

**LEGAL ASPECTS  
OF DOING BUSINESS IN  
EUROPE**

Second Edition

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# Montenegro

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## **Introduction**

Montenegro is a relatively new Mediterranean country, which declared independence from the state union with the Republic of Serbia on 3 June 2006. It is spread over 13,812 square kilometers and has approximately 670,000 inhabitants. Montenegro is located in the southern region of the European continent and at the southwestern part of the Balkan Peninsula.

Montenegro's land borders are 614 square kilometers long; the longest border is with Bosnia and Herzegovina and the shortest with Croatia. Montenegro also has borders with Serbia and Albania. Almost half the length of its borders is along the Adriatic seacoast. The Constitution of Montenegro was adopted in October 2007. It provides an ecological state of social justice based on the rule of law.

Montenegro has adopted the principle of division of powers into the legislative, executive, and judicial branches. The Assembly of Montenegro implements the legislative power, the government exercises the executive power, and the courts execute the judicial power. The President of Montenegro represents the country both domestically and abroad.

The executive, judicial, and any other power is limited by the Constitution and the law. All laws have to be in accordance with the Constitution and ratified international agreements. International conventions ratified by the Assembly of Montenegro become an integral part of the internal legal system; if there is a conflict between an international convention and a Montenegrin law, the former will prevail.

The Constitution prohibits direct or indirect discrimination of any kind and regulates that all the residents of Montenegro are equal under the law, regardless of any peculiarity or personal characteristic. The Constitution prescribes that any action is allowed unless prohibited by the Constitution or by law.

## Establishment of Enterprises

### In General

In Montenegro, the performance of an economic activity is regulated by the Law on Enterprises.<sup>1</sup> The Law provides that commercial entities are required to be registered with the Register of Commercial Entities held by the Tax Office in Podgorica. Certain activities require prior approval for initiation of operations, but this approval is not a condition for registration of the commercial entity.

There are four types of commercial entities: partnership, limited partnership, limited liability company (SRL), and stock corporation (SA). Commercial activity also may be performed by branch offices of foreign legal entities and by entrepreneurs, which are not considered to be commercial entities. Limited commercial activity may be performed by the representative office of a foreign company.

An entrepreneur is an individual performing commercial activity with the intention of earning profits, when not acting on behalf of another person. An entrepreneur is liable with all of his assets for the obligations arising from his commercial activity. An entrepreneur is registered with the Register of Commercial Entities for statistical purposes, but the registration is not a condition for his operation.

A partnership is a form of legal entity in which at least two Montenegrin or foreign persons, known as 'partners', carry out work in order to gain profit. The liability of each partner is unlimited, and each partner is jointly and severally liable for the obligations of the legal entity and the obligations incurred while he was a partner.

A partner may be an individual or a legal person, and each partner is considered a representative of the company. Unless otherwise provided in the partnership agreement, each partner will, at the end of the business year, share equally in the profits and losses of the partnership.

Unless agreed otherwise, a partner may not be expelled from the company by a majority vote of the other partners, but only through a decision of the competent commercial court, rendered upon the request of one or more partners, on the grounds of a breach of the partnership agreement. Registration of a partnership with the Register of Commercial Entities merely serves a statistical purpose and is not a condition for the partnership's operation.

A limited partnership is a company of two or more Montenegrin or foreign persons. At least one of the partners is an unlimited partner who is liable with all its assets (if there are more unlimited partners, they are jointly and severally liable with all their assets) for the obligations undertaken by the partnership, and

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<sup>1</sup> Published in the *Official Gazette of Montenegro*, Numbers 40/10 and 36/11.



at least one is a limited partner whose liabilities are limited to its contribution to the partnership.

All decisions on the regular operations of a limited partnership are made by a simply majority vote by the unlimited partners, unless otherwise provided by the agreement on establishment. A limited partner does not participate in the management of the company, nor is he authorized to conclude contracts that bind the partnership; otherwise, he would be liable for the obligations of the company incurred during the period of his involvement in the management, as if he were an unlimited partner.

A limited liability company (SRL) may be established by one or more natural or legal Montenegrin or foreign persons. The minimum capital requirement for the establishment of an SRL is €1. A stock corporation (SA) is a company whose shareholders may be natural or legal Montenegrin or foreign persons. The minimum capital requirement for the establishment of an SA is €25,000.

The branch office of a foreign company is a part of a company established and registered abroad, which performs work in Montenegro. A foreign company which performs economic activity through its branch office in Montenegro is obligated to carry out its activities in compliance with the relevant provisions of Montenegrin law.

The branch office of a foreign company should be registered with the Register of Commercial Entities. The law prescribes that if one or more natural persons or legal entities begin conducting business activities without prior registration or without renewal of the registration, they will either be regarded as an entrepreneur or as a partnership *vis-à-vis* any third person. In Montenegro, there are currently approximately 22,500 limited liability companies and approximately 370 stock corporations.

#### **Limited Liability Company**

An SRL may be established by one or more individuals or legal entities whose contribution to the capital may be in cash or in kind and whose purpose is to gain profit. An SRL's founders/members are liable for the company's obligations to the extent of their contribution. The founders provide the initial capital of the company. By paying the initial contribution and signing the relevant founder's agreement, an individual or legal entity acquires a stake in the company in proportion to the value of its contribution and becomes a member of that company. An SRL may not have more than 30 members.

The only mandatory authority in an SRL is the executive director. Members of the company elect the executive director of the company and determine his earnings by a majority vote, unless otherwise determined by the statute of the company.

Members of the company may regulate the management of the company by an agreement or by the statute of the company, and, unless agreed differently, they may vote in the decision-making process according to their contributions to the company. If the statute does not specify otherwise and with the exception of single-member companies, the present members or those represented at the meeting by proxy or ballot who own more than half of the company's stakes make a quorum for decision making.

### **Stock Corporation**

#### *In General*

An SA is a company with capital divided into shares, established by one or more individuals or legal entities for the purpose of conducting economic activities. An SA constitutes a legal entity whose assets are separated from the assets of its shareholders, who are not liable for the company's obligations with their own assets. SA shares are registered with the Central Depositary Agency, while the company is registered with the Register of Commercial Entities. An SA may be established successively and simultaneously.

#### *Successive Establishment*

The steps for the successive establishment of an SA are:

- Signing the contract on the establishment of the SA;
- Obtaining approval for issuing founding securities from the Securities Commission;
- Making a public call for subscription and payment of shares;
- Subscription and payment of shares by the founders;
- Obtaining a decision on the success of the issue of founding shares' from the Securities Commission;
- Adoption of the statute by the founding assembly; and
- Registration of the company.

A founding assembly should be held within 30 days of the share subscription and payment. The founding assembly is responsible for electing the governing body, the executive body, and the auditor of the company. The founding assembly also is responsible for approving the contracts concluded by the founders and for adopting the statute of the company by a two-thirds majority vote of the members present.

*Simultaneous Establishment*

The steps for the simultaneous establishment of an SA are:

- Signing a contract on the establishment of the SA or, in case of one founder, adopting a decision on establishment;
- Purchasing all the shares during the establishment process, without a public call for subscription and payment of the purchase price;
- Obtaining approval for share issuance from the Securities Commission;
- Adoption of the statute; and
- Registration of the company.

The founders are obliged to pay for the shares and to invest the contributions in kind within the period specified in the establishment contract. During this period, they also are obligated to register the shares issuance before the Securities Commission. The founding assembly must convene within 30 days of the date of the payment of shares, except under certain conditions provided by law. The management bodies of an SA are:

- The shareholders' meeting, consisting of the shareholders with voting rights;
- The board of directors, elected by the shareholders' meeting (a shareholder who holds, on his own or together with others, at least 5 per cent of the equity capital has the right to propose candidates for the board of directors);
- The auditor, elected by the shareholders' meeting for the period determined by the statute of the company, which may not be more than one year;
- The secretary, elected and dismissed by the board of directors; and
- The executive director, elected and dismissed by the board of directors.

An executive director is obliged to execute orders of the board of directors and to implement its decisions regarding the company's business. The executive director's functions include the representation of the company's interest, the management of the company's assets, the conclusion of contracts, the opening of a bank account, employment in the company, and issuance of orders and instructions that are mandatory for all employees in the company. The executive director also is obliged to perform other duties that are necessary for the welfare of the company and which are within the limits of his authority as determined by contract and by the statute of the company.

*Shareholders' Meeting*

**Composition.** Each shareholder in an SA is entitled to attend the shareholders' meeting regardless of the number and class of the shares he holds. The presence of the executive director and the secretary of the company are mandatory, while

the presence of the members of the board of directors, although a common practice, is not mandatory.

**Functions.** The shareholders' meeting has the exclusive right to carry out amendments to the statute of the company, elect and replace members of the board of directors and the auditor, and decide on compensation for the members of the board of directors.

It also has the exclusive right to adopt the annual financial plan and report on the company's business, decide on the disposal of company assets exceeding 20 per cent of the overall assets, and to decide on profit allocation.

The shareholders' meeting also has the exclusive right to decide on the reduction and increase of the company's capital; decide on the replacement of shares of one class by shares of another class; and decide on the voluntary liquidation of the company, the company's restructuring, or initiation of the company's bankruptcy procedure.

Finally, the shareholders' meeting has the exclusive right to approve the evaluation of investments in kind; discuss issues within the authority of the board of directors at their request; approve concluded contracts regarding the purchase of property from founders or a major shareholder of the company; and decide on the issue of bonds, replaceable bonds, or other replaceable securities, and limit or terminate the shareholders' preemption right to register or gain replaceable bonds, provided that a payment exceeds one-tenth of the company's capital and that the contract is concluded within two years of the registration of the company.

**Convening of Meetings.** The shareholders' meeting must convene at least once a year. After the establishment of an SA, the first annual shareholders' meeting should be convened within 18 months of the founding assembly of the company.

The right to convene the shareholders' meeting belongs to the board of directors as well as to any shareholder who holds at least 5 per cent of the company's shares, unless a lower percentage is allowed by the statute. The notification for holding a regular shareholders' meeting should be delivered to all the shareholders. This notification must contain the agenda, the place, the date, and the time of the assembly.

**Quorum, Voting, and Decision Making.** A quorum must be present to conduct a shareholders' meeting, consisting of at least one-half of the shareholders entitled to vote in the meeting, whether they are present, represented by proxy, or vote by ballot.

If the shareholders' meeting does not achieve the quorum required for a decision, it will convene again within 30 days, but notification about the second

meeting must be published at least twice, in at least one daily newspaper in Montenegro, and at least seven days prior to the second shareholders' meeting.

The quorum for this second shareholders' meeting will be met when shareholders who own at least 33 per cent of the total number of voting shares are present or represented by proxy at the meeting or vote by ballot. If that quorum is not achieved at the second shareholders' meeting, a third shareholders' meeting may be convened in the same manner and on the same terms as the second shareholders' meeting and may decide on all items of the agenda, regardless of the number of shareholders present.

The shareholders' meeting is convened on the request of the board of directors or shareholders holding, individually or together, at least 5 per cent of voting shares, unless the statute of the company provides for a lower percentage.

In addition to the regular shareholders' meeting, an extraordinary shareholders' meeting may be held at the request of shareholders holding a minimum of 5 per cent of the shares. It also may be held at the request of the board of directors or a shareholder if the grounds for convening the meeting are changes in the company's activity or capital, replacing the auditor or a member of the board of directors before the end of his term, or deciding on issues concerning serious losses of the company.

An extraordinary shareholders' meeting may be convened to approve reorganization, merging, voluntary liquidation, or bankruptcy proceedings. The meeting also may be convened to approve the auditor's resignation or a reduction in members of the board of directors below the prescribed minimum or to an even number, or on a decision by the board of directors that specific issues should be considered at an extraordinary shareholders' meeting.

#### *Board of Directors*

**Composition.** The board of directors is a collective body, managed by its president. The number of the members of the board of directors is determined by the statute of the company, provided that there is a minimum of three members and the total number of directors makes an odd number. The term of the board of directors expires on the day of the first regular annual session of the shareholders' meeting, but each member may be reelected an unlimited number of times.

**Functions.** The powers and duties of the board of directors are determined by the statute of the company and the applicable laws, but the board also may make rules regarding its own work.

The board of directors is mandatorily authorized to manage the company and provide guidelines for operations, determine the company's organization and the organization of its accounting and financial control, and determine the composition of the company's management and administration.

The board of directors has the authority to appoint and dismiss the persons entrusted with the company's management and to supervise them — especially with respect to the implementation of the statute, the law, and other regulations — and to appoint the company's executive director and the secretary.

**Liabilities.** Members of the board of directors are obligated to act conscientiously for the benefit of the company as a whole. They may not use the company's property or confidential information to gain personal profit, and they have to disclose to the shareholders' meeting any benefit or privilege they have gained, other than the compensation for their work.

Moreover, board members are not allowed to limit the powers of the auditor or to interfere in any way with the auditor's work. Should members of the board breach any of these obligations, they may be fined and, under certain conditions, may be obliged to pay damages and/or may be criminally prosecuted.

#### *Auditor*

**Election.** An SA has a legal obligation to appoint an external auditor. The election of the external auditor falls within the competence of the shareholders' meeting. Legal entities performing certain operations, such as banks, are obliged to establish an audit committee.

**Authorities.** The auditor is responsible for reviewing the financial report of the company at the end of the financial year and prior to its submission to the shareholders' meeting. The auditor is obligated to attend the annual shareholders' meeting of the company and must provide explanations and answer all questions regarding his assessments and his opinion included in the submitted report.

**Liability.** The auditor is required to perform the annual auditing of the company's financial statements in accordance with International Accounting Standards (IAS) and submit a report to the shareholders' meeting.

The law provides that an auditor who fails to perform audits in accordance with Law on Accounting and Auditing,<sup>2</sup> IAS, International Financial Reporting Standards (IFRS), International Standards of Auditing (ISA), and the Code of Ethics will be fined 10 to 20 times the minimum salary paid in Montenegro.

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<sup>2</sup> Published in the *Official Gazette of Montenegro*, Number 69/05.

## Acquisition of Enterprises

### In General

Acquisition of enterprises in Montenegro is regulated by numerous laws, such as by the Law on Enterprises,<sup>3</sup> the Law on Obligations,<sup>4</sup> the Law on Takeover of Joint Stock Corporations,<sup>5</sup> the Law on Competition,<sup>6</sup> the Rules of the Central Depository Agency, and other legislative measures.

Purchase of a stake in a company or of an entire company is performed by a written contract of sale. Under this contract, the seller is obliged to transfer and deliver his property right to the buyer, while the buyer is obliged to pay a price and to register ownership. The privatization laws regulate procedures for the sale of shares held by state funds in commercial entities through a public tender, public auction, or other methods.

### Limited Partnership

In a limited partnership, a limited partner may transfer his stake in the company with the consent of all the unlimited partners. The acquirer of the stake becomes a member of the company with all the rights of a limited partner. The consent of a limited partner is not required for acquisition of unlimited stakes.

### Limited Liability Company

In an SRL, a stake in the company may be transferred only in accordance with the provisions established by the statute of that company. The statute of an SRL may restrict the transfer of a stake; by law, an SRL is not entitled to make a public call for subscription of its stakes.

Among the members of the company, stakes may be transferred without any restrictions, in accordance with the statute. When one member of the company intends to transfer his stake, the other members and the company have preemption rights. If the members fail to agree on their proportions, the stake will, by law, be divided among the company's members in proportion to their contributions, unless otherwise determined by the statute.

If, within 30 days of this offer, the members or the company fails to accept the purchase of these stakes, the stakes may be transferred to a third party, under conditions which may not be more favorable than the conditions offered to the company's members or to the company. In case of transfer of a stake, the person who transfers and the one who purchases the stake will be jointly and severally liable for the obligations related to that stake.

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3 Published in the *Official Gazette of Montenegro*, Numbers 06/02, 17/07, and 80/08.

4 Published in the *Official Gazette of Montenegro*, Number 47/08.

5 Published in the *Official Gazette of Montenegro*, Number 81/05.

6 Published in the *Official Gazette of Montenegro*, Numbers 69/05 and 37/07.

In the event of the death of a natural person or termination of a legal entity, the stake is transferred to the owner's heirs or successors, respectively, unless otherwise determined by the statute of the company.

### **Stock Corporation**

#### *In General*

In Montenegro, shares are traded in electronic form through the information system of the Central Depository Agency, and their issuance, transmission, and storage also are in electronic form in the computer system of the Central Depository Agency. The issuance and trading of shares of an SA must be performed in accordance with the Law on Securities.<sup>7</sup> Shares of SAs are issued as nominal shares and have to be registered with the Securities Commission and the Central Depository Agency.

A person who acquires more than 40 per cent of the shares of an SA listed on a stock exchange is obliged to make a public offer for the acquisition of the other shares in that SA. The Law on Takeover of Stock Corporations provides details on these obligations and contains exemptions from the application of this law.

A company may purchase its own shares if this is permitted by its statute or through a decision of the board of directors, based on the approval of the shareholders' meeting. The shares that the company acquires, owns, and purchases as well as shares purchased by a third party for the company's account may not exceed 10 per cent of the share capital of the company. When a company buys its own shares, these shares have to be cancelled or transformed into shares without voting rights and rights to dividend. The company is obliged to register the number of its own shares purchased by it with the Register of Commercial Companies.

#### *Issue of New Shares*

Issuance of shares in an SA is performed through a public offer, except in cases determined by law. An approval from the Securities Commission is required for each issuance of shares.

A public call for subscription and payment of the issued shares may not be published until the approval of the company's prospectus and the determination of a place where the prospectus can be made available to interested parties. The prospectus has to be made available to the public no later than the date of publication of the public call for subscription and payment of the shares to which it refers. The prospectus has to be approved by the Securities Commission, which determines its content. A bank or another legal entity that

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<sup>7</sup> Published in the *Official Gazette of Montenegro*, Numbers 59/00, 10/01, 43/05; 28/06, and 53/09.



carries out the subscription and payment of the securities has to inform the Securities Commission about the number of registered and paid shares. The process of issuance of shares consists of the following stages:

- Deciding on the issuance of shares;
- Obtaining the approval for public offer and subscription of the issuance from the Securities Commission;
- Conclusion of the contract between the issuer and the Central Depository Agency;
- Drafting the prospectus, making a public call for subscription and payment of the shares, as well as publishing the results of the public offer in accordance with the Law on Securities; and
- Registration of the issuance with the Register of Issuers held by the Securities Commission and the registration of the shares for buyers' accounts with the Central Depository Agency.

When an individual or a legal entity, through the acquisition or disposal of shares, obtains or loses voting rights at the shareholders' meeting and when, due to this acquisition or disposal of shares, the proportionate number of their votes becomes more than or falls below 10 per cent, 20 per cent, 33 per cent, or 50 per cent, the Central Depository Agency is obliged to notify the issuer and the Securities Commission of that change within seven days of the date of acquisition of proprietary rights over the shares.

#### *Closed Tender*

Shares in an SA may be acquired through a closed tender. A closed tender contains an offer to purchase shares, but not through a public call for subscription and payment of shares. Issuance of shares through a closed tender may be performed only if the issuer offers shares for sale:

- To current shareholders on the basis of preemption rights;
- To founders during the simultaneous establishment of the SA;
- To professional investors (investment funds, pension funds, authorized parties who perform the job of a dealer, banks, and insurance companies);
- To a maximum of 30 persons who have committed themselves in advance to buy the whole emission and are familiar with the investment risks and results of operations of the issuer; and
- To an extent which does not exceed €40,000.

## **Acquisition of Real Estate**

### **In General**

Proprietary rights may be restricted in accordance with the law. No person may be deprived of a proprietary right, except when the restriction is determined by law or when this is required in the public interest as established by law; in the latter case, fair compensation is owed.

Owners may limit or create an encumbrance over their ownership, unless the purpose of the limitation or encumbrance is prohibited. Proprietary rights are acquired by law, by contract, or through inheritance. These rights also may be acquired by a decision of a state authority, in the manner and under the conditions provided by law.

### **Agreement**

On the basis of an agreement with the owner, an ownership right is acquired by registration with the Real Estate Cadastre or in any other appropriate manner determined by law. If a seller sells the real estate to more than one person and signs the relevant agreements with them, the ownership is acquired by the person who first registered his right with the Real Estate Cadastre, provided that he acted in good faith.

If none of the buyers has registered the ownership with the Cadastre, the ownership is acquired by the person who entered into possession of the real estate.

### **Long-Term Possession of Real Estate Owned by Another Person**

A lawful possessor of a real estate who uses it in good faith and on which another has the ownership right, acquires the ownership by positive prescription after the expiry of a 10-year period. If he does not act in good faith, the time limit is 20 years.

Other real estate rights granted to a third party continue to apply to the new owner of a property if the latter came into ownership without compensation, even if he did not know about the existence of such rights. If the acquirer came into ownership of a real estate by paying compensation, any third party's rights will be terminated if the acquirer did not know about them or if, under given circumstances, he could not have known about them.

### **Inheritance and Legacy**

Acquisition of a proprietary right by heritage takes place at the moment of opening the decedent's probate estate, meaning the moment of the decedent's death or issuing of a court decision declaring that a missing person is legally dead, unless otherwise specified.

### **State, Social, and Communal Land and Property**

The government of Montenegro has the right to dispose of real estate and other assets owned by the State of Montenegro, unless otherwise stipulated in the Law on State Property.<sup>8</sup> In addition, municipalities may sell real estate owned by the State of Montenegro on which they have specific real estate rights. The Parliament of Montenegro will, upon the proposal of the government, decide on any disposal of state property whose value exceeds €150,000,000.

The method, the procedure, the conclusion of the contract, and the conditions for sale and leasing of state property are determined by the government. Sale and lease of state property is performed through a public auction or on the basis of collected offers, and through direct negotiations only as an exception.

### **Construction License**

Before initiation of construction works, it is necessary to obtain a construction permit; upon their completion, a permit to use the constructed building is required. Only a building with a permit to use may be registered with the real estate Cadastre, while an ownership right may be acquired only over such a building.

A construction license includes basic information about the applicant; the location, type, and purpose of the facility; the size of the object; and the obligation to create the main project, if the construction license is issued based on a preliminary design. An investor is obliged to start the construction of the object within two years of the date of issuance of the construction license; otherwise, he will lose his right to construct on the basis of that license.

An investor pays a fee for the provision of utilities on the construction land. A construction license determines the period within which the construction has to be completed as from the date of issuance of the building permit, which is three years in case of a new building and two years in case of reconstruction. An investor may start with the preparatory work of the construction only after obtaining the construction license. He is obliged to report to the competent inspection authorities his intention to perform preparatory works at least seven days before their initiation.

The eligibility for use of the object is determined by a technical review. The technical review includes the measure of compliance of the derivative works with the detailed design as well as with regulations, standards, technical norms, and quality standards that apply to certain types of work or materials, equipment, and installations.

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<sup>8</sup> Published in the *Official Gazette of Montenegro*, Number 21/09 on 20 March 2009.

### **Construction on Another Person's Land**

According to the Law on Legal Ownership Relationship,<sup>9</sup> a proprietary right on real estate may be acquired through building on another person's land, by positive prescription (acquisition based on long-term possession), or in other cases prescribed by law.

A person who constructs buildings on land over which another person has ownership may acquire the ownership on the building and on the land under the building, as well as on the land that is necessary for the regular use of the building, only if he did not know or he could not have known that he was building on someone else's land and if the owner of the land did not oppose the building on his land even when he learnt about it. In this case, the owner of the land has a right to be compensated for the loss of ownership, in an amount equal to the market price of the land at the time of the issuance of the relevant judicial decision, provided that he initiates the court procedure for compensation within 10 years of completion of the construction.

If the builder knew that he had built on someone else's land, or he should have known this, and the owner objected immediately, the owner of the land may request, within three years of the date of completion of the building, that the ownership on the building be transferred to him. Alternatively, the owner may require that the builder demolish the building and return the land to its original state or he may request the builder to pay the market price of the land.

In both cases, the owner of the land has a right to receive a proper compensation. However, if the owner of the land wishes to obtain ownership of the building, he should pay the builder the average price paid in the place where the building is located at the time of issuance of the judicial decision. If the builder acted in good faith and the owner of the land did not know about the construction, the right of the interested parties depends on the value of the building and the land.

If the value of the building is more than the value of the land, then both the building and the land will belong to the builder, but the builder will be obliged to pay to the land owner the market price of the land at the time of the judicial decision. If the value of the land is significantly higher than the value of the building, the court, at the request of the landowner, will grant him the ownership of the building, but he will have to pay the builder the average price of such a building in the place where it is located and at the time of issuance of the judicial decision.

If the value of the building is similar to that of the land, the court will split the ownership between the builder and the landowner, taking care of their needs and especially of their housing situation. The builder and the landowner are entitled to compensation for the constructed object or the land, respectively. These rules

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<sup>9</sup> Published in the *Official Gazette of Montenegro*, Number 19/09.

also apply to building with materials owned by a third party, without the latter's permission. The owner of the building materials has a right to compensation for the used materials and a right to damages and may request a return of the used material, if this can be separated without damage to the construction.

#### **Acquisition by Other Means in Civil Law**

A real estate right also may be acquired when a river separates a piece of land and annexes it to someone else's land. In this case, the owner of the reduced land has a right to recover the land within one year from the separation. When a river gradually and insensibly deposits the land on the coast, the increased area belongs to the coastal owner, who is not obliged to give any compensation.

The increase in coastal land caused by the natural course of a river as it gradually moves toward the opposite coast is in the favor of the coastal owner. If a river changes course, the interested coastal owners, at their own expense, are entitled to bring the river back to the former course within one year, unless this is contrary to the river regulation plan. The island formed by rivers' branching or by a river flooding the land remains the property of the former owner.

#### **Acquisition of Real Estate by Foreign Persons**

According to the amended Montenegrin law, both foreign individuals and foreign legal persons are treated as equal to residents in terms of ownership relations. The only exception to this provision is Article 415 of the Law on Ownership Rights. Article 415 stipulates that foreign persons are not entitled to acquire ownership on natural resources, goods of general use, agricultural land, forests and forest land, cultural monuments of great and special importance, real estate in the border areas up to one kilometer from the border of the state, islands, and real estate classified by law as property on which foreign persons may not acquire ownership because it is located in an area important for the public interest and security of the country.

As an exception, a foreign natural person may acquire a proprietary right on a piece of agricultural land, forests, and forest land area up to 5,000 square meters only if residential buildings located on that land are the object of the contract.

### **Taxation**

#### **In General**

The structure of the tax system in Montenegro includes customs fees and taxes, excise tax, corporation income tax, individual income tax, and value-added tax (VAT); taxes on real estate; taxes on insurance premiums; taxes on use of motor vehicles, vessels, aircrafts, and spacecrafts; contributions for mandatory social insurance (ie, pension and disability insurance, and health and unemployment insurance); tax on sale of used vehicles, vessels, aircrafts, and spacecrafts; state

fees (ie, administrative, judicial, and registration fees); taxes on use of natural resources in the general interest (ie, forests, water, mineral resources, roads, and sea); and local municipality taxes.

The number and structure of taxpayers are determined in accordance with data of the tax administration information system on the number of registered taxpayers, data of the previous year regarding the persons who had the status of large taxpayers, and changes in the tax register of the previous year.

In Montenegro, taxpayers are classified into six categories upon the basis of economic parameters: large-sized entities, mid-sized entities, small-sized entities, entrepreneurs, other entrepreneurs that are not registered for VAT (since 2009), and individuals.

### **Corporate Income Tax**

Corporate Income Tax is regulated by the Law on Profit Tax of Legal Entities.<sup>10</sup> Income tax can be understood as a tax on the total income of companies. Taxpayers of income tax are resident or non-resident legal entities that perform work in Montenegro for profit. The base of corporate income tax is taxable income as determined in the profit and loss statement and balance sheet. The taxable income is determined by calculating the taxpayer's incomes reported in the income statement in accordance with the Law on Profit Tax of Legal Entities.

Corporate income tax rates are, by definition, proportional and uniform. For the last 20 years, there has been a significant decline in the profit tax rate in order to attract international capital investments. The rate of income tax in Montenegro is 9 per cent and, as such, constitutes the lowest tax rate in Europe.

This means that the investment climate is highly favorable if only this aspect is taken into consideration. The reduction in the rate from the original 15 per cent (15 per cent for income up to €100,000 and 20 per cent for income of more than €100,000) to the current 9 per cent reflects an effort to attract foreign investments as well as to relieve the economy of tax obligations, which also should be helpful for the improvement and encouragement of the development of entrepreneurship. The period for which the tax is calculated (tax period) is referred to as the financial year, which is the calendar year, except in the case of liquidation or the commencement of performance activities during the year.

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<sup>10</sup> Published in the *Official Gazette of Montenegro*, Numbers 65/01, 12/02, 80/04, 40/08, and 86/09.

### Personal Income Tax

Personal income tax (individual income tax), regulated by the Law on the Income of Individuals,<sup>11</sup> applies to resident and non-resident individuals who acquire income from the sources determined by law. Resident individuals are obliged to pay this tax on their income obtained through activities performed in and outside Montenegro, while non-resident individuals pay tax only on income derived from activities performed through the permanent place of business in Montenegro.

Income is defined as a summary of taxable income generated during the tax period. Taxable income represents the difference between income and recognized expenses (costs) that the taxpayer has to report, unless the law stipulates otherwise. Expenses should be documented. Income tax is a direct tax. The taxpayer calculates the tax on income in the tax application, which has to be submitted by the end of April and refers to the previous year. Income tax is paid along with the submission of the tax application.

The sources of income are personal income and incomes acquired on the basis of independent activity, property and property rights, and capital. The tax basis is a summary of the net income of individuals from all sources. The basis of the income tax of a resident is the taxpayer's taxable income earned during the tax period less the amount of transferred losses and personal deductions. A resident is entitled to a personal allowance of €840 per year (€70 per month). The income tax rate is 9 per cent.

### Value-Added Tax

Value-Added Tax (VAT) is regulated by the Law on Value-Added Tax.<sup>12</sup> This tax only refers to the added value, not to the entire turnover. The method of calculation of the taxpayer's obligation to pay VAT is the tax on the carried turnover minus the tax calculated for the supply of products made or services granted by a taxpayer during the same accounting period.

A VAT taxpayer is any natural or legal entity that independently performs any activity (ie, production, trade, and services, including mining, agricultural, and professional activities), regardless of its purpose or outcome. The subjects of VAT are sale and transfer of goods and performance of services by a taxpayer when engaged in commercial activities for reimbursement, import of products into Montenegro, and newly constructed real estate (a land plot does not constitute a subject of taxation).

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11 Published in the *Official Gazette of Montenegro*, Numbers 65/01, 12/02, 37/04, 29/05, 78/06, 04/07, and 86/09.

12 Published in the *Official Gazette of Montenegro*, Numbers 65/01, 12/02, 38/02, 72/02, 21/03, 76/05, 04/06, and 16/07.

Until 1 January 2006, a standard tax rate of 17 per cent was applied. After that date, the reduced rate of seven per cent also is in use. Therefore, the law prescribes two tax rates: a standard rate of 17 per cent and the reduced rate of seven per cent.

A 0 per cent VAT rate applies to export transactions and delivery of medicines and medical devices which are financed by the Republic Fund for Health Insurance. The reduced rate of 7 per cent applies to basic products for human consumption (ie, milk, bread, fats, oil, and sugar); drugs, including drugs for veterinary use, except drugs that are issued at the expense of the Republic Fund for Health Insurance; textbooks and teaching aids; books, and monographic and serial publications; accommodation services in hotels, motels, tourist resorts, inns, camps, and villas; drinking water, except bottled water; daily and periodical publications, except the advertising press; public transport services for passengers and their personal luggage; and certain other supplies and services. VAT is charged at the time of delivery of products or at the time of execution of services. The tax period is the period from the first to the last day of the month (calendar month).

### **Property Tax**

The Law on Property Tax<sup>13</sup> introduces and regulates property tax, inheritance and gift tax, and tax on sale and purchase of real estate. Property tax has to be paid for the ownership right on real estate, the right of usufruct on real estate, the right to use a real estate and the right of residence, the right to use on the basis of a time-sharing agreement, and for a long-term lease (for a period longer than five years, according to the real estate law).

Real estate includes residential and commercial buildings, apartments, offices, garages, rest and recreational facilities, and buildings owned separately from the land. A payer of property tax is any natural person or legal entity that is a holder of rights over real estate located in the territory of the Republic of Montenegro.

The basis of property tax as regards the right of ownership over real estate is the market value of the real estate on 31 December of the year preceding the year for which the tax on property is to be determined and paid.

The basis of property tax for other rights is half of the market value of the real estate. The basis of property tax on agricultural and forest land is the amount of annual income estimated by the Cadastre or the value determined through its books. The tax base for property built during the year for which tax is determined and paid is equal to the market value of the relevant property on 31 December of the year preceding the year for which property tax will be determined and paid.

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<sup>13</sup> Published in the *Official Gazette of Montenegro*, Numbers 03/92, 30/93, 3/94, 42/94, 11/95, 20/95, 22/95, 45/98, 65/01, and 69/03.



The market value of the property is determined by the competent tax authority, but it may be reduced each year due to depreciation of up to 60 per cent. The rate of property tax on residential buildings and apartments is 0.25 per cent. Property tax on residential buildings or dwellings in which taxpayers or members of their household live is reduced by 30 per cent of the amount determined by applying these rates. An additional reduction of 10 per cent exists for each household member, but the total reduction may not exceed 70 per cent.

The tax on residential buildings up to 60 square miles, land in housing areas that are not situated in a city, construction land, or land in urban areas inhabited only by people more than 60 years of age is reduced by 75 per cent. The tax rate on property for buildings and housing for rest and recreation and for occasionally used buildings and apartments is 0.5 per cent.

The tax rate on property rights over agricultural and forest land whose tax basis is determined by the amount of annual income estimated by the Cadastre is 2 per cent, while the tax rate on property rights over agricultural and forest land whose tax basis is determined by the book value of the real estate is 0.45 per cent.

The tax rate on land that is not used is, in accordance with the law, 4 per cent. The property tax rate on commercial buildings, parts of buildings, offices, and garages is 0.20 per cent of the market value of the real estate. As an exception, the tax rate on production facilities is 0.10 per cent of the established base.

### **Tax on Inheritance**

The tax on inheritance and gifts is paid for the right of ownership over real estate and other rights over real estate that the heir inherits or the gift recipient receives as a gift. The tax on inheritance and gifts also is paid on inherited or gifted money and on money claims and movables when their individual market value is more than double of the amount of the average net wages earned in Montenegro during the month preceding the month in which tax liability is determined.

As regards inheritance and gift tax, the taxpayer is an individual who inherits property as well as an individual or legal person who receives a gift. Resident taxpayers are obliged to pay the tax on inheritance and gifts with respect to property acquired in their country and abroad. Non-resident taxpayers will be obliged to pay the tax on inheritance and gifts with respect to property earned in the territory of Montenegro. The tax base of the tax on inheritance and gifts is the market value of the property inherited or received as a gift, reduced by debts, expenses, and other costs that the taxpayer has to pay.

The tax rate on inheritance and gifts is 2 per cent for inheritance received by relatives of the second degree (eg, siblings). The determined tax rate is 20 per cent for inheritance received by relatives of the third degree (eg, aunts and uncles) and 30 per cent for those not related to the testator or donor.

### **Tax on Sale of Real Estate**

Tax on sale of real estate is regulated by the Law on Real Estate Tax.<sup>14</sup> Tax on sale of real estate and other real estate rights is paid on the sale of rights over real estate, property rights, permanent right of an individual or legal entity to use municipality construction land plots for the construction of an object, permanent right to use and construct in urban construction land plots transferred between individuals or legal entities, and rights over expropriated property, if expropriation is for residential or commercial buildings.

The payer of tax on sale of property rights is the seller or transferor of the rights, unless otherwise determined by a contract. The basis of tax on sale of property rights is the market value of the real estate and rights at the time when the tax liability arises.

When the right of ownership over a real estate in the territory of Montenegro is exchanged against another homogeneous right over real estate, the tax base is the difference in market value of the exchanged rights. Tax liability occurs on the date of concluding the contract of transfer or exchange of property rights and other rights. The tax rate on trade of real estate and property rights is proportional, in an amount of 3 per cent.

### **Social Insurance Contributions**

The social insurance system in Montenegro consists of pension insurance (based on intergenerational solidarity), health insurance (compulsory), and unemployment insurance. Social insurance is conducted by public institutions: the Fund for Pension and Disability Insurance, the Health Insurance Fund, and the Employment Bureau. These contributions are calculated on gross salary, and the total contribution rate is split between employer and employee.

The contribution rate for pension and disability insurance and for health insurance has been recently reduced through amendments to the social security system in Montenegro. The primary characteristic of the present pension system in Montenegro is the principle of intergenerational solidarity ('pay as you go') on which the system is based and which means that current employees finance the payment of current pensioners' pensions by paying contributions. Unemployment insurance is the participation of employees, employers, the government, and other agencies and organizations in ensuring resources for productive employment and performance of other unemployment rights.

The taxes and contributions paid by the employee and calculated on the gross amount of his salary are:

- Tax on salary, 9 per cent;
- Contribution for pension and disability insurance, 15 per cent;

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<sup>14</sup> Published in the *Official Gazette of Montenegro*, Numbers 69/03 and 17/07.

- Contribution for health insurance, 8.5 per cent;
- Contribution for unemployment, 0.5 per cent; and
- Other relevant taxes, 2.3 per cent.

The taxes and contributions paid by the employer and calculated on the gross amount of the employees salary are:

- Contribution for pension and disability insurance, 5.5 per cent;
- Contribution for health insurance, 3.8 per cent;
- Contribution for unemployment, 0.5 per cent; and
- Tax for the employment fund and on salary, 15 per cent of 9 per cent.

For employees who are on unpaid leave for a period of more than 30 days, the employer pays a contribution at the rate of 12.3 per cent of the prescribed base. The basis for calculation and payment of contributions for pension and disability insurance and health and unemployment insurance is wages, salaries, and benefits in accordance with the law, collective agreement, and employment contract. The basis may not be less than the minimum monthly contribution basis, which is the basic salary on which contributions for one calendar month of insurance are calculated and paid.

For taxpayers who perform professional or other independent activities, the basis is taxable income derived from that independent activity, which may not be below the average monthly salary in Montenegro.

### **Customs Regulation**

The Customs Law<sup>15</sup> regulates customs procedures, the rights and obligations of the persons involved in customs procedures, and the rights, duties, and powers of the competent authorities for clearance of goods. Revenues from customs duties and other revenues achieved in customs procedures are paid to the budget of Montenegro.

Persons who directly or indirectly participate in commodity trade are obliged, at the request of the customs authorities, to make available all documents and information and to provide any other assistance necessary for the application of the customs regulations. In order to implement customs supervision and performance, the participants in trade transactions are obliged to retain all the documents and data until the deadline established by the regulations and for at least five calendar years following the last day of the calendar year in which the

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<sup>15</sup> Published in the *Official Gazette of Montenegro*, Numbers 07/02, 38/02, 72/02, 21/03, 31/03, 29/05, 66/06, and 21/08.

customs declaration for placing the goods into free circulation or export customs declaration was accepted or the customs supervision of goods was completed.

For goods that are imported into the customs territory, customs duty must be paid according to the Law on Customs Tariff<sup>16</sup> and the regulations prescribed by it. An exception is made for goods that do not have a commercial character and are carried by a passenger or by an individual, for which a uniform tax rate of five per cent of the customs value of goods may be applied. For goods imported from countries with which Montenegro has concluded a free trade agreement, customs duties are charged in accordance with these agreements. The customs value of imported goods is the sales value which is actually paid or the price that would be paid for the goods that are imported into Montenegro, increased by:

- The amount of the costs paid by the buyer that is not included in the price, with some exceptions prescribed by law;
- The proportionate part of the value of the goods and services that the customer supplied, directly or indirectly, without charge or at reduced price, for use in manufacturing and sale of imported goods for export and to the extent to which the value was not included in the price that is paid or will be paid;
- Fees for copyright and licenses for goods, which are estimated and paid directly or indirectly by the buyer as a condition for sale of the goods, if such benefits are not included in the price that is actually paid or that will be paid; and
- The part of the amount realized by a further sale, assignment, or use of imported goods that is directly or indirectly paid by the seller.

If the customs value of the imported goods cannot be determined in this way, it will be determined as the transaction value of identical goods sold for import into Montenegro and imported at the same or nearly the same time, on the same commercial basis, of approximately the same quantity as the estimated goods.

If a suitable example of a similar import cannot be identified, the transaction value of identical goods sold on a different commercial basis or in different quantities will apply, with the necessary adjustment for differences, provided that the adjustment is carried out on the basis of submitted evidence. If there is more than one transaction value for identical goods, the lowest current value will apply to the determination of the customs value.

When the customs value of imported goods cannot be determined even in this way, the customs value of the goods will be determined as the transaction value of similar goods sold for import into Montenegro, if the goods are imported at the same or nearly the same time as the goods estimated. If there is more than

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<sup>16</sup> Published in the *Official Gazette of Montenegro*, Numbers 75/05, 17/07, 56/07, 03/08, 78/08, and 85/09.

one transaction value of similar goods, the lowest current value will apply to the determination of the customs value.

If the same or identical or similar imported goods are sold in Montenegro on the same conditions as the imported goods, the customs value of the goods will be estimated on the basis of unit prices at which those goods or identical or similar imported goods are sold in the largest total amount at the same time or in nearly the same time period as the goods which are estimated.

The customs value of imported goods also is calculated as the total of the value of material and production costs or other types of processing that are used in the production of imported goods, the amount of profit and general expenses, and other expenses.

If the customs value of imported goods cannot be determined by any of these methods, the value will be established on the basis of available data in Montenegro and by application of appropriate methods that are consistent with the principles and basic provisions of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade of 1994 (GATT 1994), Article VII of GATT 1994, and the Customs Law.

At the request of the importer, the customs authority is obliged to inform him about the determined customs value and the method used to determine the customs value. Notification of the customs value and the method used will be issued in the form of a decision that may be appealed.

From the moment of entry, the imported goods in the customs territory are subject to measures of customs control, in accordance with the regulations. Goods remain under customs supervision until determination of their status; in case of foreign goods, goods remain under supervision until their customs status changes, or until the goods are put into a free zone or free warehouse, or until they are re-exported or destroyed.

All goods that enter into or exit from the customs territory area have to be reported to the border customs authorities or other competent tax offices. The importer of goods into the customs territory should, without delay, transport the goods to another place specified by the customs authorities. The goods submitted to the customs authority have a status of goods in temporary accommodation, during which time the customs authority is not allowed to determine the treatment or use of the goods. With respect to these goods, only necessary actions for preservation of the goods (unchanged appearance or technical characteristics) will be allowed.

All goods under customs procedures have to be included in the appropriate customs declaration for that customs procedure. Customs declarations may be submitted in written form, through electronic data exchange, verbally, or by any other actions prescribed by customs regulations. When their free circulation is authorized, the goods acquire the status of domestic goods, which means the

application of measures of a domestic commercial policy, other formalities, as well as the payment of the prescribed duties, taxes, and other fees.

Foreign goods meant for re-export can benefit from the procedure of temporary import, which permits their use in the customs area, with complete or partial exemption from customs duty. The amount of import duties paid for the goods under the temporary import procedure is determined at the rate of 3 per cent of the amount of customs duties that would have been paid for the goods in the free circulation zone.

Some goods are exempted from payment of customs duties. These goods include goods specified by an international agreement that commits Montenegro and non-commercial goods of the prescribed type, value, and quantity carried by travelers or sent to natural persons in Montenegro.

Trade marks, patents, models, and accompanying documents, forms of recognition of patents or innovations that are sent to organizations for the protection of copyright and industrial rights also are exempted from payment of custom duties. The exemption also applies to agricultural products for farming, livestock, forestry, and fish farming obtained from a property by citizens of Montenegro who live in the belt width of five kilometers from the border and who have an appropriate land plot in the neighboring state.

If domestic goods exported from the customs territory are returned to that territory within a period of two years and put into free circulation, they will be exempted from customs fees on the request of the applicant making the customs declaration. Import customs debt arises on illegal entry of goods into the customs territory or illegal movement of goods from the free zone or free warehouse into another part of the customs area. Import customs debt also arises through the unlawful taking of goods under customs supervision or through any other unlawful conduct.

If more than one person is responsible for payment of customs debt, these persons are jointly and severally liable. The customs authorities are obliged to register and calculate the total amount of customs duties in the manner determined by the Minister of Finance. After registration of the amount of customs debt, the customs authorities have to inform the debtor about the amount of his debt. If the amount of customs debt is already listed in the customs declaration, the customs authority will not inform the debtor separately, but the debtor will be deemed to be informed.

If customs debt is not paid within the prescribed period, the customs authorities may utilize all the statutory options, including forced execution. In that case, default interest will be calculated on the amount of the debt, in accordance with the law.

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## **Currency Regulation, Capital and Profit Transfer, and Investment Incentives**

### **Currency Regulation**

The official currency in Montenegro is the euro. On the basis of the Law on the Central Bank,<sup>17</sup> it was introduced as a substitute for the deutsche mark, which replaced the dinar in 2000. The euro is published by the European Central Bank, headquartered in Frankfurt. Although Montenegro is not an EU member, it was agreed with the EU members that Montenegro would use the euro as its official currency.

Montenegro has introduced the euro in order to facilitate the trade in goods and services and its international communications. This indicates that Montenegro, as a small and open country, wanted to have a strong convertible currency which would help it to join the European economic mainstream more easily.

One of the benefits of the introduction of the euro in Montenegro is that if an investment is to be made, investors will know exactly how much profit they will make, since inflation in Montenegro also is calculated on the basis of the euro. Therefore, business calculations are expected to be straightforward, without the risk of inflation of the local currency. Furthermore, transaction costs caused by money exchange are avoided.

### **Capital and Profit Transfer**

The Law on Foreign Investments<sup>18</sup> regulates the regime and incentives for foreign investments in Montenegro. Foreign investors are companies with a seat abroad, foreign citizens, domestic citizens when living abroad for more than one year, domestic companies with more than 25 per cent of foreign capital, and domestic companies founded by a foreigner or a foreign company.

Foreign investors are entitled to establish a company in Montenegro, to invest in Montenegrin companies, and to purchase a Montenegrin company or a portion of its shares. The only restriction is imposed on companies that manufacture and/or trade in arms and ammunition, in which foreign investors may not hold more than 49 per cent of the share capital and only after obtaining special permission from the State of Montenegro. Investments in insurance companies, banks, and other financial companies are regulated by separate laws.

Profit may be collected and transferred abroad after payment of all relevant taxes in Montenegro, in accordance with the shareholders' agreement or the founding documents of the company. Invested capital may be transferred abroad

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17 Published in the *Official Gazette of Montenegro*, Numbers 52/00, 53/00, 47/01, and 04/05.

18 Published in the *Official Gazette of Montenegro*, Numbers 52/00 and 36/07.

or reinvested in Montenegro in case of liquidation or termination of the company by other means or if the foreign investor sells its share.

### **Investment Incentives**

The law provides tax relief on the basis of hiring new employees. The tax basis will be reduced for a taxpayer who hires new employees for permanent employment in a business year (but for not less than two years) by the amount of gross salaries of such employees plus respective contributions to compulsory social insurance paid by the employer. This tax relief applies for a period of one year from the day of hiring a new employee.

Profit deriving from a capital investment that is used for the purchase of new securities is not taxable, provided that it is reinvested within 12 months of the profit arising. Profit from sale of securities held by a taxpayer in his portfolio for more than two years is exempt from taxation.

Customs tariff incentives in Montenegro apply to the import of raw materials. Customs duty for raw materials does not have to be paid if the finished products made by using the imported raw materials are to be exported. It is necessary to obtain an approval from the relevant customs authority for this exemption. Customs duty does not need to be paid for the import of equipment as equity of the foreign investor, but VAT is still owed.

In some cases, there is no export customs duty at all; thus, no customs duty has to be paid on the exported goods and the VAT rate also is 0 per cent, according to the Law on Value-Added Tax. This means that an exporter who pays VAT on raw materials does not have to pay VAT when he exports the finished products at a later stage.

## **Competition Law**

### **In General**

The manner, procedure, and measures for the protection of competition in the market and obtaining authorizations from the competent authorities in Montenegro are regulated by the Law on Protection of Competition.<sup>19</sup>

Actions that are regarded as violations of competition in terms of the Law on Protection of Competition are agreements, decisions by associations, and concerted practices that may restrict, prevent, or distort competition; the abuse of a dominant position; and concentrations which substantially prevent, restrict, or distort competition, primarily by creating or strengthening a dominant position in the market.

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<sup>19</sup> Published in the *Official Gazette of Montenegro*, Numbers 69/05 and 37/07.



Violation of competition is determined depending on the particular case, based on the level and the dynamics of changes in the structure of the relevant market, limitations and opportunities for equal access to the market for new competitors, changes that limit the possibility of supplying the market, the level of benefits for consumers, and other circumstances that affect competition.

The Law on Protection of Competition applies to acts and actions committed in the territory of the Republic of Montenegro. The Law also applies to acts or actions that have arisen as a consequence of acts or actions committed outside of the territory of Montenegro, when the person responsible for violations of competition provisions is in the territory of Montenegro.

The Law on Protection of Competition applies to all entities that conduct business activities and participate in the trading of goods or services and commit, or may commit, a violation of competition provisions (market participants). In particular, the Law applies to legal entities and other forms of economic activity, regardless of their residence or headquarters, and to individuals irrespective of their nationality and residence.

The Law on Protection of Competition also applies to other entities that directly or indirectly, continuously or periodically, conduct business activities and participate in the trading of goods or services, regardless of their legal status, citizenship, residence, or headquarters (such as trade unions, business associations, sports organizations, institutions, cooperatives, and proponents of intellectual property rights). State and local authorities that directly or indirectly conduct business activities and participate in trade in goods and services also come within the purview of the Law.

The Law on Protection of Competition does not apply to market participants who perform activities in the public interest or to persons who, based on the acts of the competent authorities, obtain revenue from public funds, if the application of this Law would prevent the performance of the entrusted activities.

The Law also applies to associated market participants. Associated market participants, in terms of this Law, are two or more participants that are connected to one another, either directly or indirectly, legally or factually, and who decisively influence the business decisions of the other participants. They may do so through ownership of the majority stake in capital or the majority of votes in organs of governance, through the right to appoint the majority of members of the management bodies and persons authorized to represent the market participants, as well as through agreements on the transfer of management rights and contracts of employment.

The competent authorities for the protection of competition are the relevant ministry and administrative body. The competent authority is a legal entity, and its work is independent. The acts of the competent authorities are final, but can initiate an administrative dispute. The competent ministry for the implementation of the Law on Protection of Competition is given the

responsibility to propose a policy regarding protection and development of competition and to monitor its implementation, to adopt the regulations for implementation of the Law on Protection of Competition, to determine the research methods for analyzing competition conditions in the market, and to perform other duties in accordance with the Law.

The administrative body responsible for the protection of competition has several functions. These include monitoring the competition in the market in general and in the markets of certain economic sectors, granting approval for exemption from the prohibition of certain agreements and approval for the concentration of participants, and making resolutions in the process of determination of competition violations stipulated by this Law.

Moreover, the administrative body is responsible for taking actions in order to prevent participants and associations of participants from violating the Law on Protection of Competition or for eliminating the damages and harmful consequences caused to other market participants and consumers by infringements of the Law, and for analyzing the situation in the market and submitting a report to the ministry.

Further responsibilities of the administrative body are preparing the technical basis for drafting bylaws and for the implementation of European and other international standards and instruments in the field of protection of competition, establishing international cooperation with competent authorities of other countries and international organizations, publishing statistical data from the field of competition, and performing other tasks in accordance with the Law. The violation of competition in the market is caused by prohibited agreements and the abuse of a dominant position.

### **Prohibited Agreements**

Prohibited agreements are agreements that prevent, restrict, or distort competition. Such agreements are prohibited and null and void, particularly those which:

- Directly or indirectly determine purchase or selling prices or other conditions;
- Limit or control production, markets, technical development, or investment;
- Share markets or sources of supply;
- Apply dissimilar conditions to the same transactions with different market participants; and
- Enforce the acceptance of additional obligations that are not connected to the subject of the agreement.

Agreements between associated parties are not prohibited. Also, some agreements may be exempted from the prohibition if they:

- Contribute to the improvement of production, distribution, or technical development;
- Encourage economic development;
- Provide proportionate benefits to consumers;
- Impose restrictions only to the extent necessary to achieve these goals; and
- Do not allow the exclusion of competition with respect to the major part of goods or services.

Arrangements may be horizontal or vertical. Horizontal agreements are between existing or potential market participants who operate at the same level of the production or supply chain. Vertical agreements are agreements on conditions of supply, sale, or resale among existing or potential market participants who operate at different levels of the production or supply chain. If the competent authority, through an authorized official authority, *ex officio*, or at request of the person concerned, determines that an agreement prevents, restricts, or distorts competition, it will issue a decision regarding the existence of violation of competition rules.

In addition, the competent authority may determine the measures for participants in the agreement that enable the establishment of competition in the relevant market and eliminate the harmful consequences of illicit agreements, and it may set a deadline for their execution. Agreements of minor importance, which do not have an essential impact on competition, are not prohibited. These are horizontal agreements among participants whose total stake in the relevant market does not exceed 10 per cent and vertical agreements among participants whose total stake in the relevant market does not exceed 15 per cent.

Horizontal agreements which directly or indirectly aim at price fixing in the sale of products to third parties or aim at the limitation of sales and division of the market or the market's participants may not be exempted from the prohibition. Participants in the agreement are obliged to report a prohibited agreement to the competent authorities within 15 days of its signing.

#### **Abuse of Dominant Position**

A dominant position in the relevant market consists of those market participants that operate independently from other market participants and which can make business decisions independently from competitors, suppliers, customers, or the users of goods or services. A dominant position in the relevant market is based on an estimation of the share of the participant in the relevant market, the share of its competitors, the economic power of the possible competitors, barriers to entry in the relevant market, and the possibility of the dominant position of the buyer.

A participant whose share in the relevant market exceeds 50 per cent may be said to have a dominant position in the market. A dominant position also may be

held by a participant whose share in the relevant market does not exceed 50 per cent, but this has to be proved by the competent authority or the applicant. Two or more independent participants that are economically connected on the relevant market so that they act as one participant also may be said to have a dominant position if their share in the relevant market exceeds 60 per cent (collective domination).

The abuse of a dominant position in the relevant market is prohibited. The abuse of a dominant position in the relevant market of goods is caused by actions which prevent, restrict, or distort competition, particularly actions that:

- Directly or indirectly impose unfair purchase or selling prices or other unreasonable conditions;
- Limit production, markets, or technical development to the detriment of consumers;
- Apply dissimilar conditions to identical transactions with other participants; and
- Make the conclusion of contracts dependent on acceptance of additional obligations that, by their nature or according to commercial practices, have no connection with the subject of the contract.

If the competent authority, through an authorized official authority, *ex officio*, or at request of the person concerned, determines the abuse of a dominant position, it will establish by its decision that there has been a violation of competition rules.

In addition, the competent authority may determine the measures that market participants are obliged to take in order to establish competition in the relevant market and eliminate the harmful consequences of the abuse of dominant position, and it may set a deadline for the application of those measures. The decision may not order a division of participants; a disposal of their assets, shares, or stakes; a cancellation of the contract; or a waiver of rights that can have a decisive impact on the operations of other market participants. A concentration of market participants occurs in case of formation of a new participant by the merging of two or more previously independent participants or parts of undertakings (merger).

A concentration of market participants also occurs when one or more natural persons who already control at least one or more participants in the market acquire control over other market participants or a part of them.

The establishment of and joint control of new participants by at least two independent participants when a new participant operates on a long-term basis and has all the features of independent participants and direct access to the relevant market (joint venture), also constitutes a concentration of market participants.

‘Control’ is defined as the possibility to influence the business of participants decisively, based on rights, contracts, or any other legal or actual facts. In particular, control is based on the ownership right over or the right to use the entire property or part of the participant’s property, as well as to decisively influence the composition and operation of other participants in the market.

Two or more concentrations performed between the same participants in a shorter period than two years are considered one concentration. The competent authority may issue an approval for the concentration at the request of the market participants.

The request for approval of the concentration should be submitted if the joint total annual income of participants in the concentration achieved in the market of Montenegro exceeds €3,000,000 in the annual accounts from the previous accounting year, or if the total annual income of participants in the concentration achieved worldwide for the previous accounting year exceeds the amount of €15,000,000, and if at least one participant in the concentration is registered in the territory of Montenegro.

The request for approval of a concentration also may be submitted when participants in the concentration show a serious intention to conclude a contract by signing letters of intent, or when a market participant announces its intention to sell its shares to another participant. The competent authority is obliged to publish the request for approval in the *Official Journal of Montenegro*. This information includes the names of participants in the concentration, the nature of concentration, and the economic sector in which the concentration will take place.

Participants in the concentration are obliged to stop the implementation of the concentration until the competent authority adopts a decision approving the intended concentration or until the deadline for the competent authority to make a decision expires.

The competent authority may acquire the data and determine the facts for the protection of competition through an inspection. The competent authority is obliged to make a decision regarding prohibited agreements and abuses of a dominant position in the market within four months of the initiation of the proceedings. This deadline may be extended in certain cases. The decision related to the abuse of a dominant position in the market may not be appealed.

The competent authority is obliged to make a decision to reject the request for approval of a concentration within 25 working days. If the competition authority decides that the concentration does not require an approval, it will suspend the proceedings. A decision approving the concentration should be issued within 115 working days. A decision rejecting the application for approval of the concentration, thus prohibiting the concentration (merging of the involved entities), has to be issued within 130 working days. If the competent authority

fails to issue a decision within the prescribed time limits, it will be deemed that the concentration is allowed under the Law on Protection of Competition.

When the competent authority determines that the agreement prevents, restricts, or distorts competition, or that the dominant position is being abused, the decision may include temporary prohibition on trading in certain types of goods or services in the relevant market for a period that may not exceed three months. If, upon the prohibition on traffic for certain types of goods or services, participants continue to trade in the goods or services, the decision may include temporary prohibition of the activity for a period that may not exceed four months.

## **Intellectual Property Protection**

### **In General**

According to Montenegrin law, protection of intellectual property falls under the jurisdiction of the Intellectual Property Office, which was founded in 2007 by the Decree on Organization and Working Methods of the Public Administration.<sup>20</sup>

The scope of the Intellectual Property Office includes accepting applications and examining whether the conditions for recognition of industrial property rights are fulfilled; decisions on obtaining patents, trade marks, designs, topography of integrated circuit labels, and protection of geographical origin (intellectual property); determination of the termination of industrial property rights; and publication of data related to applications for recognition of industrial property.

The Intellectual Property Office also provides information services related to applications and industrial property rights, maintains a register of applications for recognition of industrial property rights and industrial property agents representing the applicants, and receives deposits and records of copyright works and objects of existing related rights.

The scope of the Intellectual Property Office extends to granting licenses to organizations to perform activities of collective administration of copyright and related rights, supervising their work, and cooperating with international organizations in the field of intellectual property and other activities within its competence.

Intellectual property is divided into two categories: industrial property and copyright. Industrial property includes inventions (patents), trade marks, industrial designs, geographical indications and labels of origin, and the topography of integrated circuits. Copyright includes works of literature, science, and art; related rights of artistic composition and expression; and

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20 Published in the *Official Gazette of Montenegro*, Numbers 59/09 and 15/10.

protection of organizational, business, and financial investments in construction, manufacturing, distribution, and radio broadcasting of copyright works.

## **Industrial Property**

### *Patents*

The legal protection of patented inventions is regulated by the Law on Patents.<sup>21</sup> A patent may be granted for any invention in any field of technology, provided that the invention is new, is an inventive step, and is industrially applicable. The subject of patent protection may be a product (such as a device, substance, or composition) or a procedure. Biological material also may be subject to patent protection.

An invention is considered new if it is not contained in the current 'state of technique' (state of the art). A state of technique is everything that is available to the public before the date of filing a patent application, as well as the content of all applications submitted before the invention. The invention involves an inventive step if, from the perspective of experts in the relevant disciplines, it does not result, in an obvious way, from the current state of technique. An invention is industrially applicable if the subject of the invention can be produced or used in any field of industry or agriculture.

A patent owner has the exclusive right to stop or prevent all others from producing the patented product or procedure or from using or offering it for sale, importing it, or offering for sale or supplying products constituting essential elements of the patent by those unauthorized to use the invention, without his consent.

The protection is valid for a limited period of 20 years from the date of filing the patent, if the prescribed fees for maintaining the patent are paid. These fees have to be paid for the first three years and for each year following the submission date of the application, according to the Law on Administrative Fees.

The procedure for recognition of a patent begins with the patent application. If all conditions prescribed by law are met, the patent is recognized; otherwise, the request for a patent is rejected. A patent is a territorial right, recognized by a domestic office, and is only valid in the territory of Montenegro.

However, an international agreement on cooperation in the field of patents, the Patent Cooperation Treaty (PCT), provides for the submission of an international patent application, which has the same legal effects as the filing of national applications in each of the signatory countries. This allows the applicant to submit one application and request protection in multiple countries, if these countries are party to the PCT.

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<sup>21</sup> Published in the *Official Gazette of Montenegro*, Number 66/08.

### *Trade Marks*

The manner of acquisition and protection of rights to use a trade mark when trading in goods and services is regulated by the Law on Trade Marks.<sup>22</sup> A trade mark is a right which protects a sign that is used in commerce to distinguish the goods or services of one natural or legal person from the same or similar goods or services of another natural or legal person.

A trade mark may be an individual trade mark, a collective trade mark, or a trade mark of guarantee. A collective trade mark is a sign of a legal entity that represents a particular form of association of manufacturers and service providers, and only members of that group have the right to use that trade mark. A trade mark of guarantee is a trade mark used by several companies under the supervision of the holder of rights in the trade mark, which serves as a guarantee of quality, geographic origin, the methods of production, or other common characteristics of goods or services of these companies.

As a sign that serves to distinguish between goods and services in circulation, a trade mark is to be presented graphically. The trade mark may consist of words, slogans, letters, numbers, pictures, drawings, layouts, colors, three-dimensional shapes, combinations of any or all of these characters, and musical phrases displayed in musical notations.

An applicant has a priority right from the date of submission of the request for recognition of a trade mark over all other persons who filed an application later. The protection lasts 10 years from the submission of the application, but may be extended an unlimited number of times.

The process of recognition of a trade mark is of an administrative nature (or is classified as an administrative procedure). The Law on Trade Marks is the *lex specialis* of the Law on General Administrative Procedure.<sup>23</sup> Thus, the provisions of the Law on General Administrative Procedure will apply to all questions about the procedure for the registration of a trade mark which are not regulated by the Law on Trade Marks.

The procedure for recognition of a trade mark by the Intellectual Property Office of Montenegro also is governed by the rules contained in international treaties that apply in Montenegro: the Paris Convention for the Protection of Industrial Property, the Madrid Agreement concerning the International Registration of Marks, the Protocol to the Madrid Agreement concerning the International Registration of Marks, and the Nice Agreement on International Classification of Goods and Services for the Registration of Marks.

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22 Published in the *Official Gazette of Serbia and Montenegro*, Numbers 61/04 and 07/05.

23 Published in the *Official Gazette of Serbia*, Number 60/03.



### *Designs*

The manner of protection of the appearance of a product is regulated by the Law on the Legal Protection of Designs.<sup>24</sup> The appearance of the product includes the complete visual impression that the product leaves on the informed consumer or user.

A design is determined by the visual characteristics, which are primarily lines, contours, colors, shape, texture, and materials of which the product is made or with which it is decorated, as well as their combinations. The primary characteristic of a three-dimensional design lies in the form of the product (eg, a car or furniture model or the look of jewelry, watches, packaging, and many other products). Two-dimensional designs consist of two-dimensional features, such as pictures, patterns, ornamentation, the layout of lines, and the like. Industrial designs may consist of a combination of one or more three-dimensional and two-dimensional features.

A design protects industrial or handicraft objects as well as parts that are intended to merge into a complex product, packaging products (packaging), graphic symbols, and typographic characters. A design may not protect a computer program or products for which the outward appearance is only determined through its technical function. Industrial design is primarily aesthetic in nature, so it must be suitable for industrial or craft production; otherwise, it constitutes a 'work of art' that can be protected only under copyright.

The application for registration of a design may be submitted by the author or his legal successor or by his employer in the cases provided by law. Foreign natural and legal persons have the same rights as domestic natural and legal persons if such treatment emanates from international agreements or the principle of reciprocity.

According to the Montenegrin legislation, a design can be protected by an exclusive right only if it is new and has an individual character. A design is deemed new if no identical design has become available to the public before the date of submission of the application for registration of the design or if there is no previously submitted application for the registration of an identical design. A design has an individual character if the overall impression on an informed user differs from the overall impression that is left on the user by any other design which became available to the public before the date of application for recognition of the design. The protection of a design lasts 25 years from the date of its submission, provided that the prescribed fees for its maintenance are paid.

### *Geographic Origin*

The manner of acquisition, the legal protection, and the realization of rights in the process of the use of labels of geographical origin are regulated by the Law

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<sup>24</sup> Published in the *Official Gazette of Serbia and Montenegro*, Number 61/04.

on Labels of Geographic Origin.<sup>25</sup> Labels of geographical origin convey the message to potential customers that the product is produced in a certain area and has certain desirable characteristics that can be found only in this place. Names of origin and geographical labels constitute labels of geographical origin.

The name of origin is the geographical name of the country, region, or locality, with the purpose of designating that the product comes from there, that its quality and special features are exclusively or essentially conditioned by the geographic environment (which includes special natural and human factors), and that its production, processing, and preparation is wholly carried out in that particular area.

A geographical label is a label that identifies certain goods as originating from a certain territory of a country, region, or locality in that territory, so that the quality, reputation or other characteristics of the goods are essentially attributable to their geographical origin. Labels of geographical origin are in use for natural products (such as water, salt, or stone), farm products, home-grown products, and industrial products and services.

Any domestic natural or legal person who produces products in a specific geographic area that are marked by the name of that geographical area as well as any associations of persons, chambers of commerce, associations of consumers, and state agencies interested in the protection of the name of origin may initiate a procedure for the protection of labels of geographical origin.

Foreign natural or legal persons also may initiate this procedure if the name of origin or geographical label is recognized in their country of origin, when this is derived from an international contract. For proceedings before the Intellectual Property Office, foreign natural or legal persons must have a local proxy who is a lawyer registered in the index of lawyers. The duration of registered names of origin or geographical labels is not limited.

#### *Topographies of Integrated Circuits*

Topographies of integrated circuits are protected under the Law on the Protection of Topographies of Integrated Circuits.<sup>26</sup> The Law sets conditions for the protection of topographies of integrated circuits (topography), the rights of their creators, the manner of their implementation, and the rights of the company or other entity in which the topography was created.

A topography is any representation of a three-dimensional arrangement of elements, at least one of which is active, and interconnections in the integrated circuit, or such three-dimensional layout prepared for the production of a specific integrated circuit.

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<sup>25</sup> Published in the *Official Journal of Montenegro*, Number 48/08.

<sup>26</sup> Published in the *Official Gazette of Serbia and Montenegro*, Number 61/04.

An integrated circuit is the finished or intermediate product with a particular electronic function, in which there are elements, at least one of which is active, and interconnections integrally formed in and/or on a piece of material. Only topography which is a result of intellectual effort and creativity of its creator and which at the time of its creation was not commonly known among creators and producers of the topography of integrated circuits may be protected. The procedure for protection of a topography has to be initiated by submission of an application for protection of topography to the Intellectual Property Office.

## **Copyright and Related Rights**

### *In General*

The Law on Copyrights and Related Rights<sup>27</sup> regulates the rights of authors of literary, scientific, professional, and artistic works; the rights of performers; the right of the first publisher of a free work; the rights of producers of phonograms, videograms, programs, and databases; and the rights related to copyright, the manner of exercising these rights, and their judicial protection.

A copyright is an original intellectual creation of an author, expressed in a certain form, regardless of its artistic, scientific, or other value and regardless of its purpose, size, content, and the manner of its manifestation, as well as of the permissibility of the public communication of its contents.

Typical copyright works are written works; dramatic, dramatic-musical, choreographic, and pantomime works, works derived from folklore, and musical works (with or without words); films; works of art; works of architecture, applied art, and industrial design; cartographic works; plans, sketches, models, and photographs; and direction of theatrical works.

An author is any natural person who has created a work of authorship. The person whose name, pseudonym, or copyright mark is indicated on copies of the work or referred to in its disclosure is deemed to be the author, until it is proved otherwise. On the basis of his copyright over the work, the author has moral and economic rights from the moment of its creation.

### *Copyright*

The moral rights of the author are the right of authorship and its attribution to him and the right that his name, pseudonym, or mark is marked on each copy or referred to it in any public communication of his works, unless this is technically impossible.

An author also has the moral right to publish his work and to determine the manner in which it is published and the right to protect the integrity of his work,

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<sup>27</sup> Published in the *Official Gazette of Serbia and Montenegro*, Number 61/04.

especially the right to oppose amendments to his works by unauthorized persons.

The author's moral rights include the right to oppose the public communication of his works in altered or incomplete form, taking into account the particular technical form of communication and good business practice, the right to give permission for the processing of his work, and the right to oppose the exploitation of his work in a way that endangers or may endanger his honor or reputation.

The material rights of the author include the author's right to the commercial exploitation of his work as well as works created through the processing of his work. For any use of copyright work by another person, the author is entitled to compensation, unless otherwise prescribed by law or contract. An author also is entitled to prohibit or allow recording or copying of his works in any tangible or intangible, permanent or temporary, direct or indirect way; the right to prohibit or allow the marketing of copies of his works; the right to prohibit or allow the execution of his work, and the right to prohibit or allow presentation of his work to the public.

Moreover, the author has the exclusive right to prohibit or allow the transfer of execution or performance of his work; the right to prohibit or allow the public communication of his work, including the commission of acts available to the public by wired or wireless means, in a way that allows individuals to access the work in a place and at the time they choose; and the right to prohibit or allow adaptation, arrangements, and other changes of his work.

An author has the right to a special compensation for his work that is expected to be duplicated for non-commercial purposes by way of sounds, images, and text. The author is entitled to special benefits for the import or sale of technical devices and sound, image, and text carriers that may be duplicated. Co-debtors for those fees are the importer and the seller of the technical devices, or sound, image, and text carriers.

Copyright may be inherited or transferred through a contract. The moral rights of the author may not be transferred by contract, while the author or his legal successor may give some or all property rights over his work to another person.

Material rights arising from copyright last during the life of the author and for 70 years after his death, while moral rights in copyright works last forever. The material rights of unknown authors (an anonymous work or work under a pseudonym) cease after 70 years from the date of publication. If the author reveals his identity before the deadline, it will be deemed that the author's identity is known from the date of disclosure of the copyright work.

Works of foreign authors are protected in Montenegro. A foreign author is a person who has a copyright on the basis of international agreements ratified by Montenegro or an agreement concluded between Montenegro and the author's country of origin.

*Related Rights*

Related rights include the right of performers, the right of phonogram and videogram producers, the right of show producers, the right of database producers, and the right of the first publisher of a free work.

The rights of performers include moral and material rights. A performer is an individual who is personally engaged in the interpretation of works (musician, actor, dancer, mime, singer, and conductor). The moral rights of a performer are the right of the performer to be recognized as such and the right that his name will be indicated on each copy of the recording, program, or any other appropriate way of exploiting his interpretation, unless this is (considering the specific form of exploitation) technically impossible.

A performer also has the moral right to oppose the modification of his performance and any exploitation of his interpretations in an altered form, if such an activity threatens his creative or professional reputation; the right to oppose the circulation of the video of his interpretation, if the recording has technical deficiencies that threaten the integrity of the performance and his reputation; and the right to oppose the exploitation of his performance in a manner that endangers or may endanger his honor or reputation.

The property rights of a performer include the right to reimbursement for broadcasting of his performance through a published clip on a sound carrier and for public communication of his performance which is broadcast through a published recording on a sound carrier.

A performer may transfer his property rights to another person by a performance contract. That person may not transfer the received rights to any third party without the consent of the performer, unless the performance contract otherwise prescribes. A phonogram is a record of sound or a series of sounds on a sound carrier. A videogram is a record of a series of images, with or without sound accompaniment, on an image carrier or on an image and sound carrier.

Producers of phonograms and videograms have material rights for the first recording. Manufacturers of phonograms and videograms have the exclusive right to prohibit or permit the reproduction of their phonogram or videogram in any form and in any way and prohibit or permit the circulation of copies of reproduced phonograms, prohibit or permit the rental of copies of the phonograms, and prohibit or permit availability of their phonograms to the public, by wired or wireless means.

Producers and manufacturers also have the right to receive reimbursement for broadcasting of their works and public communication of phonograms or videograms. A producer has the right to oppose the exploitation of his works in an altered form, if such exploitation may jeopardize his legitimate property interests. A broadcast/transmission is an electric, electromagnetic, or any other signal converted into sound, visual, or audio-visual content that is broadcasted for communication to the public.

A database is a collection of independent data, works of authorship, or other materials arranged in a systematic or methodical way, which are individually accessible by electronic or other means. A database also is a computer program used for the development or operation of a database.

The producer of a database has the exclusive right to prohibit or allow the occasional or permanent reproduction of his database in whole or in its essential parts, by any means, for any purpose, or in any form. The producer also may prohibit or permit the marketing and rental of copies of the whole database or its relevant parts, connection to computer networks, and any other form of public communication of the database in whole or in its essential parts.

After the expiration of the author's property rights, the person who first lawfully issues or otherwise communicates to the public the author's work, if the work has not previously been released, has property rights that correspond to the property rights of the author. Related rights are transferable, except for the personal rights of performers. Holders of related rights, except for database producers, are entitled to special benefits under the same conditions that apply to authors.

The property rights of performers last 50 years from the date of the performance, while their moral rights last forever. The rights of phonogram and videogram producers last 50 years from the date of the production of the phonograms or videograms. If phonograms or videograms are lawfully issued or published during this period, the right ceases 50 years from the date of their publication or issuance, depending on which of those dates is earlier. The right of show producers lasts 50 years from the date of the first transmission/broadcast of the protected program.

The right of database producers lasts 50 years from the date of producing the database. If the database is made available to the public in any way during this period, the right lasts 15 years from that date. If substantial changes occur in the selection or arrangement of the contents of the database, this deadline will be extended for another 15 years.

Significant changes in the selection or arrangement of the contents of a database are considered the addition, deletion, or modification of all or part of the contents of a database, resulting in a new version of the database. The right of the first publisher of a free work lasts 25 years from the date of the first publication or first communication to the public in any form.

## **Employment Law**

### **In General**

Employment, unemployment insurance, the rights of unemployed persons and the conditions and procedures for their implementation, the methods of fund

collection, and other important issues related to employment are governed by the Law on Employment.<sup>28</sup>

The Law prohibits any direct and indirect discrimination against persons who seek employment and against employees with respect to their sex, birth, language, race, religion, color, age, pregnancy, health or disability, nationality, marital status, family responsibilities, sexual commitment, political or other beliefs, social origin, property status, membership in political and trade union organizations, or other personal characteristics. Harassment and sexual harassment at the workplace and work-related instances of harassment and sexual harassment also are prohibited.

### **Unemployment**

Unemployed persons are treated equally as regards the implementation of their rights, regardless of their nationality, race, sex, language, religion, political or other beliefs, education, social origin, property, and other personal characteristics. In terms of the Law, an unemployed person is considered to be any person from 15 to 65 years of age who is registered in the records of the Employment Institute of Montenegro and who is actively seeking employment. This definition includes any foreign citizen or stateless person who has a permit for permanent residence and a work permit in Montenegro. Regular students, college students, pensioners, and farmers are not considered unemployed persons.

Unemployed persons are entitled to get information from the Employment Institute about the possibilities and conditions of employment, to search for employment, and to be involved in programs on active employment policy or preparation for employment. They also are entitled to receive unemployment insurance, financial assistance, health insurance, and to other rights, in accordance with the Law on Employment.

The involvement in active employment policy programs includes measures such as financing and/or co-financing the opening/creation of new jobs; co-financing public works, scholarships, and establishment of the Employment Fund; partial compensation for costs incurred for the maintenance of productive jobs; acquiring loans for employment investments; and co-financing seasonal employment (eg, in tourism, construction, hospitality, and agriculture).

Further measures include assisting in training of newly recruited employees; co-financing the salaries of interns; developing employment programs for certain categories of unemployed persons (disabled persons and unemployed persons who have been waiting to be employed for a long time); developing spatial and occupational mobility of labor; and co-financing education and training.

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28 Published in the *Official Gazette of Montenegro*, Number 14/10.

Active employment policy programs also include co-financing adjustment of space and technical equipment for employment of disabled persons; developing adjustment programs for certain categories of the unemployed; and other measures in accordance with the Act on Employment.

Preparation for employment includes professional orientation, vocational training, re-education or additional training, innovative skills for unemployed persons waiting for employment for more than two years, training of interns for independent work, and other forms of training. These measures are financed by the Employment Institute or in cooperation with other relevant organizations (eg, educational institutions, organizations for protection at work, the Fund for Pension and Disability Insurance) and employers, in accordance with the relevant laws.

Unemployed men under the age of 50 or women under the age of 55 have the right to be trained for employment. Unemployment insurance includes the obligation of employed persons and entrepreneurs to contribute to unemployment insurance. The funds for the realization of the right to unemployment insurance come from the contributions paid by employed persons and employers and from other sources. Persons employed abroad may be insured against unemployment if they are not insured on the basis of an interstate agreement.

Insured persons who are dismissed without their voluntary resignation, consent, or fault and were employed by one or more employers on a full-time basis for at least nine continuous months or 12 months with interruptions during the last 18 months are entitled to financial compensation if they apply to the Employment Institute within 30 days of termination of employment.

An insured person who was employed on a part-time basis acquires the right to financial compensation if by the re-allocation of his working time he meets all the conditions for full-time employment.

An insured person who ceased to perform the work of an entrepreneur without any fault on his part has the right to financial compensation if, during the last 18 months, he performed that activity continuously for at least nine months or for 12 months with interruptions and if he applies to the Employment Institute within 30 days of termination of his activity.

Any disabled person capable of working in social welfare institutions or other care facilities has the right to financial compensation while waiting for employment. During the period of receiving financial compensation, an unemployed person is obliged to actively seek employment, to be available for employment, to accept suitable employment, to engage in an appropriate active employment policy program, and to report to the Employment Institute once a month.

Financial assistance paid by the Employment Institute in the amount of the 60 per cent of the minimum wage in the Republic is provided for persons sent for



training, re-education, additional training, or specialization during training, if they do not receive monetary compensation. Unemployed persons registered with the Employment Institute also have health insurance, unless they already have this insurance as a dependent member of an actively insured person.

An unemployed person who acquires employment outside his place of residence, brokered by the Employment Institute or otherwise, is entitled to one-time financial assistance. The conditions for implementation of this right and its scope are prescribed by law. The procedure for implementation of the right determined by the Law on Employment is initiated at the request of the unemployed person. The provisions of the Law on General Administrative Procedure apply to the procedure for implementation of rights of unemployed persons.

A decision of the first instance decision of the Employment Institute is subject to revision. Appeal and revision of the decision is immediately effective, unless otherwise provided by law. If a first instance decision is appealed, the revision and appeal will be resolved by the same decision. The final decision of the Employment Institute may be appealed in an administrative court. Expenses related to requests, decisions, appeals, and other submissions and acts with respect to the implementation process of rights of unemployed persons are exempted from tax.

### **Employment of Foreigners**

The Law on the Employment and Work of Foreigners<sup>29</sup> provides that a foreigner may be employed or work in Montenegro under the conditions defined by law, collective agreements, ratified and published international treaties, and generally accepted rules of international law. A foreigner may work in Montenegro if he has a work permit, a permanent residence permit or permit for temporary stay, or a signed employment contract or a work contract.

The government annually determines the number of work permits for foreigners (quota), in accordance with the migration policy and movement in the labor market. The quota is determined on the proposal of the Ministry of Employment, after consultation with the ministries responsible for specific activities for which the quotas are determined and taking into account the opinion of the Social Council.

The quota for the following year is determined no later than 31 October of the current year. The government may limit or increase the number of work permits or may rearrange the number of work permits issued for specific purposes, if this is required through changes in the relationship of supply and demand in the labor market.

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<sup>29</sup> Published in the *Official Gazette of Montenegro*, Numbers 22/08 and 32/11.

A foreigner may not work in jobs for which he has not concluded an employment contract or an agreement on work. A work permit is issued as a personal work permit, an employment permit, or a license. The procedure for the issuance, refusal, cancellation, and termination of the validity of a work permit is implemented by the Employment Institute.

A personal work permit is issued for an indefinite time, at the request of a foreigner who is a permanent resident or is a recognized refugee. This is a license that allows the foreigner to freely access the labor market, regardless of his situation in the market.

An employment permit is a permit on the basis of which an employer concludes a contract with a foreigner. This permit is issued for the period of one year, at the request of the employer, unless there is a quota related to the employment of foreigners.

A work permit is a permit with a pre-determined duration, on the basis of which an employer concludes a contract with a foreigner, or a foreigner with a legal entity based in Montenegro (or with an organizational unit of a foreign company registered in Montenegro), to perform services or other form of work derived from a civil law contract.

Work permits are published at the request of the employer, legal person, or organizational unit of a foreign company registered in Montenegro. Depending on its purpose, a work permit refers to seasonal work of foreigners, working with commissioned foreigners, training and education of foreigners, and provision of contractual services.

### **Employment Rights**

The Labor Law<sup>30</sup> regulates the rights and obligations of employees on the basis of work, the manner and procedure for the achievement of this aim, and encourages employment and facilitates flexibility in the labor market. An employment relationship is a relationship between employee and employer that is based on a work contract, in accordance with law and collective agreements.

Employees have the right to an appropriate salary, security, and protection of their life and health at work, the right to vocational training, and other rights in accordance with law and collective agreements.

Employed women have the right to special protection during pregnancy and childbirth. Employees have the right to special protection for childcare in accordance with the law. Employees who are less than 18 years of age and employed persons with disabilities are entitled to special protection in accordance with the law.

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30 Published in the *Official Gazette of Montenegro*, Numbers 49/08, 26/09, and 88/09.

Employees are required to conscientiously and responsibly fulfill their work duties and to respect the organization of work and business of the employer, as well as the terms and conditions of the employer as regulated by the employment agreement.

Employees also are obligated to inform the employer about relevant circumstances which affect or could affect the performance of their duties and about any kind of potential danger to life and health of employees and any material damage caused. Employees must comply with regulations on safety and health at work and carefully carry out the work in a way that protects their life and health as well as the life and health of others, and to comply with other obligations established by law, collective agreements, and the employment contract.

The employer is obliged to provide the employee with a workplace as regulated by the employment contract, to organize work in a way which safeguards the security and protection of life and health at work, and to pay earnings to the employee for the performed work, in accordance with the law, collective agreements, and the employment contract.

The employer also is obligated to inform the employee about working conditions, work organization, rules in relation to the fulfillment of contractual obligations at work, as well as the rights and obligations arising from regulations on safety, and to protect the life and health of employees.

The employer is obligated to give due consideration to the opinion of unions or other legal representatives of employees in cases established by law, to respect the employees' personality and protect the employee's privacy, to ensure the protection of the employee's personal data, and to comply with other obligations established by law, collective agreements, and the employment contract.

## **Banking Law**

### **In General**

The Law on Banks<sup>31</sup> determines the establishment, management, operation, and control of banks, financial institutions, and credit unions. The Law also determines the operation and control of persons engaged in credit guarantee activities, with the aim of establishing and maintaining a healthy and stable banking system that ensures the protection of the interests of depositors and other creditors. Legal entities and individuals are not allowed to perform banking activities or enter the profession without the permission of the Central Bank of Montenegro. Apart from banking activities in the strict sense, banks may perform the following activities:

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31 Published in the *Official Gazette of Montenegro*, Number 17/08.

- Issuing guarantees and undertaking other off-balance sheet liabilities;
- Purchase, sale, and collection of receivables (eg, factoring and forfeiting);
- Issuing, processing, and recording instruments of payment, domestically and abroad;
- Financial leasing;
- Transactions with securities;
- Trading in their own name and for their own account or on behalf of clients;
- Depository operations;
- Making analyses and providing information and advice about the creditworthiness of companies and entrepreneurs and other matters related to the business;
- Leasing safes; and
- Supporting activities directly or indirectly related to the bank's business, in accordance with the statute of the bank.

A bank may, with the prior approval of the Central Bank, perform other duties in accordance with the Law on Banks.

### **Establishment of a Bank**

A bank may be established only as an SA. Founders may be Montenegrin and/or foreign individuals and/or legal entities. Banks may be established by one founder. The minimum capital must be at least €5,000,000 and has to be paid in full before registration of the bank in the Register of Commercial Entities.

The Central Bank keeps a register of banks, financial institutions, and credit unions, and branches and representative offices of foreign banks. Data from the register are public and published on the website of the Central Bank.<sup>32</sup>

The founders of a bank submit to the Central Bank an application for issuance of a working permit. The Central Bank is obliged to make a decision within 180 days of the filing of the application. The decision is final, and an administrative procedure may be initiated against it.

The application for registration of a bank with the Central Register of the Commercial Court must be filed no later than 60 days from receipt of the decision on the issuance of the permit to the bank from the Central Bank. The bank is obliged to begin the performance of services no later than 60 days following registration with the Central Register of the Commercial Court. The Central Bank will make a decision within 60 days of the submission of a request for approval.

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32 The website of the Central Bank (CBCG) is at <http://www.cb-mn.org/eng/>.

### **Qualified Participation**

A legal entity or an individual may not acquire a qualified participation in a bank without the prior approval of the Central Bank. The Law on Banks defines 'a group of related persons' as an acquirer of shares in capital and participation in voting rights of a bank. A person having a qualified participation in a bank may not, without the prior approval of the Central Bank, continue increasing his participation in capital or voting rights of the bank if this will result in reaching a percentage of more than 20 per cent, 33 per cent, or 50 per cent of the voting rights or capital of the bank.

If a person fails to submit a request for issuance of the appropriate permit or if the request is rejected, the Central Bank will, by its decision, order the alienation of shares which are over the allowed limit within a period which is not less than three but not more than six months.

If the Central Bank concludes that a person has acquired or increased a qualified participation in a bank's capital, it will inform that person to submit to the Central Bank a request for issuance of the appropriate permit within eight days of receipt of the notice.

The legal consequences of an illegal acquisition of eligible shares are that the acquirer will not be allowed to exercise his voting rights above the level of the voting rights which that person had before the acquisition of or the increase in qualified participation in the bank, until being provided with the appropriate approval from the Central Bank.

### **Management of a Bank**

#### *Shareholders' Assembly*

The shareholders' assembly votes on the statute of the bank, the annual report on operations of the bank, and the report of the independent external auditor; on the appointment and dismissal of members of the bank's board of directors and the amount of their benefits; the allocation of profit; the increase and reduction in the bank's capital; restructuring and termination of the bank; and on other issues determined by the statute of the bank.

#### *Board of Directors*

The board of directors manages the bank. Foreign individuals also may be elected as members of the board of directors. The board of directors must have at least five members, at least two of which must be persons who are independent of the bank.

A person considered independent of the bank is any person who does not have a qualified participation in the bank or in the parent company of the banking group to which the bank belongs and has not been employed in the bank or a subsidiary legal entity during the last three years.

At least one member of the board of directors must know the official language of Montenegro and must have a permanent residence in Montenegro during the performance of his duties as a member of the board of directors. The president of the board is elected by the board of directors from among its members. Members of the board of directors are elected for a period of four years and may be re-elected.

A bank's board of directors is, among others matters, responsible for establishing and maintaining a risk management system along with policies and procedures to deal with the risks to which the bank is exposed through its operations, determining the goals and strategies of the bank, and ensuring their implementation.

The board also is responsible for determining the annual plan of the bank, including the financial plan, approving the annual report on operations of the bank, and approving transactions which significantly affect the bank's business and operational risks, in accordance with policies and procedures for risk management.

Other responsibilities of the board include periodically reviewing and assessing the exceptions made in relation to established policies and procedures; approving the annual internal audit plan and internal audit reports; establishing the basis for the functioning of the internal control system in relation to the size of the bank, the complexity of tasks, and the level of risk taken; considering reports of the Central Bank on the inspections made; and electing executive directors and other persons responsible for the conduct of business within certain areas of bank operations and determining their earnings.

### **Executive Directors**

The executive directors of the bank manage the bank on a daily basis. Any person who, in addition to the conditions determined for election as a member of the board, meets certain eligibility requirements may be elected as an executive director. The eligibility criteria are a university degree and the ability and professional experience in managerial jobs that match the needs of management and risk management in the key areas of the bank's operations.

Executive directors are employed on a full-time basis and are responsible for the implementation of the acts of the board of directors, the organization and conduct of operations, and risk management in key areas of business.

### *Audit Committee*

The audit committee consists of at least three members who are not connected with the bank and have experience in the field of finance. The bank's executive directors may not be elected as members of the audit committee.

The audit committee is, among other matters, responsible for analyzing the financial statements of the bank, analyzing and monitoring the functioning of the internal control system, and considering the audit program and internal audit reports and giving opinions on the findings of internal audits.

The audit committee's supervisory functions include monitoring the implementation of recommendations of internal audit and monitoring and analyzing the compliance of the bank with laws, regulations, and its own acts.

In addition, the audit committee prepares proposals, opinions, and evaluations with respect to audit issues which fall under the decision-making scope of board of directors. The committee also must submit annual reports on its work to the board of directors.

### **Operations of a Bank**

Banks manage all risks to which they are exposed through their operations, in accordance with the law, the regulations of the Central Bank, and accepted risk management practices in banks. The Central Bank may issue guidelines for the application of accepted risk management practices in banks.

The risks to which a bank is exposed through its operations for which a system of risk management has to be established are liquidity risk, credit risk, market risk, operational risk, interest rate risk arising from the non-trading activities of the bank, and country risk, among other risks.

Banks are required to determine the capital adequacy, based on their own resources, as a coefficient of absolute and relative indicators of their solvency needs and capital adequacy. Banks also are obliged to establish, maintain, and promote an effective internal control system which corresponds to the size and complexity of the bank and its business.

Regulations of the Central Bank govern the basis of the internal controls in banks. Banks are obliged to organize an internal audit as an independent function of the bank. An internal audit provides, among other things, an evaluation of the adequacy and effectiveness of the internal control system; identification of key risk areas in bank operations and evaluation of the implementation and effectiveness of management policies and methodologies for risk assessment; an assessment of quality and reliability of the information system; a review of the accuracy, timeliness, and reliability of accounting and financial reports and records; and an assessment of compliance levels in relation to capital and operational risk.

Members of the board of directors, shareholders, all employees of the bank, and other persons with access to bank-related information are obliged to store all data and information related to their work and the bank. These entities are not allowed to use that information for their personal benefit, nor to make it

available to other parties, provided that those data and information are classified as a bank secret by law.

As an exception, data considered to be a bank secret must be made available, when prescribed by law, to the Central Bank, to the competent court, and to other persons, based on the express written consent of the client or the competent authority.

To prevent money laundering and terrorism financing, information may be made available in accordance with the law prescribing the prevention of money laundering and terrorism financing. In accordance with the law governing the protection of deposits, data may be made available to the Fund for the Protection of Deposits.

A bank secret includes information about the owners and the number of accounts opened in the bank, information about the individual state of deposits and transactions in the accounts of legal entities and individuals opened in the bank, and other data on clients to whom the bank offers its services.

### **Foreign Banks**

A foreign bank may operate in Montenegro through a branch if prior approval for the branch has been issued by the Central Bank. This approval determines the operations in which the branch of a foreign bank may engage in Montenegro. The request for issuance of an approval for a branch must be submitted to the Central Bank.

The Central Bank is obliged to decide on the request through a decision within six months of the date of submission of a proper request. The decision is final and an administrative dispute may be initiated against it. The approval for the business of the branch is a condition for registration with the Central Register of the Commercial Court. The branch is obliged to register within 60 days of the delivery of the approval for business and to begin its work within 60 days from the date of its registration.

A foreign bank may, with the prior approval of the Central Bank, establish a representative office in Montenegro. A representative office of a foreign bank only represents the interests of the bank and may not perform banking activities.

### **Microfinance Institutions and Credit Unions**

The Law on Banks also regulates microfinance institutions, credit unions, and persons engaged in the credit guarantee business. The Central Bank issues decisions on applications for licenses for microfinance institutions and credit unions. A microcredit financial institution or a credit union acquires the status of a legal entity through its registration with the Register of Commercial Entities.

Applications for registration of microfinance institutions and credit unions must be filed within 60 days of the date of receipt of the license. Microcredit financial



institutions are established as SAs or SRLs. The minimum amount of the initial capital of microcredit financial institutions is €100,000.

Microcredit financial institutions may approve loans from their own funds and funds obtained in the money market for the purpose of implementation of development projects of companies, approve loans for improvement of services and entrepreneur loans to the individuals, invest in short-term securities issued by the government of Montenegro and in other high quality, short-term financial market instruments, and provide financial leasing and consultancy services.

A credit union is a financial institution owned by the members of a union, organized on the principles of voluntary association, relationship, reciprocity, and equality of members of the union. A credit union approves loans and provides other financial services primarily from its own assets and the deposits of its members. A credit union may be established by at least 30 individuals or entrepreneurs who are professionals or otherwise related, under the conditions stipulated by law.

The minimum amount of initial capital for a credit union is €10,000. Membership and donor funds are regarded as the capital of the union. The credit union may receive deposits from members of the union, approve loans from its own funds, issue guarantees, perform payment services in the country for its members under a contract with the bank in which an account for regular operations has been opened, invest funds in short-term securities issued by the government of Montenegro, and perform other activities prescribed by law.

Legal entities may engage in the credit guarantee business if they obtain the approval for that work from the Central Bank. The conditions for issuance of the approval, including minimum initial capital, operations, the control of operations, and withdrawal of consent, are regulated by acts promulgated by the Central Bank.