



Energy Community Secretariat (ECS)
Am Hof 4, Level 6, 1010 Vienna, Austria

Web : <http://www.energy-community.org>

STUDY ON THE IDENTIFICATION OF LEGAL REQUIREMENTS AND ISSUES RELATED TO THE ESTABLISHMENT AND OPERATION OF AND THE PARTICIPATION IN A COORDINATED AUCTION OFFICE IN SOUTH EASTERN EUROPE

PART 2: POSSIBLE REQUIREMENTS FOR THE
ESTABLISHMENT AND OPERATION OF THE
PLANNED COORDINATED AUCTION OFFICE IN
SOUTH EASTERN EUROPE
(referred to as "task 4")

Prepared by:

Tom Kyriakopoulos

Dr. Yannis Kelemenis

 **Kelemenis & Co.**
Law firm

7 July 2009

TABLE OF CONTENTS

I.	SCOPE OF TASK 4.....	3
II.	CHARACTERISTICS OF THE SEE-CAO.....	4
1.	CORPORATE STRUCTURE OF THE SEE-CAO.....	4
2.	OPERATIONS AND MANAGEMENT OF THE SEE-CAO	5
3.	SERVICES TO BE PROVIDED BY THE SEE-CAO	7
4.	CAPACITY ALLOCATION MODEL.....	8
5.	RELATIONSHIP SEE-CAO - TSOs – AUCTION PARTICIPANTS.....	8
5.1	<i>According to the Business Plan</i>	8
5.2	<i>Following clarifications provided at the 8th SEE-CAO IG Meeting in Budva</i>	11
III.	REVIEW OF MONTENEGRO LEGAL ORDER.....	14
1	AGREEMENT FOR SYNDICATION.....	14
2	SETTING UP THE SEE-CAO.....	15
3	SHARE CAPITAL OF THE SEE-CAO	23
4	SHARES AND SHAREHOLDERS	23
5	MANAGEMENT – SUPERVISORY BOARD.....	26
6	GENERAL MEETING OF SHAREHOLDERS	27
7	FINANCING – LOANS.....	30
8	PROFITS – FISCAL YEAR – AUDITORS	30
9	EMPLOYMENT AND SOCIAL SECURITY	31
10	LEGAL REVIEW OF COMMERCIAL SET UP OF THE SEE-CAO.....	32
11	TAXES	33
	ANNEX I – CHECKLIST OF LEGAL ISSUES	39

I. Scope of Task 4

According to the 5th Ministerial Council decision on 11 December 2008 in Tirana and the agreement of the TSOs, the location of the SEE-CAO will be in Montenegro.

To this effect, the scope of Task 4 is the analysis of the legal order of Montenegro with the objective of identifying the legal and administrative steps necessary to host the SEE-CAO in terms of establishment and operation in Montenegro.

On the basis of the above, the Consultant has undertaken, with the assistance and support of legal colleagues in Montenegro, a review and screening of the legal order of Montenegro, the result of which is the present Report providing the Energy Community with the legal and administrative steps necessary to host the SEE-CAO in terms of establishment and operation.

The screening of the Montenegro legal order in order to identify the legal and administrative steps necessary to host the SEE-CAO in terms of establishment and operation in Montenegro was carried out on the basis of a Check List prepared by the Consultant. The Check List of legal issues examined and presented in this Report is attached as Annex I herein.

II. Characteristics of the SEE-CAO

The analysis of the legal order of Montenegro with the objective of identifying the legal and administrative steps necessary to host the SEE-CAO in terms of establishment and operation in Montenegro was based on the following main characteristics of the SEE-CAO. The characteristics below are based on:

- the Business Plan prepared and approved by the SETSO TF,
- the Minutes of the 8th SEE-CAO IG Meeting in Budva on 20.1.2009 (which took place following the preparation and approval of the Business Plan) and
- the work we have undertaken and the meetings we have concluded thus far with national stakeholders during the Inception Phase and the 2nd Stage of the Project (Task 3).

1. Corporate Structure of the SEE-CAO

The SEE-CAO will be established in the form of a limited liability company, i.e. D.O.O. The shareholders of the SEE-CAO (in the event of D.O.Os, the appropriate term may not be “shareholders” but “partners”; in any case the term “shareholders” is used in general to define the owners of the company) will be the regional TSOs. All shares (in the event of D.O.Os, the appropriate term may not be “shares” but “parts” or “units”; in any case the term “shares” in general to define the fraction of the share capital of the D.O.O).

Although limited liability companies are profit-oriented companies, the aim of the SEE-CAO is to operate on a very small (in the event investments are required for the following year) or zero net profit margin.

The founding shareholder TSOs (it is likely that not all TSOs will join the SEE-CAO from the beginning) will contribute equally to the initial share capital, each one holding the same number of shares. The remaining TSOs in the 8th Region (i.e. non founding shareholders of the SEE-CAO) will be allowed to join the SEE-CAO as additional shareholders, if agreed by the existing shareholders and on the condition that they will participate in the auction mechanism.

In order to establish the SEE-CAO, different agreements will have to be concluded, such as the Articles of Association, the Agreement for Syndication, Service Level Agreements between TSOs and the SEE-CAO and Inter-TSO Agreements.

In particular, it is noted that the Agreement for Syndication will be an agreement signed among all TSOs, in their capacity as shareholders of the SEE-CAO, specifying various corporate and commercial matters and describing in particular the relationship, the rights and obligations of the shareholders of the SEE-CAO. The issues in the Agreement for Syndication may contain matters not specified in the Articles of Association or matters not compliant with the laws of Montenegro. Indicatively, the Agreement for Syndication may consist and cover some or all of the following issues (outside, over and above the provisions of the Articles of Association):

- Shareholders, shares and disposal of shares,
- Obligations when transferring shares
- Object of the syndicate
- Management of the SEE-CAO
- Supervisory Board of the SEE-CAO
- Voting rights
- Joining and withdrawal from the Syndicate
- Indemnification/penalties
- Court of jurisdiction and applicable law

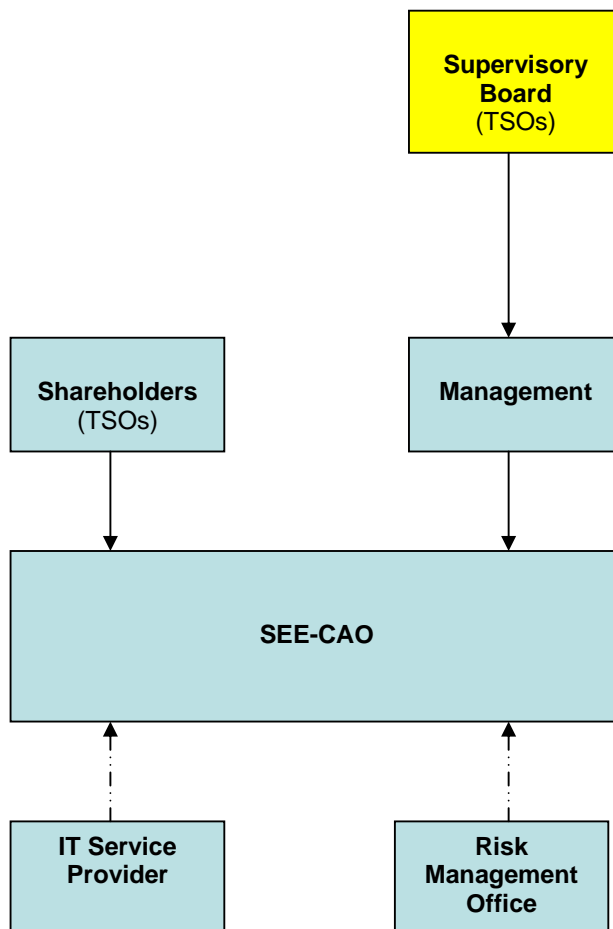
2. Operations and Management of the SEE-CAO

The SEE-CAO will have the following operational and management features:

- a. *Management* will be responsible for the day to day activities of the SEE-CAO. One Managing Director elected by the shareholders shall manage the SEE-CAO in the first period of start-up (e.g. first 2 years). He/she will coordinate and supervise the staff as well as negotiate and conclude contracts between the SEE-CAO and its partners.
- b. The *Supervisory Board* will consist of representatives of the shareholders, i.e. the TSOs, and will represent the economic interests of the shareholders. Management will be bound by the decisions of the Supervisory Board and it will have to report to it on a regular basis.

- c. The *Risk Management Office* (RMO) will be a department within the SEE-CAO. The Market participants will provide risk management instruments to cover credit limit risks and they will be allowed to bid up to the credit limit provided. The RMO will be in charge of defining acceptable risk management instruments and administration of risk management instruments provided by market participants and corresponding credit limits. The risk management Instruments provided in the Business Plan are: (i) bank guarantees, (ii) deposits, (iii) promissory notes and (iv) custody accounts.
- d. The *IT Department* will be part of the SEE-CAO. It will provide the technical services for coordinated auctioning as well as necessary ancillary services – such as scheduling support, online risk management assessment and billing.

The figure below outlines the overall operations and management structure of the SEE-CAO.



3. Services to be provided by the SEE-CAO

The general overview of the service the SEE-CAO will be providing is the performance of auctions “for the account and on behalf of the national TSOs” with respect to the allocation of cross-border capacity on the national borders of the 8th Region [i.e. Albania, Bosnia & Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro, Serbia, the territory under administration by the United Nations Interim Administration Mission in Kosovo (pursuant to United Nations Security Council Resolution 1244), Bulgaria, Greece, Hungary, Romania, Slovenia and Italy] using a coordinated explicit auction method to be agreed by the national TSOs (i.e. either “coordinated explicit load-flow based auctions” or “coordinated bilateral NTC-based auctions”).

As concerns the above general definition of the service SEE-CAO will be providing, the following main points should be accentuated:

- the SEE-CAO will be auctioning the cross-border capacity on the borders of the 8th Region “for the account and on behalf of the national TSOs” (please see section 5 below regarding the triangular legal relationship between SEE-CAO, the TSOs and the auction participants) and it will NOT be allocating any cross-border capacity;
- the allocation of the cross-border capacity on the national borders of the 8th Region will be undertaken by the national TSOs, who are licensed by the national Governments or Regulators; in other words, the SEE-CAO will only be performing the administration task (i.e. an administrative support function of the TSOs) necessary in order for the TSOs to carry out their licensed duty which is the actual allocation of the cross border capacity;
- the TSOs will have the obligation that any cross-border capacity on the national borders of the 8th Region auctioned by SEE-CAO “for the account and on behalf of the national TSOs” to the auction participants will be honoured and carried by the licensed national TSOs, according to the scheduling.

Further to the general description of the service to be provided by SEE-CAO to the TSOs, we set out below the particular services and responsibilities SEE-CAO will have vis a vis the TSOs:

1. Coordinated merging and processing of data provided by TSOs;
2. Coordination of calculations performed by TSOs;
3. Market and customer Interface;
4. Comprehensive risk management services;
5. Execution of coordinated auctions and controlling auction results;
6. Calculation of congestion income distribution;
7. Issuing of Settlement Notifications;
8. Scheduling communication (interface TSOs and Traders);
9. Secondary market services for trading of PTRs

4. Capacity Allocation Model

According to the Business Plan for the formation of the SEE Auction Office prepared by SETSO TF, the model of the SEE-CAO is aimed at capacity allocation based on coordinated explicit load-flow based auctions.

However, before achieving the final approach of a region wide flow-based allocation scheme, the national stakeholders concluded at the 8th SEE-CAO IG Meeting that the initial capacity allocation mechanism could be based on coordinated bilateral NTC-based auctions as an intermediate stepping stone before implementing a region wide flow-based allocation scheme.

5. Relationship SEE-CAO - TSOs – Auction Participants

5.1 According to the Business Plan

The Business Plan stipulates (page 11, section 3.1.4) that *“In order to allow for distribution of auction incomes to the shareholders during the year and to avoid issues related to the corporate taxes it is recommended to set up the company to do transactions “for the account of another”. With such a construct the Auction revenues are not part of the balance sheet of the CAO and thus also possible taxation problems have less priority.”*

Furthermore, the Business Plan stipulates (page 19, section 3.6.5) that *“The settlement notification process performed by CAO is necessary for TSOs to prepare and submit invoices to market participants in automated way.”*

On the basis of the above wording, it seems that the Business Plan envisages the SEE-CAO exclusively as a “service provider” to the TSOs providing the services noted above in section 3 and not as a “contracting” or “invoicing” party with any Auction Participant.

In particular, if the SEE-CAO is to adopt the above structure, when interfacing with Auction Participants and executing coordinated auctions, the SEE-CAO will have to make known to Auction Participants that it is acting and entering into transactions in the name, on behalf and on the account of the TSOs. The above structure has the following legal characteristics:

1. The commercial relationship arising from the auctions will be concluded directly between the TSO and the Auction Participant and not between the SEE-CAO and the Auction Participant. In this case, the result of the auction will be commercially binding between the particular TSO and the Auction Participant and there will be no liability for the SEE-CAO.
2. Each TSO will invoice the Auction Participant directly for congestion income.
3. In the event the SEE-CAO receives payment from the Auction Participant on the basis of the invoice issued by the TSO, this payment will be recorded in the SEE-CAO’s accounting books, however, not as the SEE-CAO’s income but as an off balance third party income.
4. The SEE-CAO will invoice the TSOs for its services on a cost basis.

As concerns the above, the Consultant notes the following:

- The above “service provider” structure may be feasible in the event of coordinated bilateral NTC-based auctions. However, this structure would have considerable legal complications and problems, in the event of coordinated explicit load-flow based auctions. In particular, in the event of load-flow based auctions, it is not apparent or certain (at least at the time of the auction) which path the TSOs will use to carry out the obligation to transfer power from “source” to “sink” and therefore it is not apparent or certain (at least at the time of the auction) which and how many TSOs will be the actual contracting parties and who will eventually be performing the allocation, thus being entitled to the congestion income.

- The idea expressed by some of the TSOs (in favour of adopting a “service provider” structure with “coordinated explicit load-flow based auctions”) that at the end of each month the various TSOs will invoice invariably the Auction Participants for the amount of congestion income, without specifying if that TSO has actually allocated the respective capacity to the invoiced Auction Participant will give rise to legal complications because in the event of a dispute, the Auction Participant will go against the “invoicing” TSO and not the TSO that actually was liable for the dispute.
- In the event the SEE-CAO is used solely as a “service provider” and not as a “contracting-invoicing” vehicle, there is no legal rationale for the SEE-CAO to have a Risk Management Office or in any case to accept financial guarantees in its name from the Auction Participants because, given that the SEE-CAO will not be a contracting party with the Auction Participants and it will not be invoicing the SEE-CAO for the congestion income. Therefore, if the “service provider” structure is to be adopted, there is no legal basis for the SEE-CAO to accept financial guarantees/instruments from the Auction Participants in its name.

The above commercial relationship is justified in the Business Plan (page 11) as follows: *The profit is ordinarily distributed among shareholders at the end of the year as dividend and in this case problems arise in the event of distribution of auction income to the shareholders during the year. Furthermore, the auction income can only be distributed to the owners according to their contribution to the share capital. This could also lead to taxation problems because the CAO has to pay corporate taxes – from the overall auction income – which clearly doesn't reflect the owners' will.*

The Consultant would like to clarify that the above explanation is not accurate for the following reasons:

- In the event the SEE-CAO issued an invoice to an Auction Participant in connection with congestion income arising from a particular auction for a particular interconnection, the respective TSOs would have to issue invoices to the SEE-CAO for each one's portion of that congestion income.

- In this case, the congestion income paid by the Auction Participant to the SEE-CAO and from the SEE-CAO to the TSO respectively would go through the SEE-CAO's accounts as income (based on the SEE-CAO's invoice issued to the Auction Participant) and at the same time an expense (based on the TSOs' invoice issued to the SEE-CAO), thus leaving a nil result in the SEE-CAO's Profit and Loss Account and corporate tax statement.
- At the same time, this would allow the TSOs to receive payment of their corresponding congestion income upon issue of their respective invoice.

5.2 Following clarifications provided at the 8th SEE-CAO IG Meeting in Budva

According to the Minutes of the 8th SEE-CAO IG Meeting, SETSO TF clarified that *"it is envisaged that the future CAO will be responsible for invoicing, collecting and distributing revenues as described within the Business Plan."*

Notwithstanding the comments in section A above, on the basis of the above clarification with respect to the auctioning of cross border capacity, it is understood that the SEE-CAO will take a more active commercial role and in particular that of a "contracting" and "invoicing" intermediating counter party in a triangular commercial structure between the SEE-CAO, the TSO and the Auction Participants.

With respect to the auctioning of cross border capacity, the triangular commercial structure will be set up approximately as follows:

1. The SEE-CAO will execute coordinated auctions of cross border capacity on the borders between the TSOs in the 8th Region according initially to coordinated bilateral NTC-based auctions (the Auctions) in its name but on behalf of the TSOs (coordinated explicit load-flow based auctions will take place at some time in the future).
2. The SEE-CAO will represent and bind the TSOs and the TSOs will commit themselves to accept the results of the common auctions executed by the SEE-CAO.

3. The contractual relationship arising from the result of any Auction will be directly between the SEE-CAO and the Auction Participants who will have submitted the winning bids. According to this contractual relationship, the SEE-CAO promises the allocation of the capacity to the Market Participants who submitted the winning bids.
4. The TSOs will commit themselves to accept the results of the common auctions executed by the SEE-CAO and allocate the capacity promised by the SEE-CAO to the Auction Participant, according to the Common Auction Rules. The Consultant notes that the Auction Rules should stipulate that the TSOs will carry out the transmission services in accordance with their individual respective prerequisites, the legal requirements applicable to them and their mandatory national laws.
5. Following the announcement of the winning bids (to the TSOs and the Auction Participants), the SEE-CAO will issue an invoice to the Auction Participants who submitted the winning bids.
6. Following the issue and receipt of the SEE-CAO's invoice, The Auction Participants will pay the congestion income to the SEE-CAO within the deadline set out in the invoice.
7. Following the announcement of the winning bids and the issue of the SEE-CAO's invoice, the TSOs (whose interconnection capacity was auctioned by the SEE-CAO) will then issue an invoice to the SEE-CAO for the congestion income it is entitled to according to the TSOs agreement. Payment of this invoice should be done on a regular basis and in any event perhaps before use of the capacity in the cases of monthly and yearly auctions.
8. The SEE-CAO should not make any "profit" from the allocation of interconnection capacity, nor "mark down" the congestion income due to the corresponding TSOs. In this manner, 100% of the congestion income received by the SEE-CAO will be redistributed to the TSOs accordingly.
9. The redistribution of the congestion income will be made in the form of "income" due to the TSOs on a regular basis during the course of the entire year and not as "dividend" at the end of the SEE CAO's fiscal year. Therefore, the TSOs can expect regular payments of the congestion income due to them.

10. Notwithstanding the above, the SEE-CAO will also invoice the TSOs for its services on a cost basis in order to cover its annual capital expenditures and working capital needs.

The Consultant notes that the above structure may be feasible in both coordinated bilateral NTC-based auctions and in coordinated explicit load-flow based auctions.

III. Review of Montenegro Legal Order

On the basis of the characteristics of the SEE-CAO set out in section II above, the Consultant provides below an analysis of the main legal and administrative steps necessary to host the SEE-CAO in terms of establishment and operation in Montenegro.

1 Agreement for Syndication

Preliminary Comment: It is our understanding that in addition to the “Articles of Association” the TSOs will sign a “side agreement” defined as “Agreement for Syndication”. The “Agreement for Syndication” will be an agreement signed among all TSOs in parallel to the “Articles of Association”, as shareholders of the SEE-CAO, specifying various corporate matters and describing in particular the relationship, the rights and obligations of the shareholders of the SEE-CAO, as this is outlined further in section II.1 above. Thus, the corporate relationship of the shareholders will be governed by the “Articles of Association” and the “Agreement for Syndication”.

- 1.1 Montenegro corporate law does not recognize nor contain provisions regarding side shareholder agreements such as the “Agreement for Syndication”.

On the other hand, based on contract law, the TSOs can agree and sign an Agreement for Syndication in the form of a side commercial agreement setting out their relationship as shareholders of the SEE-CAO. This agreement would be valid and binding for the contracting parties. Moreover, it is possible for the Agreement for Syndication to be governed by foreign law and any disputes arising from such an agreement could be settled in a foreign or international judicial or arbitration forum.

- 1.2 On the basis of the above and notwithstanding the fact that the Agreement for Syndication may be valid and binding, the Agreement for Syndication will not bind the SEE-CAO, because, although it will be concluded freely between the shareholders, it will not be deemed part and parcel of the Articles of Association and therefore are not part of the corporate mechanism of the SEE-CAO. The SEE-CAO will operate solely on the terms and conditions of the Articles of Association, which is considered its only constitutive document. Therefore, in the event of a dispute among the TSOs regarding the enforcement of the provisions of the Agreement for Syndication conflicting with those of the Articles of Association, the latter would prevail if brought before a court in Montenegro or enforced in Montenegro.

- 1.3 On the basis of the above, the Agreement for Syndication should not contain provisions that are contrary or conflicting with those of the Articles of Association or mandatory provisions of Montenegro corporate law, because although they may be valid, they could not be enforced in Montenegro. To this effect, special attention must be paid when drafting the Agreement for Syndication to ensure that it does not conflict with mandatory provisions of Montenegro corporate law.

2 Setting up the SEE-CAO

- 2.1 The following should be taken into consideration when setting up the SEE-CAO:

- 2.1.1 Information required for setting up the SEE-CAO:

	Information	Comments and Guidelines
1	Proposed name of the Company	Name can be proposed to be in English as well. It will obligatory include “doo” as a short term for limited liability company
2	Short name of the Company	Company may have a short name in use as well, but it must also be registered.
3	Address of the seat of the Company	Seat of the Company must be registered as the management seat or the address where the business activity is performed. It is usually leased premises. Lawyer’s address or similar arrangements to nominee services or registered address are not allowed according to the law.
4	Main Business Activity	Description of the main business activity will have to be provided in order to adjust it to legal codification, as required by the law.
5	Founders of the Company (Founders)	Founders can be equally individuals and legal entities, foreign or domestic. Minimum 1, and maximum 30.

6	Amount of the founding capital (Founding Capital)	Minimum 1 Eur. There is no maximum legally limited. Founding capital must be fully paid before the Company registration, by the Company founders. Founding capital can be used/disposed of by the Company right after it is paid, with no limitation. Liability of the Founders is limited up to the amount of their stake in the Company. Founding Capital cannot be determined in future work or services.
7	Proportional ownership participation in the Company (Stakes)	The Founding Capital in LLC is divided into equities / stakes (i.e. 10%, 12%...) to all founders. LLC by the very law does not have shares, bearer or registered. Usually the stake determines the scope of rights and obligations of each stakeholder, but it can be determined otherwise. Each stake has to be proportional to the amount of the paid up founding capital.
8	Executive Director of the Company (Director)	It is an obligatory management/administration body in the Company. It is obligatory an individual and cannot be a legal entity. Director is obligatory employed in the Company and cannot be employed elsewhere in the country. If a foreigner, he/she must obtain a temporary residence and working permit. Through the Company acts, Director can be limited in disposal of his/her authorizations in the Company. Director is by law chief of management, legal representative and person liable for the Company actions. Member of the BoD cannot be Director. Founder may be appointed Director.
9	Authorised representatives	Aside the Director, other third parties may be appointed as part of management called authorized representatives with certain scope of authorizations in the Company. They do not have to be employed in the

		Company.
10	Board of Directors (BoD)	LLC does not have to have a BoD as the mandatory body in the Company. It is optional. If chosen to be elected, it has to be elected and registered with Company Registry every year. It has at least 3 members, and always odd number of members.
11	Term for which the Company is registered	The SEE-CAO can be established for a definite or indefinite period of time.

2.1.2 Documents required by the TSOs as shareholders of the SEE-CAO:

	Documents	Explanation
1	Company Registration Application Form (Application Form)	After TSOs deliver all necessary data, an “Application Form” will be delivered for signing to the Executive Director (i.e. Managing Director) and/or to the members of BoD (i.e. the Supervisory Board). The Application Form must be signed in person. This document must be issued in two original copies.
2	Decision on Foundation or Agreement on Foundation	After the TSOs deliver all necessary data and agree on the completed text of the act, the “Decision on Foundation” will be prepared by the SEE-CAO’s legal counsel and delivered to the TSOs (as founders of the SEE-CAO) for signing by their legal representatives. Given that the founders will be companies (i.e. the TSOs), legal representatives of the TSOs must be a) either registered representatives of the founder having the Company Registry Certificate not older than 6 months, notarized and/or apostilled, to prove their position and scope of authorizations, or b) Special Power of Attorney issued by the registered representative of the founder, notarized and/or apostilled, issued for this purpose (note: this text can

		<p>be prepared by the SEE-CAO's legal counsel on request). The "Decision on Foundation or Agreement on Foundation" must be certified before the notary public or local Montenegrin court. This document must be issued in three original copies.</p>
3	Articles of Association	<p>After the TSOs deliver all necessary data and agree on the completed text of the act, the Articles of Association will be prepared by the SEE-CAO's legal counsel and delivered to the TSOs (as founders of the SEE-CAO) for signing by their legal representatives. Given that the founders will be companies (i.e. the TSOs), legal representatives of the TSOs must be a) either registered representatives of the founder having the Company Registry Certificate not older than 6 months, notarized and/or apostilled, to prove their position and scope of authorizations, or b) Special Power of Attorney issued by the registered representative of the founder, notarized and/or apostilled, issued for this purpose (note: this text can be prepared by the SEE-CAO's legal counsel on request) This document must be issued in three original copies.</p> <p>According to the Business Organization Law in Montenegro, the Decision/Agreement of Foundation and the Articles of Association are two different legal acts especially taking into consideration the contents of these, because these acts must content following:</p> <ol style="list-style-type: none"> 1. The Decision/Agreement of Foundation must include: <ul style="list-style-type: none"> - the founders (full names, identification numbers, names of legal persons) and their addresses; - the name of the company; - a statement that the company is a limited

		<p>liability company;</p> <ul style="list-style-type: none"> - the rights and obligations of the founders in the formation of the company and their liability for failure to fulfil their obligations; - the Capital of a LLC; - procedure for settling disputes between the founders; - authorization of one or more named founders to represent the company. <p>2. The Articles of Association must include:</p> <ul style="list-style-type: none"> - the name of the company; - address of its registered office and place for receiving official notices; - the general nature of the company's business activities; - a statement that the company is a limited liability company and the amount of the capital; - in so far as a board of directors is constituted, the rules governing the appointed number of board members and the procedure for appointment of the board and appointing members of the management and executive bodies, their respective powers and duties, disqualification and removal and the allocation of powers among these bodies; - rules for alteration of capital if not determined by law; - persons authorized to represent the company either jointly or individually.
--	--	---

4	Decision on the BoD appointment, if applicable	The Decision appointing the BoD must be signed by the TSOs as founders of the SEE-CAO. This document must be issued in two original copies.
5	Documents to be provided by the TSOs as founders of the SEE-CAO	The TSOs (as they are in the form of legal entities) must provide the following documents: <ul style="list-style-type: none"> • Company Registry Certificate on Foundation, • Good Standing Certificate not older than 6 months and • Power of Attorney for the signing representative (as described in point 3.above), • all documents must be notarized and/or apostilled.
6	Documents for the members of BoD (i.e. Supervisory Board)	For every member of the BoD (i.e. the Supervisory Board) a notarized and/or apostilled copy of his/her passport is required.
7	Documents for the Executive Director (i.e. Managing Director)	A notarized and/or apostilled copy of his/her passport is required and his/her working book, if he/she is a resident of Montenegro.
8	Document for the Registered Representatives, if applicable	A notarized and/or apostilled copy of his/her passport is required.
9	Proof of the founding capital payment	If the founding capital is determined in cash, then a statement issued by a local commercial bank in which each of the TSOs (as founders) remitted the payment of each one's contribution to the founding capital, must be produced. If part of the founding capital is contributed in kind (i.e. not cash) an evaluation of a locally certified evaluator

	must be provided.
--	-------------------

2.1.3 Procedure for Incorporation and Registration:

	Procedure	Explanation
1	SEE-CAO's company Stamp	Stamp must be issued.
2	Directorate for Statistics Registration	Certificate may be issued in 1-2 days.
3	Licensed Local Accountant's engagement	The SEE-CAO must have an accountant engaged right after registration is completed. It must be a locally licensed accountant.
4	Bank account	The SEE-CAO must open a bank account in one of the local commercial banks.
5	Tax Registration	The SEE-CAO must register as Tax Payer and as VAT payer, if qualified.
6	Business premises municipality license issuance	For the SEE-CAO's business premises, usually leased by the Company, where the seat of the Company is registered and/or where the business activity of the Company is conducted, depending on the business activity registered, the SEE-CAO must obtain a business license.
7	Customs Registration	If applicable for import-export activities, the SEE-CAO must be registered with the Customs Directorate
8	Pension Fund Registration	Both the SEE-CAO and the employees must be registered with State Pension Fund.
9	Health Fund Registration	Both the SEE-CAO and the employees must be registered with State Health Fund.

10	Employment Contracts	Each employee must have an employment contract with the SEE-CAO, signed in accordance with local labour regulations. The first employee is always the Executive Director.
11	Residence and Working permits	Each foreign employee must obtain working permit based on engagement with the SEE-CAO, according to the local regulations, including the Executive Director (i.e. Managing Director).

2.2 The approximate time frame (not taking into account the time required for obtaining any special licenses if necessary and for the shareholders to agree on the text of the Articles of Association and to provide the necessary documents) for setting up a limited liability company is approximately one week, once all documents are collected from the Shareholders and the necessary applications for registration are filed. It should be noted that the collection of all necessary documentation from the shareholders and the translation of such documents (which is within the control of each TSO) will be the most time consuming aspect of setting up the SEE-CAO.

2.3 As concerns the cost for establishing, incorporating and registering for tax purposes the SEE-CAO, the following costs (not including legal fees) should be taken into consideration:

- There are no taxes on share capital.
- There are no taxes for tax registration.
- translation services to local language (as all documents must be filed to Company Registry in local language) is approximately €15 per page.
- Company Registry registration taxes amount to approximately €30.
- Certification taxes must be paid (instead of notary public, as Montenegro does not have notary public function yet). These cannot be estimated in full before entering the incorporation procedure, but they are estimated at approximately €300.

2.4 The TSOs, in their capacity as shareholders in a Montenegro limited liability company, are not required to be registered in any public authority in Montenegro (including tax authorities).

3 Share capital of the SEE-CAO

- 3.1 The minimum share capital provided by Montenegro law is €1 and there is no higher limit.
- 3.2 The declared share capital in the by-laws must be fully paid up by the TSOs before the SEE-CAO is registered in Montenegro. The share capital must be remitted in a temporary SEE-CAO bank account, opened in a Montenegro bank. The share capital can be increased afterwards, but it cannot be declared and then paid in instalments. Furthermore, the share capital cannot be paid in a bank account outside Montenegro.
- 3.3 The laws of Montenegro do not contain restrictions or limitations regarding debt – equity ratio [*Note: Debt – equity ratio refers to the maximum amount of loans the SEE-CAO can receive in connection to its share capital (e.g. In a 4:1 debt – equity ratio, the SEE-CAO cannot borrow more than 4 times its share capital)*]. This effectively means that when discussing the manner in which the SEE-CAO will be financed (i.e. Debt vs Equity) the TSOs can agree to finance the SEE-CAO with higher debt, therefore reducing the amount of capital the TSO must tie up in the share capital of the SEE-CAO.

4 Shares and Shareholders

- 4.1 A limited liability company can have from 1 to 30 shareholders.
- 4.2 According to Montenegro corporate law, limited liability companies do not have different categories of shares (e.g. registered or bearer shares, blocked shares, common shares, preferred shares, shares with and without the right to vote etc.). The TSOs' participation (i.e. equity stake) in the limited liability company's share capital will be determined according to their proportional participation ownership in the company (i.e. 10%, 15%, 32%, etc....).
- 4.3 If the shareholders wish to agree that they do not want any shareholder having the right to sell his shares to third parties in the event a shareholder wants to exit/leave the SEE-CAO, according to the corporate law of Montenegro, this can be provided in the Articles of Association. In this case, the Articles can prohibit the free transfer of shares by providing that such shares be bought by the shareholders of the SEE-CAO or SEE-CAO itself. Where the shareholders or the SEE-CAO do not buy the shares, the shares shall be withdrawn relating to the reduction of the initial capital.

Notwithstanding the TSO's right to agree to the above restriction, according to mandatory provisions of Montenegro corporate law, the TSOs, as shareholders of the SEE-CAO, will not be free to sell, transfer or dispose their shares in any way they want because the other shareholders must have a pre-emption right on these shares, according to mandatory provisions set out in Montenegro corporate law. Such rules must be set out in the SEE-CAO's Articles of Association.

The shares of a limited liability company in Montenegro may be transferred only in accordance with the procedures established in the Articles of Association. Shares may be transferred among shareholders without restriction in conformity with the Articles of Association. Where a shareholder proposes to transfer shares, the shareholders of the SEE-CAO and the SEE-CAO itself have a pre-emptive right to purchase the shares, in accordance with the procedure to be agreed in the Articles of Association. Where no agreement to purchase the shares is reached between the TSO selling the shares and the shareholders, the shares are divided among them proportionately to their percentage in the SEE-CAO, unless otherwise provided in the Articles of Association.

Where the shareholders and the SEE-CAO itself have declined to purchase the shares proposed to be sold within 30 days from the date on which the shares were offered, the shares may be transferred to a third party under terms no less favourable than offered to the SEE-CAO or to the existing shareholders.

If the shares are being sold by execution procedure, the court shall notify the shareholders and the SEE-CAO. If the shareholders and the SEE-CAO fail to express their wish to buy the shares within 15 days from receipt of notification, such shares shall be sold in accordance with the execution procedure rules.

The Articles of Association of a limited liability company give the shareholders the right to increase their interest in the limited liability company if the company proposes to increase its capital. The size of the increase in the value of a part shall be proportionate to the relationship of the part to the total value of the limited company's capital, unless the Articles states otherwise.

- 4.4 According to Montenegro corporate law, the shareholders cannot stipulate in the Articles of Association that a shareholder must withdraw from the SEE-CAO (as a shareholder) in the event of a decision of the remaining shareholders in the general assembly and receive his contribution to the share capital. Even if such a clause were to be agreed under any circumstances in the Agreement for Syndication or the Articles of Association, such provision may be disputable in Montenegro courts, which would have exclusive jurisdiction to settle corporate differences of Montenegro limited liability companies.
- 4.5 As concerns minority rights, according to Montenegro corporate law, shareholders holding or representing 5% of the company's share capital have the following rights:
1. In case of Company merger to ask for the Assembly to vote,
 2. To appoint a representative to make an audit of company accounting,
 3. To call upon the ordinary and extraordinary General Assembly,
 4. To request the change of the Assembly's agenda,
 5. To propose a member of the Board of Directors,
 6. To propose the external auditor.

In the event all 13 TSOs join the SEE-CAO, each TSO will have approximately 7.7% of the company's share capital and therefore, each TSO can individually exercise any of the above minority rights. Moreover, given that the Law generally determines the minimum of what the Articles must include, the TSO shareholders should be able to agree on broadening the scope of the minority rights, to a degree that they do not conflict with the mandatory rights and powers of the limited liability company's corporate bodies.

- 4.6 We understand that not all TSOs will be founding shareholders in the SEE-CAO. The SEE-CAO will be set up initially by the TSOs that wish to be the founding members of the SEE-CAO and the remaining TSOs will enter the SEE-CAO following a future increase of share capital. This is of course possible, on the condition that the provisions regarding the pre-emption right of the other shareholders is respected first (see item 4.3 above) before a new shareholder enters. The pre-emption right is to be determined by the Articles of Association.

It should be noted that a 2/3 majority of votes must be respected in the General Meeting of Shareholders in bringing a decision to increase the capital. The Articles of Association cannot provide for a lower majority than that stipulated in Montenegro corporate law.

Moreover, the Articles of Association should be able to provide for a higher majority (even a consensus of 100%) of shareholders.

5 Management – Supervisory Board

5.1 According to the SETSO TF Business Plan, the SEE-CAO will have:

- (i) a Managing Director elected by the shareholders who will be responsible for the management of the day to day activities of the SEE-CAO for the first period of start-up (e.g. first 2 years), including coordinating and supervising the staff and negotiating contracts between the SEE-CAO and its partners and
- (ii) a Supervisory Board, which will consist of representatives of the shareholders. The Managing Director will be bound by the decisions of the Supervisory Board and it will have to report to it on a regular basis.

According to Montenegro corporate law for limited liability companies, the basic corporate bodies are (i) the Founders / Assembly of Shareholders and (ii) the Executive Director (i.e. the Managing Director).

Nonetheless, given that the SEE-CAO wishes to have a two tiered management structure (as noted above), according to Montenegro corporate law, a limited liability company (i.e. the SEE-CAO) can provide in its Articles of Association to have a two tiered management structure, with one Executive Director (i.e. Managing Director – as per the SETSO TF Business Plan) and a Board of Directors (i.e. Supervisory Board – as per the SETSO TF Business Plan), whereby the Supervisory Board will be the ultimate management body issuing binding decisions as concerns the management of the SEE-CAO and binding the Managing Director as to the manner in which he/she must perform his/her executive managerial duties, as long, as the requirement of Board of Directors (i.e. the Supervisory Board) is set as the top management Board and Executive Director is the Chief of Administration.

- 5.2 According to Montenegro corporate law, management (i.e. the Board of Directors - Supervisory Board) is appointed by the shareholders (i.e. the TSOs) and Executive Director (i.e. Managing Director) is appointed by the Board of Directors. The bodies that appoint them also revoke their position.
- 5.3 As concerns the Supervisory Board (which will be in the form of a Board of Directors) the minimum number of members is 3 and there is no maximum. Therefore, all 13 jurisdictions can be represented in the Supervisory Board. It should be noted that the number of members in the Supervisory Board must be odd, in which case, in the event of an even number of TSOs in the SEE-CAO, one more member will have to be appointed. Decisions are taken by majority with the Chairman having the casting vote.
- 5.4 According to Montenegro corporate law, foreign nationals (i.e. from the EU, countries within South East Europe, persons outside Europe) can be appointed in the management (i.e. Managing Directors or members of the supervisory board) of a limited liability company in Montenegro. They do not have to be Montenegro nationals. For those who are to be employed, if foreigners, residence and working permits must be obtained.
- 5.5 Only the Executive Director (i.e. the Managing Director), as the Chief of Administration, by very law must be employed and as such must have residence and working permit. Board of Directors members (i.e. Supervisory Board), or other Board type members by law do not have to be employed in the SEE-CAO and as such do not have to have working permit.

6 General Meeting of Shareholders

- 6.1 According to Montenegro corporate law, the General Meeting of Shareholders is the sole and appropriate body to decide on the following matters:
- (1) amend and supplement the Articles of Association of the SEE-CAO;
 - (2) elect the members of the Board of Directors and approve the appointment of the auditor;
 - (3) remove from office members of the Board of Directors and auditor who have been elected by the general meeting;
 - (4) set the fees for the Board of Directors;
 - (5) adopt a resolution on the distribution of profit;

- (6) increase or reduce the authorized capital, exchange shares of one class for shares of another;
- (7) voluntarily liquidate the company or reorganize the company or file bankruptcy proceedings;
- (8) approve the valuation of non-monetary contributions; and
- (9) at the request of the Board of Directors, consider issues assigned to the Board, which pertain to the activity of the company;
- (10) approve any contract to be entered into by the SEE-CAO concerning property acquisition from a founder or a majority shareholder of the company for a payment of not less than 1/10 of the company's authorized capital, when such a contract is to be concluded within a period of 2 years from registration of the company;
- (11) adopt a decision to issue any bonds or any convertible debentures or convertible securities;
- (12) limit or cancel a priority right of shareholders to subscribe for shares or acquire convertible bonds, but only by the 2/3 majority vote of all affected shareholders.

It should be noted that the Articles of Association can provide for additional matters.

6.2 In order for the GMS to take decisions outlined in 6.1 above, as determined by the law, a quorum of shares representing at least 50% of the total voting shares is required. If not achieved, a repeat meeting may be called within 30 days of the original meeting, at which at least 33% of the total voting shares is required. If not achieved, a third meeting may be called within 30 days of the repeat meeting at which no quorum is required, and the meeting shall have the right to adopt resolutions on all the items of the agenda irrespective of the number of shares represented. If decisions are mentioned in the law for a 2/3 majority of votes, otherwise a simple majority of votes, unless the Articles of Association determine otherwise.

6.3 The procedure for convening the GMS is as follows:

- The first annual general meeting must be held within 18 months of the company's statutory general meeting.
- The general meeting is organized by the Authorized Officer on the instructions of the Board of Directors. The right to call a meeting is vested in the Board and in the shareholders, the value of whose shares is no less than 5% of the share capital, unless the Articles of Association provides for a smaller percentage.

- With the exception of the first year following the incorporation of a company, the Board must call a regular annual general meeting within 3 months of the end of each financial year.
- Notice of the convening of a general meeting is issued no later than 30 days before the date of the meeting. Notice of the meeting must be delivered by mail.
- The meeting may not adopt resolutions on issues that are not on the agenda unless all shareholders who have voting rights attend the meeting.
- The Chief Executive shall act as by the chairman of the meeting unless otherwise decided by majority vote of the attending shareholders.
- The minutes of the general meeting shall be signed by the chairman of the meeting, secretary and at least one shareholder authorized to do so by the meeting.
- A quorum at a general meeting shall consist of shares representing at least half of the total voting shares, either in person, or by proxy. If this meeting does not attain the required quorum, a repeat meeting may be called within 30 days of the original meeting, at which the quorum shall consist of shares representing at least thirty three percent of total voting shares, either in person, or by proxy.
- If the repeat meeting does not attain the required quorum, a third meeting may be called within 30 days of the repeat meeting at which no quorum is required, and the meeting shall have the right to adopt resolutions on all the items of the agenda irrespective of the number of shares represented. The procedure for calling a general meeting shall be valid for convening the repeat meetings. Notice of any repeat meeting must be given in the manner prescribed already except that only 10 days notice is required.
- Upon viewing the agenda and the draft resolution, shareholders who are entitled to vote at the general meeting may inform the meeting in writing of their vote “for” or “against” in respect of each individual resolution or may instruct their proxy in writing.
- Voting at the general meeting shall be open. Secret voting shall be mandatory on the issues on which at least 10 % of the shares represented at the meeting request a secret vote.

- The resolution of the meeting shall be adopted by a simple majority vote of the shares present, with the exception of cases where resolutions require a higher percentage vote. For the purposes of this paragraph, shares for which a valid proxy attends the meeting shall be deemed to be present.
- Shares with suspended voting right shall not be counted toward any decision. However, such shares shall be counted toward establishing number of shares for quorum.

7 Financing – Loans

- 7.1 A limited liability company in Montenegro (i.e. the SEE-CAO) can receive loans from foreign or international banks (e.g. EBRD) and there are no limitations to this effect.
- 7.2 According to Montenegro law and practice, it is disputable whether limited liability companies in Montenegro (i.e. the SEE-CAO) can receive loans from their third parties (i.e. non banks) or the shareholders. Montenegrin Law on Banks prescribes that only financial institutions can provide loans and the tax authority opinion is the same. However, the Ministry of Finance has taken the opposite position. In practice, limited liability companies receive loans from non-financial organizations.
- 7.3 There are no restrictions regarding the amount of loans a limited liability company can take. Moreover, as also noted above (see item 3.3 herein) the laws of Montenegro do not contain restrictions or limitations regarding debt – equity ratio. This effectively means that the SEE-CAO can receive as much debt as needed without the amount of share capital playing any decisive legal role.

8 Profits – Fiscal Year – Auditors

- 8.1 As concerns whether the Articles of Association of the SEE-CAO can stipulate that its profits will never be distributed, we note that the laws of Montenegro do not prescribe this eventuality. However, as Montenegro company law has general provisions on protection of minority shareholders, such a provision may be regarded as a violation of shareholders' rights in advance, against their freedom to dispose of their assets.

Notwithstanding the above, the Shareholders can decide at each Annual General Meeting of Shareholders that the profits of that year will not be distributed but will remain in the company to be re-invested. This must be freely decided by the shareholders each year at the SEE-CAO's General Meeting of Shareholders. It should be noted that even if all TSOs concluded in the Agreement for Syndication that all of the SEE-CAO's profits will not be distributed but rather carried forward to be used next year as working capital or reinvested in the SEE-CAO, this agreement cannot be enforced in Montenegro. In order to circumvent this problem, the TSOs would be able to conclude in the Agreement for Syndication that any TSO deciding to receive dividend from the SEE-CAO will have to compensate the SEE-CAO or the other TSOs for an amount equal to the dividends distributed.

- 8.2 The fiscal year provided for limited liability companies in Montenegro is 1 January to 31 December of each year (i.e. calendar year).
- 8.3 The SEE-CAO, as a limited liability company, does not in general have to have obligatory audit. However, in case it goes over certain amount of turnover and other conditions, prescribed by the tax laws, it enters into the audit regime, just like stock companies. Moreover, it may also enter into such a regime voluntarily.
- 8.4 The SEE-CAO can maintain its accounting books according to International Financial Reporting Standards (IFRS).

9 Employment and Social Security

- 9.1 The SEE-CAO, as a limited liability company in Montenegro, can hire foreign employees (i.e. nationals from EU member States, neighbouring countries or outside Europe) and there are no limitations to the number of foreign employees the SEE-CAO can have (i.e. the SEE-CAO can have only foreign employees if it so wishes). The only limitation is that foreign employees require temporary residence and working permits, according to Montenegro law.
- 9.2 Foreign employees need to have approved temporary residence and working permits. If specialists in some area, they need to have their diploma's approved in the country, too. The same requirements apply for nationals of EU Members States or other neighbouring countries or nationals from outside Europe.
- 9.3 According to Montenegro law, the general work regime is as follows:

- a. The legal daily and weekly working hours are 8 hours a day, 40 hours a week. There is no monthly quotation.
- b. The permissible overtime is up to 10 hours a day, payable depending on what kind of hours and labour it is. There are different scales.
- c. Working at night or on weekends (the SEE-CAO may operate 24 hours a day, 7 days a week so it will require different shifts) is also permissible, but in accordance with special conditions.
- d. The annual vacation is at least 18 working days a year, to be used twice a year at most as per suggestion of the employee and decision of the employer. The number of days are increased depending on the industry, age and working experience of employee.

9.4 Employees (foreign and local) working in Montenegro have to be registered for mandatory social security in Montenegro. Contributions are payable monthly, with the salary, as they are due with the salary. They are determined in the form of percentage of the gross salary. The percentage of all taxes and social security contributions payable to any salary is approximately 62% to the net salary (e.g. for every €100 net salary paid out, the SEE-CAO has to pay an additional €62 for all contributions and taxes related to the salary. A ceiling exists only for the pension fund contributions, which is approximately €21-22.000/ year, while other obligations do not have a ceiling.

9.5 As concerns whether foreign nationals working in Montenegro are entitled to get an exemption from Montenegro social security contributions if they have social security from their country, it is noted that there are bilateral treaties for social security concluded between former SFRJ and some countries. However, practice has shown that the Montenegro social security authorities are not experienced with such treaties and therefore, in practice it may be difficult to get an exemption.

10 Legal review of commercial set up of the SEE-CAO

10.1 Having reviewed the SETSO TF business plan, the description of the services that will be provided by the SEE-CAO and the commercial aspects related to the SEE-CAO's services, either as a "service provider" or as a "contracting-invoicing vehicle" (see our comments above in section ii.5), we conclude that there are no legal implications, restrictions or limitations in general commercial law in Montenegro that would prevent or forbid the SEE-CAO from:

- (i) conducting auctions with respect to cross border capacity on behalf of the TSO and invoicing auction participants for such allocation and
- (ii) providing cross border services to the TSOs and invoicing them for such services.

10.2 It is our understanding that the TSOs require that the SEE-CAO possess and operate a bank account outside Montenegro, in a neutral country with a well developed banking system. To this effect and according to Montenegro law, the SEE-CAO is allowed to maintain and operate bank accounts in foreign banks outside Montenegro. It should be reminded that the only limitation is that the share capital must be deposited in a bank account in Montenegro.

10.3 In connection with the above question, the SEE-CAO, as a Montenegro limited liability company, is allowed:

- a. to receive payments in its bank accounts in foreign banks outside Montenegro from foreign companies and
- b. to make payments through its bank accounts in foreign banks outside Montenegro to foreign companies.

10.4 According to Montenegro commercial law, the SEE-CAO as a Montenegro limited liability company has the right to sign commercial agreements with foreign companies (for services described in section II.3 above) that are governed by foreign law and stipulating that any dispute arising from the commercial agreement will be settled in a court or arbitration outside Montenegro. However, the terms and conditions of these agreements (SLA, Inter TSO Agreements, Agreement for Syndication etc.) must be carefully reviewed by Montenegro legal counsel before they are signed in order to conclude whether:

- (i) the terms and conditions comply with mandatory Montenegro legal provisions,
- (ii) disputes arising from such agreements can be resolved before foreign or international courts or arbitration or whether they must be brought before Montenegro courts that have exclusive jurisdiction and
- (iii) such agreement and their terms can be enforced in Montenegro in the event any court or arbitration decision must be enforced against the SEE-CAO in Montenegro.

11 Taxes

- 11.1 Loans provided to the SEE-CAO in Montenegro from local or foreign banks (i.e. foreign or international banks such as EBRD) or foreign companies (i.e. non banks) and the interest paid thereon may be subject to taxes and duties. However, there are exceptions/situations prescribed by local law, and there may be a decision of the Government according to which certain loans may be exempt from tax. Tax advice should be obtained from local tax advisory counsel at the time of financing so that the optimum tax structure can be obtained thus lowering the overall costs of the loan.
- 11.2 The corporate income tax rate for limited liability companies is 9%. Dividends paid to shareholders are currently subject to 15% Montenegro withholding income tax, unless an applicable double tax treaty (see below question 11.4) provides for lower withholding tax rates for dividends paid out to shareholders who are foreign tax residents, qualified according to the double tax treaty.
- 11.3 It is our understanding that the SEE-CAO, as a Montenegro limited liability company, will operate with zero profit (i.e. it will operate on cost) whereby there would be no profit to distribute and no profit to tax. In general, companies can of course operate with zero profit/zero tax. However, the Montenegro tax authorities may not accept that a commercial company operates on a cost basis and therefore may try to impose income tax on deemed profit or disallow certain expenses. Even if presently the tax authorities were not to take such a position and allow a commercial company in agreeing with its suppliers and customers to provide services at a “zero profit” level, it is not certain that in the future such a situation (either by law or tax practice) will remain. The risk of having the SEE-CAO subject to payment of future income tax may be avoided only by enacting special legal provisions with respect to the income tax regime of the SEE-CAO.
- 11.4 As concerns double tax treaties and the applicable withholding tax rates, Montenegro has declared that it will honour all tax treaties that have been concluded by the state union of Serbia and Montenegro. However, these treaties have to be confirmed by treaty partners. The following chart contains the withholding tax rates that are applicable to dividend, interest and royalty payments by resident Montenegro companies (i.e. the SEE-CAO) to non-residents (i.e. TSOs) under the tax treaties currently in force. Where, in a particular case, a treaty rate is higher than the domestic rate, the latter is applicable.

Montenegro - Treaty Withholding Rates

Dividends	Interest	Royalties
-----------	----------	-----------

	Individuals, companies	Qualifying companies ¹		
	(%)	(%)	(%)	(%)
<u>Domestic Rates</u>				
<i>Companies:</i>	15	15	5	15
<u>Treaty Rates</u>				
<i>Treaty With:</i>				
Albania	15	5	10	10
Belarus	15	5	8	10
Belgium ²	15	10	15	10
Bosnia and Herzegovina	10	5	10	10
Bulgaria	15	5	10	10
China (People's Rep.)	5	5	10	10
Croatia	10	5	10	10
Cyprus ²	10	10	10	10
Czech Republic	10	10	10	5/10 ³
Denmark ²	15	5	0	10
Egypt	15	5	15	15
Finland ²	15	5	0	10
France ²	15	5	0	0
Germany ²	15	15	0	10
Hungary	15	5	10	10
Italy ²	10	10	10	10
Korea (Dem. Rep.)	10	10	10	10
Kuwait	10	5	10	10
Latvia	10	5	10	5/10 ⁵

Former Yugoslav Republic of Macedonia	15	5	10	10
Moldova	15	5	10	10
Netherlands ²	15	5	0	10
Norway ²	15	15	0	10
Poland ²	15	5	10	10
Romania	10	10	10	10
Russia	15	5 ⁴	10	10
Slovak Republic	15	5	10	10
Slovenia	10	5	10	5/10 ⁵
Sri Lanka ²	12.5	12.5	10	10
Sweden ²	15	5	0	0
Switzerland	15	5 ⁶	10	10
Ukraine	10	5	10	10
United Kingdom ²	15	5	10	10

1. The reduced treaty rates given in this column generally apply if the holding is at least 25% of the capital or of the voting power, as the case may be.
2. Tax treaty concluded by the former Socialist Federal Republic of Yugoslavia or by the Federal Republic of Yugoslavia. The other treaties listed were concluded by the state union of Serbia and Montenegro. Montenegro continues to honour the treaties of all those types. However, the application of treaties with Montenegro has to be confirmed by treaty partners.
3. The lower rate applies to copyright royalties, excluding computer software.
4. The reduced rate applies if the beneficial owner is a company which holds directly at least 25% of the capital of the dividend-paying company and has invested at least USD 100,000.
5. The lower rate applies to copyright royalties, including films, etc.
6. This rate applies if the Swiss company owns at least 20% of the capital in the dividend-paying company.

11.5 It is our understand that if the SEE-CAO adopts the “contracting-invoicing vehicle” structure, the SEE-CAO will issue invoices (i) to Auction Participants for the allocation of cross border capacity and (ii) to the TSOs for its services in order to cover its annual capital expenditures and working capital needs. The above invoices will be subject to Montenegro VAT at a rate of 17% if the Auction Participants are resident of Montenegro and in the case of TSO-EPCG.

In all other cases, it is not certain whether the invoices issued to companies residing outside Montenegro (i.e. Auction Participants outside Montenegro and all other TSOs) will be subject to Montenegro VAT or not. In particular, the general rules is that since the SEE-CAO is a resident of Montenegro, all services it provides will be subject to Montenegro VAT at a rate of 17% unless special provisions of Montenegro VAT legislation provides that the particular service should be subject to VAT outside Montenegro (i.e. VAT charged in the country of the recipient or charged in Montenegro with the right of exemption as the particular service may be deemed as an export of service).

Ex prima facie and in reservation to our comments in the following paragraph, it is our opinion that:

- the invoicing of congestion income to Auction Participants should not be subject to Montenegro VAT as it is capacity allocated outside Montenegro to a company residing outside Montenegro; and
- the invoicing of auctioning services to TSOs should be subject to Montenegro VAT as it is a service provided in Montenegro, irrespective if it is actually being provided to a company residing outside Montenegro.

Notwithstanding the above, it should be noted that once the operational structure between SEE-CAO – TSOs – Auction Participants is finalised and there is a clear and final description of the services that will be provided to the TSOs and the Auction Participants, a question must be filed with the Montenegro Ministry of Finance in order to obtain an official position of the State of Montenegro regarding the imposition of local VAT, given the large amounts of congestion income that will be actually “re-invoiced” through the SEE-CAO in Montenegro and secondarily the invoicing of the auctioning services, which will effectively increase by great lengths (i.e. 17%) the cost of the above services to the Auction Participants and the TSOs and benefit the State of Montenegro to the detriment of the regional market.

In the event both or either of the above income (i.e. congestion income and service income) are subject to Montenegro VAT, following the position to be taken by the Montenegro Ministry of Finance (as per above), the VAT issue may be resolved only by enacting special legal provisions with respect to the invoices issued by the SEE-CAO.

- 11.6 It is our understanding the TSOs (whose interconnection capacity was allocated by the SEE-CAO) will issue invoices to the SEE-CAO for their congestion income. Payment of this invoice will be effected by the SEE-CAO to the TSOs. In light of the above, the amounts paid by the SEE-CAO on the invoices issued by the TSOs should not be subject to Montenegro withholding tax, according to Montenegro income tax.

However, once the operational structure between SEE-CAO – TSOs – Auction Participants is finalised, a question must be filed with the Montenegro Ministry of Finance in order to obtain an official position of the State of Montenegro regarding the imposition of withholding taxes on the payment of congestion income by the SEE-CAO to the TSOs because even if no withholding tax is imposed today, it is possible that Montenegro income tax may be amended in the future to provide for such tax.

Annex I – Checklist of Legal Issues

1	Agreement for Syndication
1.1	Is an Agreement for Syndication valid according to the laws of Montenegro?
1.2	In the event of corporate dispute among the shareholders, is an Agreement for Syndication enforceable in the courts of Montenegro?
1.3	Can the Agreement for Syndication contain provisions that are against Montenegro corporate law?
2	Setting up the SEE-CAO
2.1	What are the requirements and the procedure for setting up the SEE-CAO as a limited liability company?
2.2	What is the approximate time frame (not taking into account the time required for obtaining any special licenses if necessary and for the shareholders to agree on the text of the Articles of Association and to provide the necessary documents) for setting up a limited liability company?
2.3	What is the approximate cost for establishing, incorporating and registering for tax purposes the SEE-CAO?
2.4	Do foreign shareholders have an obligation to be registered in any way in Montenegro due to the fact they will become shareholders in a Montenegro limited liability company?
3.	Share capital of the SEE-CAO
3.1	What is the minimum and maximum share capital provided by law?
3.2	When does the share capital need to be paid by the shareholders and can it be paid in instalments?

3.3	Do the laws of Montenegro have provisions regarding debt – equity ratio limitation and if yes, what are they?
4.	Shares and Shareholders
4.1	What is the minimum and maximum number of shareholders a limited liability company can have?
4.2	What kind and/or category of shares (if any) does Montenegro corporate law have for limited liability companies (e.g. registered or bearer shares, blocked shares, common shares, preferred shares, shares with and without the right to vote etc.)?
4.3	<p>If the shareholders agree that they do not want any shareholder having the right to sell his shares to third parties, in the event a shareholder wants to exit/leave the SEE-CAO:</p> <ul style="list-style-type: none"> a. can the Articles of Association contain provisions prohibiting the shareholder from selling, transferring or disposing shares in the SEE-CAO (i.e. “blocked shares”) to third parties or limiting the right of each shareholder to sell, transfer or in any way dispose of the shares? b. are the shareholder, according to the corporate law of Montenegro, free to sell, transfer or dispose their shares in any way they want or are the shareholders restricted in any way?
4.4	Is it possible, according to Montenegro corporate law, for the shareholders to stipulate in the Articles of Association that a shareholder must withdraw from the SEE-CAO (as a shareholder) in the event of a decision of the remaining shareholders in the general assembly?
4.5	What minority rights (i.e. the rights of a group of shareholders holding a certain minority percentage in the share capital) do shareholders have according to Montenegro corporate law?
4.6	<p>Can a new shareholder enter the SEE-CAO as a shareholder following an increase of the share capital of SEE-CAO?</p> <p>Can the Articles of Association provide that a lower (than that stipulated in</p>

	<p>Montenegro corporate law) quorum and/or majority of the General Meeting of Shareholders is required for the entry of new shareholders?</p> <p>Can the Articles of Association provide that the consensus (i.e. 100% agreement) of all shareholders is required for the entry of new shareholders?</p>
5.	Management – Supervisory Board (see section 1.2.3 above)
5.1	<p>According to Montenegro corporate law for limited liability companies, what kind of management structure can a limited liability company have (e.g. sole or multiple administrators working collectively or each one individually vs management boards working as a corporate body with issue of decisions)?</p> <p>According to Montenegro corporate law, can a limited liability company provide in its Articles of Association to have a two tiered management structure, with one Managing Director and a Supervisory Body, whereby the Supervisory Body will be the ultimate management body issuing binding decisions as concerns the management of the SEE-CAO and binding the Managing Director as to the manner in which he/she must perform his/her executive managerial duties?</p>
5.2	<p>According to Montenegro corporate law, how is management (i.e. administrators and/or management boards) appointed (during the establishment and thereafter) and revoked?</p>
5.3	<p>In the event of management boards, what is the minimum and maximum number of members the management board can have and how (by what majority) are decisions taken?</p>
5.4	<p>According to Montenegro corporate law, can foreign nationals be appointed in the management (i.e. Managing Director, member of the Supervisory Board) of a limited liability company in Montenegro or do they have to be Montenegro nationals?</p>
5.5	<p>If foreign nationals can be appointed in the management of limited liability companies, what requirements (if any) do they have in Montenegro?</p>

6.	General Meeting of Shareholders (GMS)
6.1	What corporate matters require GMS decision, according to Montenegro corporate law?
6.2	What quorum and majority percentages are required for GMS to take decisions outlined in 6.1 above?
6.3	What is the procedure for convening the GMS?
7.	Financing – Loans
7.1	Can limited liability companies in Montenegro receive loans from foreign or international banks (e.g. EBRD)?
7.2	Can limited liability companies in Montenegro receive loans from third parties or their shareholders?
7.3	In both case above are there any limitations as to the amount of loans a limited liability company can obtain, according to the laws of Montenegro?
8.	Profits – Fiscal Year – Auditors
8.1	According to the laws of Montenegro, can the Articles of Association stipulate that that limited liability company's profits will never be distributed? According to the laws of Montenegro, can the Shareholders decide at each Annual General Meeting of Shareholders that the profits of that year will not be distributed but remain in the company?
8.2	What fiscal years can a limited liability company have?
8.3	What audit obligations does a limited liability company have according to Montenegro law?
8.4	Can a limited liability company maintain its accounting books according to International Financial Reporting Standards (IFRS)?

9.	Employment and Social Security
9.1	Can a limited liability company in Montenegro (i.e. the SEE-CAO) hire foreign employees and is there any limitation to the number or amount of foreign employees a company can have (i.e. can a limited liability company in Montenegro, i.e. the SEE-CAO, have only foreign employees)?
9.2	If the limited liability company in Montenegro (i.e. the SEE-CAO) can hire foreign employees, what requirements (if any) do they have in Montenegro (e.g. acquire a work permit, be registered for tax purposes in Montenegro etc.)?
9.3.	Please provide brief information on what Montenegro general employment law (not taking into consideration specific collective labour agreements) provides on the following topics: <ul style="list-style-type: none"> a. daily and weekly working hours; b. permissible overtime and amount of additional compensation; c. working at night or on weekends (the SEE-CAO may operate 24 hours a day, 7 days a week so it will require different shifts); d. annual vacation;
9.4	Do employees (foreign and local) working in Montenegro have to be registered for mandatory social security in Montenegro? What salary withholding tax and social security contributions payable by the employee and the employer for national and foreign employees in the form of fixed fees or a percentage of the gross salary? Is there a ceiling (i.e. maximum) to the amount of social security contributions an employee can pay monthly?
9.5	Are foreign nationals working in Montenegro entitled to get an exemption from Montenegro social security contributions if they have social security from their country?
10.	Commercial
10.1	Based on the description of the services that will be provided by the SEE-CAO, is there anything in general commercial law in Montenegro that would prevent or

	forbid the SEE-CAO from (i) conducting auctions with respect to cross border capacity on behalf of the TSO and invoicing auction participants for such allocation and (ii) providing cross border service to the TSOs and invoicing them for such services?
10.2	Are Montenegro limited liability companies allowed to maintain and operate bank accounts in foreign bank outside Montenegro?
10.3	Are Montenegro limited liability companies allowed to <ul style="list-style-type: none"> a. receive payments in their bank accounts in foreign banks outside Montenegro from foreign companies? b. make payments through their bank accounts in foreign banks outside Montenegro to foreign companies?
10.4	Can limited liability companies in Montenegro sign commercial agreements with foreign companies that are governed by foreign law and stipulating that any dispute arising from the commercial agreement will be settled in a court or arbitration outside Montenegro?
11.	Taxes
11.1	Are loans provided to SEE-CAO in Montenegro from local or foreign banks (i.e. foreign or international banks such as EBRD) or foreign companies (i.e. non banks) and the interest paid thereon subject to stamp duty or any other tax, duty or levy?
11.2	What is the corporate income tax rate for limited liability companies what is the withholding tax rate for dividends paid to foreigners?
11.3	Can SEE-CAO, as a Montenegro limited liability company, operate with zero profit (i.e. it will operate on cost) whereby there would be no profit to distribute and no profit to tax?
11.4	What withholding tax rates does Montenegro apply with respect to applicable double tax treaties it has signed with third countries?
11.5	if the SEE-CAO adopts the “contracting-invoicing vehicle” structure, the SEE-

	<p>CAO will issue invoices: (i) to Auction Participants for the allocation of cross border capacity and (ii) to the TSOs for its services on a cost basis in order to cover its annual capital expenditures and working capital needs. Should the above two invoices be subject to Montenegro VAT?</p>
11.6	<p>Following the announcement of the winning bids and the issue of the SEE-CAO's invoice to the Auction Participants, the TSOs (whose interconnection capacity was allocated by the SEE-CAO) will then issue an invoice to the SEE-CAO for the congestion income they are each entitled to. Payment of this invoice will be effected by the SEE-CAO to the TSOs.</p> <p>In light of the above, are the amounts paid by the SEE-CAO on the invoices issued by the TSOs subject to Montenegro withholding tax, according to Montenegro income tax?</p>