for application submission;
- 5) Address at which information regarding participation in the procedure of awarding funds and the contact person’s details can be obtained;
- 6) Address where the application should be submitted;
- 7) Scheduled date for opening of applications.

2. Application for participating in the procedure

Article 17

Applications for participation in the procedure of awarding funds (hereinafter “the Application”) are submitted to the Agency by the deadline stated in the public announcement.

The application has to be submitted in Serbian language.

The application has to contain the following:

- 1) Basic information on the party submitting the application, i.e. the Investor;
- 2) Details regarding the investment project;
- 3) General information on the Investor (vision, objectives, information on products and services, data on sales and main export markets);
- 4) General information on a legal person registered in the Republic of Serbia if the party submitting the application is a foreign investor.

The following must be enclosed together with the application:

- 1) A detailed business plan for which financing is being sought;
- 2) Original or certified photocopies of Balance sheets and income statements for the previous three years of operations with a report from an authorised auditor (if there is a legal obligation to have a certified auditor), while a foreign legal entity should submit both the original or a certified photocopy and a certified translated copy;

3) A projected balance sheet and income statement, as well as a report on expected cash flow of the Beneficiary of Funds for the next three years of the investment project's operations, starting from the date when the application was submitted;

4) An original or certified photocopy from the Serbian Business Registers Agency submitted by an Investor with their head office in the Republic of Serbia or a certificate from the respective registry of the state in which the Investor has their head office which is not to be older than three months and is certified by the competent institution, as well as a certified translation of the certificate;

5) A written declaration of whether funds from the budget of the Republic of Serbia have been awarded for the same project and, if so, under what conditions.

The Minister of Economy and Regional Development (hereinafter: Minister) will define the content and form of the application in more detail.

Application assessment commission

Article 18

The Application Assessment Commission (hereinafter "the Commission") decides whether the conditions and criteria specified in this Decree have been met and forwards its recommendations for awarding of funds to the Minister.

This Commission is formed based on the decision of the Minister on the basis of the recommendation of the ministry responsible for finance and the Agency.

The Commission has a president and a minimum of two members. The representative of the Ministry is also President of the Commission.

Opening of applications

Article 19

The opening of applications is a public procedure.

In special cases, the Agency may decide, on the grounds of business, official, military or state secrets, not to make the procedure of opening applications public; this will be stated in the public announcement.

Assessment of applications

Article 20

The Commission will not consider untimely, incomplete or unallowed applications.

The Commission assesses investment projects on the basis of the conditions, the location of the investment and official regulatory criteria.

The Minister renders the decision on awarding funds, which itself will contain information about the Beneficiary of Funds, the investment project, and the amount of funds awarded to the project.

The Commission shall send out a report on the results of the assessment procedure to all participants in the procedure for awarding funds within a period that cannot exceed 30 days, starting from the date of the finalisation of the procedure or from the date when the decision on awarding the funds is made.

Objections

Article 21

Participants in the procedure are entitled to object.

Such objections are submitted to the Minister within a period of eight days starting from the date of receipt of the report.

The Minister shall rule on the objection within 15 days, starting from the date of receipt of the objection.

Disbursement of awarded funds

1. Request for disbursement of awarded funds

Article 22

Disbursement of awarded funds is carried out on the basis of the request submitted to the Agency by the Beneficiary of Funds, in accordance with the agreement on awarding funds.

1. Dynamics of disbursement

Article 23

Awarded funds are disbursed in equal increments of 25% of the total amount of the awarded funds which are disbursed as the following conditions are met:

- 1) Upon concluding a purchase contract for a structure or land, or a lease agreement for land or structures, or an excerpt from the cadastre or appropriate land records
- 2) Upon obtaining a construction permit or a permit for the reconstruction and/or adaptation of a structure which may not be older than three years from the day the request for payment is submitted;
- 3) Upon obtaining a usage permit for the structure or structures whose reconstruction or adaptation is envisaged by the investment project;
- 4) Upon achieving full employment envisaged in the investment project.

An exception to paragraph 1 of this article is provided for projects in the international marketable service sector which envisage the leasing of office space, for which awarded funds are disbursed in two equal installments upon the fulfillment of each of the following conditions:

- 1) Upon signing the contract for the lease of business premises which has to be valid for no less than three years, starting from the date of completion of the investment project;

2) Upon achieving full employment envisaged by the investment project.

The unpaid amount of funds from the previous period is carried over into the disbursement of the following payment period.

3. Contract on awarding of funds

Article 24

The mutual rights and obligations pertaining to the disbursement of funds are governed by the contract signed by the Ministry and the Beneficiary of Funds.

The Ministry may terminate the contract in each phase of its implementation if it is determined that the Beneficiary of Funds does not fulfil the conditions stipulated by the contract and related to the investment dynamics.

The Ministry is entitled to, on the basis of the issued bank guarantee, charge the account for the amount of disbursed funds and statutory penalty interest if the Investor does not fulfill their contractual obligations.

Funds for investments from article 5 of this Decree shall be determined in the contract on the use of funds.

4. Bank guarantee

Article 25

The Beneficiary of Funds has to provide a bank guarantee payable on the first demand for the benefit of the Republic of Serbia.

The bank guarantee from Paragraph 1 of this Article is a guarantee payable on the first demand and issued by a commercial bank that is active on the territory of the Republic of Serbia which is valid for three three years for each of the first three payment increments, and for three years and six months for the fourth payment increment.

Progress report on investment project

Article 26

The Beneficiary of Funds submits to the Agency semi-annual reports on the progress of the investment project for which the funds have been awarded.

At the end of each year, the Beneficiary of Funds submits a report by an independent auditor pertaining to the business activities performed.

The National employment agency shall verify and submit to the Agency a report on the number of persons employed by the Beneficiary of Funds in the period of three years following the realization of the investment project.

Investments of special importance

Article 27

Funds for encouraging investments of special importance are provided by the budget of the Republic of Serbia. Each budget year, a maximum amount for investments of special importance is set aside in line with the priorities and fiscal capacities of the budget of the Republic of Serbia.

The funds from Paragraph 1 of this Article can be used to finance investment by the Republic of Serbia into the capital of a public-private company, as well as for the awarding of non-returnable funds to investors who make investments of special importance and are public-private companies.

Non-returnable funds from Paragraph 2 of this Article can be awarded up to a maximum of 20% of the overall value of the investment, and the dynamic of its awarding will be made in accordance with article 23 of this Decree.

The funds from Paragraph 1 of this Article can be used for financing the needs of investors making investments of special importance and public-private companies, namely investment in infrastructure and other investments essential for performing specific activities which particularly encompass the acquisition of land and other real estate, equipping land with infrastructure, and repairs to any ecological damage wrought in the period preceding the investment of special importance in the location where the specific investment is being made.

Article 28

In a public-private company, the Republic of Serbia may make investments in the form of financial resources, movable property and real estate, as well as other rights belonging to it, in a manner and under conditions prescribed by law.

Article 29

Contracts on investments of special importance are concluded between the Republic of Serbia and the The Investor Which Makes an Investment of Special Importance.

The contract in Paragraph 1 of this Article particularly contains the subject, the level and dynamic of the investment, as well as the amount of non-returnable funds that could be given as well as securities of the Republic of Serbia.

In the case of the formation of a public-private company, the contract in Paragraph 1 of this Article will be governed by the procedure, method and terms for the Republic of Serbia's possible withdrawal from such an economic entity.

Final Provisions

1. Termination of validity of other regulations

Article 30

The Decree on the Terms and Conditions for Attracting Foreign Direct Investment (Official Gazette of the Republic of Serbia, no. 34/10, 41/10) is no longer valid from the the day this Decree comes into force.

2. Entry into force

Article 31

This Decree comes into force on the day following its announcement in the „Official Gazette of the Republic of Serbia” and is valid until December 31, 2012.

Independent article of the Decree on amendments and supplements

Decree on terms and conditions for attracting direct investment

(Official Gazette of the Republic of Serbia, no. 34/10)

Article 12

This Decree comes into force on the day following its announcement in the „Official Gazette of the Republic of Serbia.”