



**Serbia -
New Decree on Terms
and Conditions for
Attracting Direct Investments**

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SERBIA: TERMS AND CONDITIONS FOR ATTRACTING DIRECT INVESTMENTS

I. INTRODUCTION

In late December 2016, the Government of Serbia passed the new Decree on Terms and Conditions for Attracting Direct Investments. The Decree supplements the Law on Investments (2015), regulating in finer detail criteria, conditions and means of attracting direct investments, in particular granting of State incentive funds for investment projects.

In Serbia, the State investment support structure is made up of the following entities:

- Ministry of Economy
- Council for Economic Development
- Development Agency of Serbia (RAS)
- Autonomous Provinces
- Local municipalities (including Units for Local Economic Development and Investment Support as dual development/investment support operational units of Autonomous Provinces and local municipalities)

II. GENERAL ELIGIBILITY

Incentive funds can be used for financing investment projects in:

- manufacturing sector
- services sector (that may involve international trade in services)

Incentive funds **cannot** be used for financing investment projects in the following sectors:

- Energy
- Coal and Steel
- Airports
- Traffic
- Trade
- Public utilities
- Hospitality
- Software development
- Games of chance
- Tobacco
- Synthetic fibres
- Manufacturing of arms and ammunition
- Shipbuilding (commercial vessels exceeding 100 tones)
- Companies in distress

An eligible entity is under the obligation to secure at least 25% of justified expenses from its own sources or other sources that do not involve provision of State aid.

While the Decree does not differentiate between domestic and foreign investors, the primary distinguishing factor is the size of a corporate entity to which government incentives are being allocated.

Large enterprise – over 250 employees and net asset value exceeding EUR 43 mil.

Medium enterprise – between 50 and 250 employees and annual revenue not exceeding EUR 50 mil or net asset value not exceeding EUR 43 mil.

Small enterprise – less than 50 employees and annual revenue (or net asset value) not exceeding EUR 10 mil.

III. ELIGIBLE PROJECTS

Subsidies in manufacturing sector may be granted for investment projects that are valued from EUR 100,000 and employ at least 10 employees.

Subsidies in services sector that may involve international trade in services may be granted for projects that are valued from EUR 150,000 and employ at least 15 employees.

Subsidies in agriculture sector may be granted for projects that are valued from EUR 2,000,000 and employ at least 25 employees.

The Decree imposes the obligation that a subsidy may be granted only under the following conditions:

- direct investment must remain at the same location in a local municipality for at least five (5) years after completion of an investment project for large enterprises, or three (3) years for small and medium enterprises; and
- total number of employees shall not be reduced after completion of an investment project for at least five (5) years for large enterprises, or three (3) years for small and medium enterprises.

IV. INCENTIVE CAPS

Maximum amount of allocated funds for large enterprises must not exceed 50% of justified expenses for completion of an investment project.

Maximum amount of allocated funds for medium enterprises must not exceed 60% of justified expenses for completion of an investment project.

Maximum amount of allocated funds for small enterprises must not exceed 70% of justified expenses for completion of an investment project.

Maximum amount of allocated funds for investments over EUR 50 mil must not exceed 25% of justified expenses for completion of an investment project.

Maximum amount of allocated funds for investments over EUR 100 mil must not exceed 17% of justified expenses for completion of an investment project.

V TYPES OF INCENTIVES

A Incentives for justified expenses on gross salaries for new employees

Depending on geographical area of an investment, in order to stimulate investments in underdeveloped parts of Serbia, between EUR 3000 and EUR 7000 per employee may be provided.

B Incentives for justified expenses on fixed assets

Depending on geographical area of an investment, in order to stimulate investments in underdeveloped parts of Serbia, between 10% and 30% for justified expenses on fixed assets may be provided.

C Additional expenses for labor-intensive investment projects

For labor-intensive investment projects, non-refundable funds may be increased by 10%, 15% and 20% of gross employee salaries, for every increase of new employment positions over 200, 500 and 1000 new employees, respectively.

VI TIMEFRAMES

Timeframe for completion of an investment project and employment of new employees is up to three (3) years from the submission of the application for grant of incentive funds; that may be, extended (after entering into the contract for grant of incentive funds) for up to five (5) years, provided that circumstances necessitating extension of time are justified, in order to most efficiently achieve aims of a particular investment and facilitate Serbia's economic development.

Timeframe for completion of an investment project of special significance and employment of new employees is up to ten (10) years from submitting the application for grant of incentive funds.

Projects of special significance are defined and addressed in more detail in Article 16 of the Decree as projects of special significance for economic development of Serbia, taking into consideration total investment value, number of new employees and specific development priorities of a local municipality where an investment project is taking place.

VII LEGAL AND PROCEDURAL ASPECTS

After an investor meets all procedural/administrative requirements, including submission of the Letter of Intent, the Application for Grant of Incentive Funds, Investment Project Business Plan and other ancillary documentation, the Development Agency of Serbia (RAS) determines whether formal requirements for grant of incentive funds have been met.

The Development Agency of Serbia then sends the following documentation to the Council for Economic Development:

1. Application for Grant of Incentive Funds
2. Expert Assessment on Investment Project Quality
3. Proposal on the amount of incentive funds to be granted
4. Draft Contract for Grant of Incentive Funds

After the Council for Economic Development makes the Decision on Grant of Incentive Funds, the Development Agency of Serbia (RAS) submits the Council Decision and the Draft Contract for Grant of Incentive Funds to the Ministry of Economy.

The Ministry of Economy delivers the Council Decision and the Draft Contract for Grant of Incentive Funds to the State Commission for Control of State Aid, for the purpose of assessing whether the grant of incentive funds in a particular instance complies with legal framework governing State aid.

Subsequently, the Ministry of Economy prepares the final version of Contract for Grant of Incentive Funds, supplementing/amending the Draft prepared by the Development Agency of Serbia (RAS).

VII THE CONTRACT FOR GRANT OF INCENTIVE FUNDS

The Contract for Grant of Incentive Funds incorporates the following (and other) terms:

- Investment amount and dynamics
- Number of new jobs created by the investment
- Anticipated expenses of gross salaries for newly created jobs
- Investor's obligation to pay contractually agreed salaries
- Timing for completion of the investment project
- Dynamics of paying out granted incentive funds
- Security instruments
- Reporting obligations
- Control of contractual obligations
- Breach provisions
- Force majeure clause
- Environmental protection clause
- Work Safety clause
- Dispute resolution clause

VIII SECURITY INSTRUMENTS

An investor is under the obligation to submit a bank guarantee issued by a commercial bank registered in the Republic of Serbia, unconditional and payable upon the first call in favour of the Republic of Serbia.

Granted incentive funds must be secured by a bank guarantee, in accordance with the Contract. In addition to the bank guarantee, an investor must submit two blank (registered and signed) promissory notes.

IX CONCLUDING REMARKS

Navigating and utilising Serbia's investment framework entails making practical and effective use of State incentives laid out in the Decree on Terms and Conditions for Attracting Direct Investments. As relatively novel Law on Investments (2015) is still being tested in practice, the Decree supplementing it now provides further legal certainty to potential investors. While ensuring legal compliance and procedural consistency during the application phase is important for the investment support institutions, it should be ensured that this process is also relatively seamless for an investor, without undue delays and unexpected hurdles.

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