

On the basis of article 7 of the Law on the Budget of the Republic of Serbia for 2012 (Official Gazette of the Republic of Serbia, no. 101/11) and article 42, paragraph 1 of the Law on Government (Official Gazette of the Republic of Serbia, no. 101/07, 65/08 and 16/11), the Government adopts

## ***DECREE***

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

#### ***Scope of the Decree***

##### **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, the transfer of new knowledge and technologies, balanced regional development of the Republic of Serbia, and attract investments in tourism.

#### ***Definitions***

##### **Article 2**

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

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 in the cases where:

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

Direct investments in the manufacturing sector may be:

(a) investments that include the construction of new manufacturing capacities (Greenfield),

(b) investments that utilize pre-existing capacities (Brownfield),

2) The *Investor* is a domestic or foreign company which submits an application in ; (in the awarding funds procedure)

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) *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;

5) *An Investment of Special Importance* is an investment of at least 200 million euros that creates at least 1,000 new jobs by the deadline set in the agreement on awarding funds, which under no circumstances may be longer than ten years from the day the agreement on awarding funds is signed and such that it contributes to the resolution of unemployment, increases exports or substitutes imports, and promotes the development of the economy of the Republic of Serbia;

6) *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;

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

8) *A large investment project* is an investment whose total value is greater than 50 million euros and which creates at least 300 new jobs by the deadline set in the agreement on awarding funds, which under no circumstances may be longer than ten years from the day the agreement on awarding funds comes into force, and contributes to the development of the economy of the Republic of Serbia;

9) *A mid-sized investment project* is an investment whose total value is greater than 50 million euros and which creates at least 150 new jobs by the deadline set in the agreement on awarding funds, which under no circumstances may be longer than ten years from the day the agreement on awarding funds is signed, and such that contributes to the development of the economy of the Republic of Serbia;

10) *Strategic projects in the tourism sector* 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, tourism and the internationally marketable services sector.

The funds may not be used for financing investment projects in primary agriculture, the hospitality industry, retail, and the production of synthetic fibers and coal, nor may they be used by commercial entities with difficulties described in article 7, paragraphs 1) – 3) of this decree.

### ***Level of funds that may be awarded***

#### **Article 4**

The total funds that may be awarded are determined in accordance with the type of investment, the number of new jobs created, and on the basis of total points received for by the investor during the procedure for each new job created, namely:

- a) 4,000 euros for between 101 and 120 points,
- b) 5,000 euros for between 121 and 140 points,
- c) 6,000 euros for between 141 and 160 points,
- d) 7,000 euros for between 161 and 170 points,
- e) 8,000 euros for between 171 and 180 points,
- f) 9,000 euros for between 181 and 190 points,
- g) 10,000 euros for between 191 and 200 points,

New jobs from paragraph 1 of this Article are considered those that are created by the Beneficiary of Funds for hiring employees for an indefinite period of time, and which are determined by the agreement on awarding funds. These shall be created within a period of three years from the day of entering into the agreement on awarding funds.

As an exception to paragraph 2 of this article, in the case of changed circumstances, as defined in the law regarding contractual relations, arise which substantially impede the fulfillment of the contractual obligations, the deadline for fulfilling obligations may be extended. This deadline may not be extended for a period longer than five years from the day the agreement on awarding funds is entered into.

In case there is an extension of the deadline as defined in paragraph 3 of this article, the validity of the bank guarantee and other collaterals shall be extended accordingly.

#### **Article 5**

As an exception to article 4 of this Decree, the amount of funding which may be awarded to large and mid-sized investment projects is determined as a percentage of the overall investment value.

The criteria for awarding funds from article 16 of this decree are applied to large and mid-sized investment projects but are not subject to the application of criteria for scoring.

The total amount of awarded funds for investment for large investment projects may not exceed 20% of the total value of the investment. For investments whose value is greater than 100 million euros, this percentage may not be greater than 17%. For mid-sized investment projects, the percentage may not exceed 10% of the investment's value.

For investments of special importance, large investment projects, and mid-sized investment projects, new jobs are considered those which are created for an indefinite period of time at by the Beneficiary of Funds by the deadline set in the agreement on awarding funds. This deadline under no circumstances may not be longer than ten years from the day the agreement on awarding funds is entered into.

### ***Eligibility for participating in the procedure of awarding funds***

#### **Article 6**

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

### ***Exceptions regarding eligibility criteria***

#### **Article 7**

The following investors and Beneficiaries of Funds shall be excluded from the right to receive funds:

- 1) Those which 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 8**

Funds may be awarded for:

- 1) investments in the manufacturing sector which create at least 50 new jobs in accordance with article 4, paragraph 2 of this decree and which have the following minimum value:

-500,000 euros – for investments in cities/municipalities which are classified in the fourth group of devastated regions in accordance with the decree which determines the unified list of the levels of development of regions and cities/municipalities;

- one million euros - for investments in cities/municipalities which are classified in the first, second, and third groups of devastated regions in accordance with the decree which determines unified list of the levels of development of regions and cities/municipalities;

- 2) investments in the internationally marketable services sector which are of at least 500,000 euros in value and which create at least 10 new jobs, in accordance with article 4, paragraph 2 of this Decree;

- 3) investments into strategic projects in the tourism sector whose minimum total investment value is at least EUR 5 million and create at least 50 new jobs;

- 4) large investment projects, on the condition that at least 20% of the value of the investment project is realized, no later than intone year from the day the agreement from article 29 of this decree is entered into;

- 5) mid-sized investment projects, on the condition that at least 10% of the value of the investment project is realized, no later than intone year from the day the agreement from article 29 of this decree is entered into;

## **Article 9**

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 Beneficiary of Funds is not decreased for a period of three years after achieving full employment envisaged by the investment project;
- 3) if the investment project will be realized in leased business premises, the rental must last for at least three years following the envisaged completion date of the project for small and medium-sized companies, and five years for large companies.

## ***Value of Investments***

## **Article 10**

Investment into fixed assets by the Beneficiary of Funds by the deadline defined in article 4, paragraph 2 of this decree is taken into account in determining an investment's value.

For the purpose of this decree, fixed assets are defined as:

1) Tangible assets which include: land, buildings, facilities, industrial buildings, 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 financial statement, in accordance with international accounting standards.

Excluding land and buildings, costs which are related to the acquiring of a leased property 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 lease contract may be included in the investment value.

### ***Criteria for awarding funds***

#### **Article 11**

The criteria for funds awarding are the following:

- 1) Investor references,
- 2) domestic suppliers' level of participation,
- 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) volume of international sales;
- 7) economic effects of the investment project,
- 8) impact of the investment on the economic development of the municipality, city and region in which the investment is being made;

A certain number of points is awarded for each of the criteria in paragraph 1 of this article. The maximum total number of points that can be awarded is 200.

The criteria for awarding funds are not applied to projects of special importance.

### ***Criteria Scoring System***

#### **Investor references**

##### **Article 12**

Investor references are scored in accordance with the reputation of the candidate, namely:

a) if the stock of the investor is traded on global stock markets and/or the candidate has experience in realizing a large number of investment projects or has already realized an investment in the Republic of Serbia – the number of points ranges from 21 up to 30,

b) if the investor has an international reputation and/or is well-known in the domestic market – the number of points awarded ranges from 11 up to 20,

c) if the investor is undertaking the business activity which is the subject of the investment and/or does not have experience in realizing investment projects – the number of points awarded is up to 10.

#### **Participation of domestic suppliers**

##### **Article 13**

The participation of local suppliers is scored based on the participation of local suppliers during and after the realization of the investment, namely:

a) greater than 70% - the number of points awarded ranges from 16 up to 20,

b) greater than 40% but less than 70% - the number of points awarded ranges from 11 up to 15,

c) greater than 10% but less than 40% - the number of points awarded ranges from 6 up to 10,

d) less than 10% - the number of points awarded is up to 10.

## **Project sustainability**

### **Article 14**

The sustainability of the investment/longevity of business is scored in the following way:

- a) if the investment project renders it impossible to transport the factory/machines outside the territory of the Republic of Serbia - the number of points awarded ranges from 16 up to 20,
- b) if equipment, machines, and facilities can be moved outside the territory of the Republic of Serbia at great cost and length of time (three to five years) - the number of points awarded ranges from 6 up to 15,
- c) if equipment, machines, and facilities outside the territory of the Republic of Serbia in a short period of time (up to three years) and at minimal cost - the number of points awarded is up to 5.

## **Introduction of new technologies and transferability of knowledge and skills to domestic suppliers**

### **Article 15**

Introduction of new technologies and transferability of knowledge and skills to domestic suppliers is scored in the following manner:

- a) If the investment project involves activities which are considered new technologies (telecommunications, microelectronics, information technology, biotechnology, new materials, etc.) and/or the investment project includes highly-sophisticated technology and the transfer of knowledge and skills to supplier companies in the Republic of Serbia - the number of points awarded ranges from 16 up to 20.
- b) if the investment project includes technologies that are at a medium level of development and enable the transfer of knowledge and skills to supplier companies in the Republic of Serbia - the number of points awarded ranges from 16 up to 20.
- c) if the investment project does not involve the use of new technology - the number of points awarded is up to 5

## **Impact of investment on Human Resources**

### **Article 16**



The impact of the investment on human resources is scored according to the level and types of knowledge and skills that transferred to human resources, or the applicability of the newly-gained knowledge and skills in the labor market of the Republic of Serbia, namely:

a) if, in order to provide general knowledge and skills or additional training to employees which will render employees more competitive in the labor market of the Republic of Serbia, the employer plans to carry out special training by themselves, or in cooperation with education institutions or institutions responsible for employment - the number of points awarded ranges from 16 up to 20.

b) if special training is envisaged in order for workers to receive specific knowledge or skills applicable to a particular business activity, or if an educational curriculum is advanced in cooperation with an educational institution, in order to render employees more competitive in the labor market of a particular industry - the number of points awarded ranges from 11 up to 15.

c) if special training is not envisaged by the investment project, or if the planned trainings do not develop knowledge and skills which may be applied in the labor market of the Republic of Serbia - the number of points awarded is up to 10.

## **International sales volume**

### **Article 17**

International sales volume is scored in accordance with export volume of products or services delivered to markets outside of the Republic of Serbia, namely:

a) if the company exports more than 50% of its products or services to international markets - the number of points awarded ranges from 21 up to 30.

b) if the company exports less than 50% of its products or services to international markets - the number of points awarded ranges from 10 up to 20.

c) if the product or service being provided is intended solely for the domestic market - the number of points awarded is up to 5.

## **Economic effects of the project**

### **Article 18**

The economic effects of the project are evaluated based on available data in the business plan and projected balance sheets and income statements, namely:

a) the economic indicator which presents the total ratio of total revenues to total expenditures for the duration of the investment project, namely:

- (1) less than 1 – no points,
- (2) from 1 up to 1.4 – from 1 up to 5 points,
- (3) from 1.5 up to 6 – up to 10 points;

b) coefficient of accumulated value that represents the ratio between the average net profit in the investment cycle and the total investment, such as:

- (1) less than 5% - no points,
- (2) from 5 up to 20% – from 1 up to 5 points,
- (3) greater than 20% - from 6 up to 10 points,

c) time of return on the investment which represents the relationship between total investment and net income during the investment period, including:

- (1) up to three years – from 6 up to 10 points,
- (2) from three up to five years – from 1 up to 5 points,
- (3) more than five years – no points.

### **Impact of the investment on the commercial development of the municipality or city**

#### **Article 19**

Effects of the investments on the commercial development of the municipality or city in which is being invested are scored based on the level of development of the municipality/city envisaged by the decree which designates the unique list of the development level of regions and local administrations. If the investment is realized in:

- a) the first group – the number of points is 15;
- b) the second group – the number of points 20;
- c) the third group – the number of points 25;

d) in the fourth group – the number of points is 30;

### ***Method and procedure for awarding funds***

#### **Public announcement**

##### **Article 20**

Funds are 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 contains 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.

#### **Application for participating in the procedure**

##### **Article 21**

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 the Serbian language.

The following documents have to be submitted with the application:

- 1) A detailed business plan for which financing is being sought;
- 2) Original or certified photocopies of registered financial reports for the previous three years of operations with a report from an authorized auditor (if there is a legal obligation to have a report by an authorized 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 of the certificate from the Serbian Business Registers Agency submitted by an Investor registered in the Republic of Serbia or a certificate from the respective registry of the state in which the Investor has their head office, which may not be older than three months and is certified by the competent institution, as well as a certified translation of the certificate;
- 5) A written statement of whether funds from the budget of the Republic of Serbia have been awarded for the same project and, if so, under what conditions.
- 6) Proof of having settled all tax and contribution obligations in the Republic of Serbia for the year preceding the day the application is submitted.

The Minister in charge of economy and regional development (hereinafter: Minister) will define the content and form of the application in more detail.

## **Application assessment commission**

### **Article 22**

Based upon the recommendation of the Agency which has, from the submitted documentation, determined fulfillment of the conditions and criteria for awarding funds set forth in present decree, the Application Assessment Commission (hereinafter: Commission) proposes to the ministry in charge of the economy and regional development (hereinafter: Ministry) to render a decision which includes the level of funding which should be awarded to the investor.

The Ministry, on the basis of the proposal of the Commission, renders the decision on the level of funding.

By a decision, the Minister nominates the Commission comprised of the representatives 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 23**

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 is stated in the public announcement.

## **Assessment of applications**

### **Article 24**

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

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

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

The Commission shall deliver notification 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 finalization of the procedure, or as of the date when the decision on awarding the funds is has been made

## **Complaint**

### **Article 25**

Participants in the procedure are entitled to file a complaint.

The complaint shall be submitted to the Ministry within eight days of the date of receipt of the notification.

The Minister shall rule on the complaint within 15 days of the date of receipt of the complaint.

## ***Disbursement of awarded funds***

### **Request for disbursement of awarded funds**

## **Article 26**

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.

The Agency, following a verification procedure, delivers to the Ministry for disbursement only completed applications from paragraph 1 of this article.

## **Dynamics of disbursement**

## **Article 27**

Awarded funds are disbursed in accordance with the type of investment as defined in article 2 of this decree, namely:

1) for greenfield investments, funds are disbursed in four equal installments of 25% of the total amount of awarded funds, upon fulfilling each of the following conditions:

(1) upon concluding a purchase contract for land, or submitting an excerpt from the cadaster or appropriate land records

(2) Upon obtaining a construction permit or a permit for the reconstruction 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 building envisaged by the investment project,

(4) upon achieving full employment envisaged in the investment project

2) For brownfield investments which do not envisage the reconstruction of existing buildings, two installments are disbursed upon fulfilling the following conditions:

(1) 30% of the total amount of awarded funds upon concluding a purchase contract for the building, or upon submitting a property deed, usage permit, or, in the case of leased premises, a lease agreement which may not last fewer than three years for small and medium-sized companies or five years for large companies from the day of completion of the investment project and a usage permit.

(2) 70% of the total amount of awarded funds upon achieving full employment envisaged by the investment project

3) for brownfield investments which include the reconstruction/adaptation of existing buildings, funds are disbursed in three installments of 33% or four installments of 25% of the total funds awarded, depending on whether the building is being reconstructed or adapted.

4) for projects in the internationally marketable services sector which envisage the lease of business premises, awarded funds are disbursed in two equal installments and upon meeting the following conditions:

1) 30% of the total amount of awarded funds upon concluding a lease agreement for business premises which may not last fewer than three years as of the day the investment project is completed,

2) 70% of the total amount of awarded funds upon achieving full employment envisaged by the investment project.

## **Article 28**

Awarded funds for large and mid-sized investment projects are disbursed:

1) as a percentage:

(1) proportionally to the level of the investment in each year of the project. The percentage of funds disbursed is equal to the percentage of the level of investment, or

(2) proportionally to the number of persons employed in each year of the investment project. The percentage of funds disbursed is equal to the percentage of total workers whose employment is envisaged by the investment project; or

2) in one lump sum in accordance with available budgetary funding

(1) upon achieving full employment envisaged by the investment project, or

(2) upon achieving the full investment amount envisaged by the investment project.

## **Contract on awarding of funds**

## **Article 29**

The mutual rights and obligations pertaining to the disbursement of funds are governed by the contract concluded by and between 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 fulfill the conditions stipulated by the contract and related to the investment dynamics.

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

## **Collateral**

### **Article 30**

The Beneficiary of Funds has to provide a bank guarantee issued by a commercial bank operating on the territory of the Republic of Serbia that is payable on the first demand for the benefit of the Republic of Serbia.

A bank guarantee shall be provided for disbursed funds for the entire duration of the agreement from article 29 of this decree.

The type and validity period of collateral for investments of special importance are determined in the agreement to award funds and in accordance with the deadline for realizing the investment program and the manner of disbursement defined in articles 5 and 34 of this decree.

For investment into large and mid-sized investment projects, the validity period of the bank guarantee is confirmed by the agreement on awarding funds and in accordance with the deadline for realizing the investment program and dynamics of disbursement set forth in articles 5 and 28 of this decree.

In addition to the bank guarantee, as a second form of collateral, the Beneficiary of Funds is required to submit two signed, blank promissory notes with a signed authorization bill to collect statutory interest, in accordance with the law which determines the rate of statutory interest.

The statutory interest is calculated for the period starting from the day of the disbursement of the final installment until the day of fulfillment of conditions for the termination of contract from article 29 of this decree.

## ***Progress report on investment project***

### **Article 31**



At the end of each year, the Beneficiary of Funds submits a report by an independent auditor pertaining to the business activities performed and the degree to which the investment has been fulfilled as envisaged by article 29 of this decree at the end of the investment period. The Beneficiary of Funds must also submit a report from an accredited appraiser regarding the value of transferred used equipment. The Agency may also request report by an accredited appraiser on the value of other transferred property.

The National employment service shall verify and submit to the Agency a report on the number of persons employed by the Beneficiary of Funds.

The Privatization agency shall verify and submit to the Ministry a report on the level of investment envisaged by the investment project; the Ministry will submit a copy of this report to the Agency.

On the basis of the report from articles 2 and 3 of this article, if the contractual obligations regarding the level of investment or number of employees have not been fulfilled, the Agency shall make a recommendation to the Ministry.

As an exception to paragraphs 3 and 4 of this article, for investments of special importance, by order of the Ministry, the Privatization agency will verify the level of investment and the National employment service will verify the number of persons employed.

The Minister shall determine the manner and procedure for control, as well as the level of compensation for the National employment service and the Privatization agency for carrying out the control.

### ***Investments of special importance***

#### **Article 32**

Funds for encouraging investments of special importance are provided by the budget of the Republic of Serbia. Maximum amount for investments of special importance for each budget year is determined 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.

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 33**

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 34**

Contracts on investments of special importance are concluded between the Republic of Serbia and 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 in favor 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 a company.

### ***Refund of funds invested in infrastructure***

### **Article 35**

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 or total refund of invested funds.

If the infrastructure in paragraph 1 of this article has already been constructed at the cost of the Investor, and if said infrastructure is necessary for the new investment project which includes additional investment and the creation of new jobs in accordance with this decree, the Investor has the right to submit a request for a partial or total refund of the invested funds. This must be submitted within a period of seven years from the day of the construction of said infrastructure was completed.

Beneficiaries of Funds under this decree have the right to submit a request for refunding of funds from paragraph 2 of this article for investment projects and/or expansions of existing investment projects which include investment of at least 10 million euros and create at least 300 new jobs.

For the purpose of this decree, infrastructure includes buildings and facilities necessary for the realization of the investment in a specific region and to which an unlimited number of users have access, including an investor for buildings and facilities used exclusively for the particular investment project.

The Ministry, acting on recommendation of the Commission for infrastructure from paragraph 6 of this article, determines the amount of the refund in accordance with the degree to which the criteria from article 11 of this decree have been fulfilled, the justification for the construction, the appraised amount and cost of the infrastructure, and the availability of budgetary funding.

By a decision, the Minister nominates the Commission for infrastructure comprised of the representatives of the ministry responsible for the economy and regional development – a unit in charge of National Investment Plan, the ministry in charge of finance, the ministry in charge of infrastructure and the Agency,

The commission for infrastructure has a president and at least two members. The representative of the Ministry is also the president of the Commission.

### ***Nomination of infrastructure projects***

#### **Article 36**

The investor submits a proposal for an infrastructure project to the ministry in charge of economy and regional development.

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 area designated for the use, proof that the proposed construction of infrastructure shall be used exclusively for the realization of the investment in Article 39 Paragraph 2 of this Decree, and the pre contract/protocol or contract concluded between the Investor and contractor.

For the purpose of this decree, the value of an infrastructural project includes the following costs:

- 1) Development and acquisition of project design and zoning documentation,
- 2) construction, and
- 3) engagement of expert supervision.

### ***Agreement***

#### **Article 37**

The mutual rights and obligations regarding the method and conditions of infrastructure construction and the partial or total reimbursement of invested funds are set forth in the agreement concluded between the Ministry responsible for economy and regional development (hereinafter: Ministry) 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 disbursed funds shall depend on income earned and the realization of priority commitments of the budget of the Republic of Serbia.

The Ministry may terminate the contract at any time and in any phase of the project 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 38**

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, interim and final) along with the report by the supervising body, except for an advance construction case for which supervisory report is not necessary.

#### **Article 39**

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

As an exemption to paragraph 1 of this article, infrastructure built for use by the Investor which invests €10 million and creates at least 300 new jobs on the territory of the Republic of Serbia, and is used exclusively for the investment project, becomes the property of the Investor.

### ***Transitional and Final Provisions***

#### **Termination of validity of other regulations**

#### **Article 40**

The Decree on the Terms and Conditions for Attracting Direct Investment (Official Gazette of the Republic of Serbia, no. 42/11, 46/11 and 84/11) is no longer valid from the day this Decree comes into force.

## **Entry into force**

### **Article 41**

This Decree comes into force on the day following its announcement in the „Official Gazette of the Republic of Serbia,” and will cease to be valid on December 31<sup>st</sup>, 2012, aside from provision of Article 31 which will no longer be valid once the procedure for realizing the investment in accordance with the agreement on awarding funds is finalized.

Disclaimer: This document is an unofficial translation of the Decree on Terms and Conditions for Attracting Direct Investment into English. Although the Serbia Investment and Export Promotion Agency (SIEPA) makes every effort to provide as accurate a translation as possible, it cannot be held responsible for any discrepancies between this document and the official, Serbian-language version.