

Government of Montenegro

Ministry of Economy

Questionnaire

Information requested by the European Commission to the Government of Montenegro for the preparation of the Opinion on the application of Montenegro for membership of the European Union

– ADDITIONAL QUESTIONS –

06 Company law

Minister:

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CHAPTERS OF THE ACQUIS – ABILITY TO ASSUME THE OBLIGATIONS OF MEMBERSHIP

6: Company law

I. COMPANY LAW

A. Legal Framework

1. What are the conditions for declaring a company null and void?

Article 26 of the Business Organisation Law (Official Gazette of the Republic of Montenegro 06/02 and Official Gazette of Montenegro 17/07, 80/08) defines the declaration of nullity of the establishment of a joint-stock company; and with a view to ensuring accuracy, we are presenting Article 26 in its entirety:

Article 26

- 1) Upon the request of an interested party, the Commercial Court shall declare the nullity of a joint-stock company only upon the following grounds:
 - no foundation agreement or charter has been concluded or executed or the requisite legal formalities, determined by this Law, were not complied with regarding these documents;
 - the prospectus for the public offering of shares was not published in accordance with the Law;
 - the objectives of the joint-stock company are unlawful or contrary to public policy;
 - the foundation agreement or the charter does not state the name of the joint-stock company, the amount of the share capital, the head administrative office, address for notices or the objective of the joint-stock company;
 - the provisions concerning the minimum amount of capital have not been met;
 - the legal or business incapacity of all founders.
- 2) A claim to exercise the right referred to in paragraph 1 of this Article can be submitted within three years of the day the company was registered in the Central Registry of the Commercial Court.
- 3) The Commercial Court shall submit a fully and legally binding decision determining the nullity to the Central Registry of the Commercial Court within the period of 15 days since the decision.
- 4) After the nullity of the business organisation is declared, the members become unlimitedly jointly liable for the commitments of the business organisation, and the contracts concluded prior to the nullity remain effective.
- 5) The nullity of the business organisation results in legal consequences in cases provided for in Article 28, paragraphs 5 and 6 of this Law.

2. (Ref to Q. 1): With reference to Article 19 of the Directive 77/91/EEC, is the companies' obligation to repurchase shares at the request of shareholders as stipulated by Article 32a of the Business Organisation law unlimited or is there a link e.g. to the balance sheet situation of the company?

Article 19 of the Directive 77/91/EEC is provided in Article 60 of the Business Organisation Law. Purchase of shares is not directly connected with the balance sheet. After the shares are purchased, the changes are recorded into the balance sheet. Article 60 is as follows:

Article 60

- (1) A company may, if authorised by its charter or a resolution of its board, purchase its own shares in accordance with the authorisation to do so by the general shareholder meeting.

- (2) Purchase of shares must be authorised by the general meeting specifying the maximum number of shares that may be purchased and the maximum price that may be paid.
- (3) The authorisation must specify a date for the purchase of shares, not later than 12 months after the authorisation has been granted, after which the authorisation expires and the shares can be purchased only with a new authorisation.
- (4) By way of exception to paragraph 2 of this Article, the board of directors may adopt a decision on acquiring shares of the business organisation if that acquisition is prescribed by the charter and if it is necessary for the protection from serious and direct detriment to the business organisation. Shares acquired in this manner shall not exceed 10 % of the share capital of the company. At the first general shareholder meeting, the board shall submit a detailed report on reasons for acquiring shares of the business organisation, number and nominal value of shares acquired, and their share of the total share capital of the business organisation and the repurchasing price of those shares.
- (5) The shares acquired, purchased or held by the business organisation, and any shares acquired by a person in his/her own name but on company's behalf, may not exceed 10 % of the share capital of the company, except where:
 - shares are required in carrying out a decision to reduce capital;
 - shares are acquired as a result of universal transfer of assets or restructuring under the provisions of this Law;
 - shares acquired to satisfy a legal obligation or court ruling requiring indemnification of minority shareholders.
- (6) Recording, acquiring and holding shares which is done by the business organisation in its own behalf in which the issuer has a majority of shares or majority of votes shall be considered as recording, acquiring and holding shares by the business organisation which is the issuer of shares.
- (7) Paragraph 6 of this Article shall not be applied to shares which the business organisation, over which the issuer of shares has a majority of shares or majority of members of the board of directors or majority of votes, or a majority ownership, acquired in the business organisation which is the issuer of shares before the issuer of shares achieved a majority of shares or a majority of votes over the business organisation. The shares shall not carry voting rights and shall be considered when determining the conditions referred to in paragraph 5 of this Article for purchasing its own shares by the business organisation.
- (8) When a company purchases its own shares, these shares shall be either cancelled or retained as shares that do not carry voting rights and are not entitled to dividends.
- (9) Shares shall be disposed of by the company within 12 months of their acquisition. If the shares are not disposed of within this period, the business organisation must cancel them within 3 days after the period expires and, within an additional period of three days, it shall notify the Securities Commission and CDA.
- (10) The company must register the number of its own purchased shares at the Central Registry of the Commercial Court.
- (11) The annual report of the company must contain the reasons for acquiring its own shares during the financial year, their number and nominal value of shares purchased and sold within the year, the value which was determined for purchasing or gained on the basis of the sale of shares and the share of acquired shares in the total number of shares owned by the business organisation.
- (12) The company shall not loan money or give any other financial assistance to any person wishing to buy shares of the company, except in the case of employee incentive stock purchase plans.

3. (Ref to Q. 4): Please provide explicit answers to the questions: are there other requirements for the publication of information by companies listed on the stock exchange? Are there for instance rules on contributions in kind and rules on creditor protection in the event of a reduction in the subscribed capital?

Additional commitments of companies regarding publication of information refer to the following:

- a) Commitment to publish prospectus for public offering of securities;
- b) Commitment to submit periodical and annual reports on operations;
- c) Commitment to publish information for admission of securities for trading on the stock exchange;
- d) Commitment of continuous reporting.

a) Commitment to publish prospectus for public offering of securities;

The regulatory framework for a prospectus published during the public offering of securities and admission of securities for trading consists of the Law on Securities (Official Gazette of the Republic of Montenegro 59/00 and 28/06) and the Rules on content of the prospectus for the public offering of securities (Official Gazette of the Republic of Montenegro 34/07). These two legal documents are, in major part, in accordance to the principles provided in the Directive 2003/71/EC (hereinafter: Prospectus Directive)

Law on Securities (hereinafter: the Law) implements the following principles in accordance with the Prospectus Directive:

Obligation to publish the prospectus – Article 36 of the Law requires the publishing of the prospectus prior to or simultaneously with the invitation for subscription and payment of relevant securities.

b) Commitment to submit periodical and annual reports on operations

Requirements regarding periodical publishing of information are aligned with the Directive 2004/109/EC on the harmonisation of requirements of transparency related to information about issuers whose securities are admitted to trading on a regulated market, which replace the previous provisions of Directive 2001/34/EC, Directive 2007/14/EC and Regulation 1287/2006 (Transparency Directive).

Rules on contents, timelines and manner of publishing financial statements of issuers of securities (Official Gazette of Montenegro 20/09) in accordance with the Transparency Directive determine the requirement for preparing annual and periodical operation reports, in order to enable reaching informed investment decisions. Provisions of these Rules are aligned with the provisions of the Transparency Directive and they stipulate the following: contents of annual and periodical operation reports; obligation of issuers to submit annual and periodical reports for the following periods: January-March, January-June, January-September and January-December, and an annual report, with the auditor's report within the period of 30 days since the period to which the report refers expires, and the annual report within 120 days since the end of the financial year.

For purposes of publishing the above stated information, the Commission has published "public information book" on its webpage, which contains all necessary information about the financial state of market participants.

Contents of these periodical and annual operation reports are stipulated in Article 6 of these Rules. In accordance with this Article, the reports shall contain:

- Basic information;
- Balance sheet ;
- Income statement;
- Cash flow balance;
- Statement of changes in capital;

- Clarifications and notes of the board of directors or, for limited liability companies, of the Executive Director, if the board of directors is not constituted;
- Report on important events;
- Notes to the financial statements;

Apart from financial statements, the issuer is obliged to disclose other information as well. The issuer is obliged to inform the public on changes of rights vested in securities or rights of acquiring these securities. If securities admitted to trading are not shares, every information or change of rights regarding these securities must be published. These obligations are determined by Article 27 of the Law stating the following:

“The issuer of securities in a public offering shall inform the Commission, issuer’s founders, other owners of the same securities and public in general on information which:

- 1) enable the assessment of issuer’s financial position or its share;
- 2) can result in unfair trading of these securities;
- 3) can potentially affect the market price of these securities.

In addition to the obligations referred to in paragraph 1 of this Article, the issuers shall also submit other information prescribed by the Commission”.

The Obligation to disclose price sensitive information is stipulated in Article 27 of the Law, and the regulations also determine the obligation of the Commission to make this information public within the period of five days since the day this information is submitted to the Securities Commission (Article 5 of the Rules on contents, timelines and manner of publishing financial statements of issuers of securities).

c) Commitment to publish information for admission of securities for trading on the stock exchange

In Montenegro, the legislative basis for listing securities is placed in the Law on Securities (Official Gazette of the Republic of Montenegro 59/00, 10/01, 43/05, 28/06). The Law on Securities prescribes general requisites regarding securities markets which prescribes that trade in securities is carried out in securities markets which are established for purposes of creating conditions for connecting supply and demand of securities. In accordance with this Law, stock exchanges are authorized to issue rules regarding the listing of securities, and the Securities Commission shall approve these rules and therefore they will become the part of the legal system of Montenegro.

The Law on Securities in general and as well as Listing Rulebooks adopted by both stock exchanges in Montenegro provide the following legal framework for alignment with the Directive 2001/34/EC as follows:

Scope – Listing rulebooks prescribe the conditions for listing of securities and admission of securities for trading on stock exchanges which refer to all issuers;

Decision of admission of a competent national authority (Article 11, paragraph 1 of the Directive) - Decision on admitting securities to the official listing is made by the Listing Commission, which is a specialized entity of the stock exchange, and which makes decisions on the basis of the Rulebook on stock exchange listing (Articles 3-9 of the Rulebook of Montenegro Stock Exchange Listing and Articles 3-9 of the Rulebook on Nex Stock Exchange Listing)

Powers of the authorised body to reject a request for admission of securities to official listing if the issuer’s situation is such that admission would be detrimental to investors’ interests (Article 11, paragraph 2 of the Directive) – In accordance with Article 12, paragraph 2 of the Rulebook on Nex Stock Exchange Listing and Article 23, paragraph 1, item 2 of the Rulebook on Montenegro Stock Exchange Listing, the Listing Commission may deny the request for admission of securities for trading on the basis of its discretionary decision if it finds that the circumstances could be detrimental to investors’ interests.

The obligation of an issuer to present information to an authorised body if it considers it necessary for the protection of investors as well as public disclosure of such information (Article 16 of the Directive) – Article 27 of the Law on Securities requires issuers to inform the Commission,

stockholders and the public in general of all relevant information which: enable the assessment of the financial situation of the issuer or its share; can result in unfair trading of those securities; can potentially affect the market price of these securities. In addition, the issuer is obliged to submit information that may be requested by the Securities Commission. In accordance with Article 16, paragraph 2 of the Directive, the Commission is obliged to publish information on issuers on its website in the “public information book”. Listing Rulebooks also prescribe the obligation of issuers to inform stock exchanges as well as the public in general on cases and activities that may influence the assessment of financial and business situation of the issuers or the price of its shares (Article 25 of the Rulebook on of Nex Stock Exchange Listing and Article 32 of the Rulebook on Montenegro Stock Exchange Listing).

d) Commitment of continuous reporting;

The obligation of an issuer to present information to an authorised body if it considers it necessary for the protection of investors as well as public disclosure of such information (Article 16 of the Directive) – Article 27 of the Law on Securities requires issuers to inform the Commission, stockholders and the public in general of all relevant information which: enable the assessment of the financial situation of the issuer or its share; can result in unfair trading of those securities; can potentially affect the market price of these securities. In addition, the issuer is obliged to submit information that may be requested by the Securities Commission. In accordance with Article 16, paragraph 2 of the Directive, the Commission is obliged to publish information on issuers on its website in the “public information book”. Listing Rulebooks also prescribe the obligation of issuers to inform stock exchanges as well as the public in general on cases and activities that may influence the assessment of financial and business situation of the issuers or the price of its shares (Article 25 of the Rulebook on of Nex Stock Exchange Listing and Article 32 of the Rulebook on Montenegro Stock Exchange Listing).

Rules on contributions in kind (non-monetary contributions) are stipulated in Article 51 of the Business Organisation Law, as follows:

Article 51

- (1) Non-monetary contributions shall be appraised by one or more licensed independent appraisal experts. Such expert may be a natural person, a legal person or firm (general or limited partnership).
- (2) Such appraisal shall take place before the contribution in kind is accepted by the general meeting.
- (3) The appraisal report shall contain:
 - the name of the owner of the property;
 - a description of each of the assets appraised;
 - a description of the methods of appraisal used;
 - a statement as to whether the values recommended by the appraisal correspond to the number and the initial price of the shares to be issued.
- (4) The decision of the general meeting for approval of non-monetary contribution shall specify the number of the shares issued for this contribution, the name of the person making the contribution and the nature of the contribution.
- (5) The issue of shares on the basis of non-monetary contribution shall be recorded at the Securities Commission.
- (6) The appraiser’s report and any decision of the general meeting to accept the non-monetary contribution shall be transmitted to the Central Registry of the Commercial Court within 7 days since the day of receipt of the decision of the Securities Commission on recording the issue of shares on the basis on non-monetary contribution. Notice of the decision to accept a non-monetary contribution shall be sent by the Registrar to the Official Gazette of Montenegro within 2 business days of receipt, to be published.
- (7) A joint-stock company shall not issue shares for a non-monetary contribution unless the contribution has been appraised by an independent appraiser in accordance with this Law. Rules on creditor protection in the event of a reduction of subscribed capital are stipulated in Article 59, as follows:

Article 59

- (1) The share capital may be reduced by a resolution of the general meeting adopted by a 2/3 majority of shares represented in person or by proxy or by ballot papers. When the company has issued shares of different classes, the decision of the general meeting must be subject to a separate vote for each class of shareholders whose equity rights are affected.
- (2) The notice convening the meeting must specify the purpose of the reduction and the way it is to be carried out. The decision of the general meeting to reduce the share capital shall be submitted to the Central Registry of the Commercial Court and published in the Official Gazette of Montenegro.
- (3) While reducing its share capital, the company must offer additional guarantees for its liabilities to each creditor who demands them and whose rights were in force prior to the date of the publication of the decision to reduce the capital.
- (4) The company must notify each creditor in writing about the decision to reduce its capital. Creditors may submit their demands within 60 days after such notification or after the publication in the Official Gazette of Montenegro, whichever is later.
- (5) The company may not give additional guarantees for its liabilities if aggregate demands of creditors exceed the net assets of the company evaluated by an independent appraisal after reduction of authorised capital. The company may not give additional guarantees for its liabilities to a creditor, if his/her demands are already fully and reliably secured. The company may not give additional guarantees to creditors when the purpose of the reduction of capital is to offset losses. Disputes concerning additional guarantees for liabilities shall be settled by the Commercial Court.
- (6) Any reduction shall be void and no payment may be made to shareholders, until the creditors have achieved satisfaction or the Commercial Court has declared that their application is without merit.
- (7) Share capital of the company may be reduced by cancelling the proportionate number of shares, which is conducted according to shares held by shareholders which will be reduced in proportion to their number of shares or by reducing the nominal value of shares.
- (8) Share capital may not be reduced to an amount less than the minimum capital prescribed by this Law.
- (9) Share capital shall be considered reduced only when amendments to the charter have been registered in the Central Registry of the Commercial Court.
- (10) The decision on reducing the share capital shall be published in the Official Gazette of Montenegro.
- (11) Consistent with the provisions of this Law on reducing capital, a company may return the contributions to the shareholders fully or in part where an appropriate number of shares of shareholders whose contribution has been returned fully or in part shall be cancelled.

4. (Ref to Q. 6): Please elaborate "large extent" of alignment of business organisation law with the First Company Law Directive. What is the status of the planned amendment of the Business Organization Law to align the legislation with the EU Company Law acquis?

Business Organisation Law is not aligned with the Directive 2003/58/EC, which defines the amendments to the First Directive 68/158/EC.

Non-alignment refers to the obligation that all acts and information, recorded not later than 1 January 2007, in written or electronic form, must be kept in the archives or entered in the registrar in electronic form. Moreover, it is not defined that the requests cannot be submitted after 1 January 2007, in written or electronic form, whichever is the choice of the submitter.

Business Organisation Law does not prescribe that Member States envisage that websites of business organizations will contain basic information, and if applicable, also the references to subscribed and paid capital. Accordingly, the law does not define that Member States envisage

appropriate sanctions in cases when required information are omitted from business documentation or from websites of the business organisation.

The beginning of working on the Draft Law on Amendments to the Business Organisation Law which will lead to its alignment with the stated Directive is planned for May 2010.

5. (Ref to Q. 7): Please elaborate "large extent" of alignment of business organisation law with the Third and Sixth Company Law Directives. What is the status of the planned amendment of the Business Organization Law to align the legislation with the EU Company Law acquis?

Business Organisation Law is not aligned with the Directive 2007/63/EC (defines the amendments to the Third and Sixth Directive - 78/855/EEC and 82/891/EEC) which prescribes the possibility of excluding the obligation to develop reports by an independent expert, if agreement of all shareholders and other securities bearers is reached.

The beginning of work on the Draft Law on Amendments to the Business Organisation Law which will lead to its alignment with the stated Directive is planned for May 2010.

6. (Ref to Q. 7): When is the final deadline for adoption of the new business organisation law?

The final deadline for adoption of the new Business Organisation Law is the end of 2011.

B. Administrative Capacity

7. Which Ministry (or Ministries) deal with legislation in the area of Company Law in Montenegro? What is the size of the department(s) dealing with this? What is the current staff number of Central Register? Do you have any plans to increase the staff number in these instances?

The Ministry of Economy, Ministry of Justice and Ministry of Finance are the competent ministries for proposing regulations from the area regulated by the Business Organisation Law in Montenegro. The Central Registry of the Commercial Court in Podgorica is competent for the implementation of the Business Organisation Law. The Central Register has 17 permanent employees and an increase in staff numbers is not planned.

8. (Ref to Q. 10): Is there a possibility for companies to submit application for registration by electronic means?

Currently, there isn't a possibility for business organisations to submit an application for registration electronically. Software support has been prepared and its implementation will begin after the adoption of the Proposal of the Law on Electronic Signature planned during the second half of 2010.

9. Do you have in place or do you have plans to introduce a One-Stop-Shop system for the registration of companies?

The registration of business organisations is already performed in one place, in the Central Registry of the Commercial Court.

However, in order to begin operating, it is necessary to perform registration in the Tax Administration, Employment Agency of Montenegro, Health Insurance Fund and Pension Insurance Fund, as well. Registration for all four institutions is performed in one place, in the Tax Administration.

In the Tax Administration of Montenegro, the registration is performed by tax payers (natural and legal entities), payers of contributions for obligatory social insurance and policy holders.

Registration on stated grounds is performed on the basis of the JPR FORM, prescribed by Rulebook on the form and content of the unique application for registration of tax payers, contribution payers and policy holders in the Central Registry.

JPR FORM is submitted in one place – the window of the branch unit of Tax Administration where the main location of the tax payer business is located, or the permanent residence of the natural person.

Thus, the JPR FORM is used for following purposes:

- registration of legal entities,
- registration of natural persons,
- registration of entrepreneurs,
- registration of policy holders for pension and disability insurance,
- registration for health insurance policy holders.

Therefore, the registration in the Tax Administration is organised in the manner which fully meets the criteria ONE WINDOW/ONE FORM. In this manner, 16 forms in the competence of four institutions (Tax Administration, Health Insurance Fund of Montenegro, Pension and Disability Insurance Fund of Montenegro and the Employment Agency of Montenegro) are consolidated into 1 form in the competence of one institution – the Tax Administration.

Full consolidation is planned as well as only one location in which the registration can be performed and the company may begin its business. Activities regarding the development of a software solution enabling the previously stated are ongoing.

10. (Ref to Q. 15): How are the sanctions stipulated by the Law on Accounting and Auditing for the non-deposition of financial statements applied and enforced on the companies not respecting their obligations?

The Ministry of Finance, in the Law on Accounting and Auditing (Official Gazette of the Republic of Montenegro 69/05 and Official Gazette of Montenegro 80/08), among other things, prescribes inspection supervision as a new obligation, with the aim to create a quality institutional framework for growth and development of the Montenegrin economy, introduction of financial discipline and an increase in quality of financial statements. In that regard, the Ministry of Finance has, after the establishment of inspection capacities, begun the control of annual and quarterly financial statements of joint-stock companies and other legal entities that issue securities, other financial instruments traded on the organised market and parent legal entities obliged to prepare consolidated financial statements. The stated legal entities are obliged to submit annual and

quarterly financial statements to the Securities Commission, in paper and electronic copy¹. In cooperation with the Commission, Ministry of Finance has determined the procedures for keeping and submitting records of legal entities.

In addition, the Ministry of Finance, in coordination with the Council for Misdemeanours, has determined the procedure of submitting the request for initiating misdemeanour procedure against legal entities and responsible persons in the legal entity, who have failed to submit annual and quarterly financial statements in the timeline prescribed by the law. The deadline for submitting the request for initiating a misdemeanour procedure is, in accordance with the Law on Misdemeanours, is 60 days from the day the Securities Commission submits the list to the Ministry of Finance, or 60 days from the day when the facts have been determined. The Ministry of Finance has submitted requests for initiating misdemeanour procedure to regional bodies of institutions against legal entities and responsible persons in the legal entities, who have failed to submit the financial statements within the deadlines prescribed by the law.

Until 30 June 2009, 59.5% of legal entities had submitted financial reports for 2008 to the Securities Commission. The percentage of submitting quarterly financial reports, according to quarters, has increased (41.6% for the first quarter, 48.5 % for the second and 52.9% for the third quarter). The Ministry of Finance has, thus far, submitted 353 requests for initiating misdemeanour procedures against legal entities and responsible persons in legal entities (for failing to submit annual financial statements for 2008 and quarterly statements for 2009). In accordance with the Rules on contents, deadlines and manner of publishing financial statements of issuers of securities (Official Gazette of Montenegro 20/09) the deadline for submitting annual financial statements is 120 days from the expiration of the period to which the statement refers. Providing that the Law was adopted at the end of 2008, and that the deadline for submitting annual financial statements has been changed, so that statements are to be submitted by 28 February of the current year for the previous year, we expect an increase in submissions of the statements, i.e. a decrease in the number of initiated misdemeanour procedures, beginning this year.

Article 16 c of the Law on Accounting and Auditing (Official Gazette of the Republic of Montenegro 69/05 and Official Gazette of Montenegro 80/08) prescribes that a pecuniary fine in the amount of twenty fold² to three hundred fold of the amount of minimum wage in Montenegro shall be imposed for an offence on a legal entity (large legal entity, medium-size legal entity and parent legal entity which is obliged to prepare consolidated financial statements, a legal entity that is the issuer of securities and other financial instruments traded on the organized market) that fails to submit financial statements and consolidated financial statements, in electronic and hard copy, to the Central Registry of the Commercial Court, within the legally prescribed deadline (until 28 February of the current year for the previous one), and a pecuniary fine in the amount of ten fold to twenty fold of the minimum wage in Montenegro shall be also imposed on a responsible person in the legal entity.

Article 16 d prescribes that a pecuniary fine in the amount of twenty fold to three hundred fold of the amount of minimum wage in Montenegro shall be imposed for an offence on a legal entity (joint-stock company and other legal entity that issues securities and other financial instruments traded on the organised market, as well as the parent company obliged to prepare consolidated financial statements) that fails to submit annual and quarterly financial statements, in electronic and hard copy, to the Securities Commission, within the legally prescribed deadline (not later than 28 February of the current year for the previous year), and a pecuniary fine in the amount of ten fold to twenty fold of the minimum wage in Montenegro shall be also imposed on a responsible person in the legal entity.

¹ Financial statements, submitted in electronic form, are published on the web-site of the Securities Commission (www.scmn.me)

² Minimum wage is € 55 (at the moment).

Article 21 a prescribes that a pecuniary fine in the amount of twenty fold to three hundred fold of the amount of minimum wage in Montenegro shall be imposed for an offence on a legal entity that fails to submit an audit report with an opinion on financial statements in the legally prescribed deadline (by 30 June of the current year for the previous year) and pecuniary fine in the amount of ten fold to twenty fold of the minimum wage in Montenegro shall be also imposed on a responsible person in the legal entity.

11. Could you provide the Commission with the following legislation in English: Law on Business Organization insolvency (Official Gazette of the Republic of Montenegro 06/02, 01/06, 02/07, 62/08).

Yes, the Law on Business Organisations Insolvency is submitted as an the Annex.

II. CORPORATE ACCOUNTING AND AUDIT

A. Accounting

12. Please provide us with the following supplementary information on the financial statements according to IFRS:

Answers under i, ii, iii, iv, v.

i. Do all consolidated accounts have to be prepared according to IFRS or only consolidated accounts related to large and listed companies? If so, which standards are applied by other entities preparing consolidated accounts?

Article 3b, paragraphs 1 and 2 of the Law on Accounting and Auditing (Official Gazette of the Republic of Montenegro 69/05 and Official Gazette of Montenegro 80/08) prescribes that “legal persons having control (parent legal entities) over one or more legal entities (subsidiaries) shall compile, submit and disclose consolidated financial statements in compliance with IAS. Consolidated financial statements are statements of the economic entirety which consists of a parent legal entity and all subsidiaries.

In addition, the obligation to prepare financial statements is prescribed in Article 6a of the Law, which envisaged that “large legal entity, medium legal entity and parent legal entity are obliged to prepare consolidated financial statements. A legal entity that issues shares and other financial instruments, traded on the organised market, shall submit financial statements and consolidated statements to the Central Registry of the Commercial Court in accordance with the IAS/IFRS”.

ii. Do entities that apply IFRS for their consolidated accounts have to apply IFRS also for their individual accounts?

Article 3 of the Law on Accounting and Auditing (Official Gazette of the Republic of Montenegro 69/05 and Official Gazette of Montenegro 80/08) prescribes that “legal persons shall prepare financial statements in compliance with International Accountant Standards (IAS), or International Financial Reporting Standards (IFRS), as promulgated by the IASB and adopted and published by a competent body that obtained a copyright to translate and publish from the relevant body of the International Federation of Accountants (IFAC)”. Thus, the financial statements of the parent legal entity and financial statements of subsidiaries are prepared in accordance with IAS/IFRS.

iii. Are there any entities which are obliged to apply IFRS also on the individual basis?

The Law on Accounting and Auditing does not envisage the possibility that certain legal entities base their financial reporting on an individual basis, and all legal entities are obliged to use IAS/IFRS as their basis for financial reporting.

iv. Which IFRS have to be applied? Those published by the IASB (English versions) or the translated one. If the latter who is in charge of the translation?

Pursuant to Article 3 of the Law on Accounting and Auditing, legal persons prepare financial statements in compliance with International Accountant Standards (IAS), or International Financial Reporting Standards (IFRS), as promulgated by the IASB and adopted and published by a competent body that obtained a copyright to translate and publish from the relevant body of the International Federation of Accountants (IFAC).

The IAS version of translation which was, according to an approval, translated and published by the Institute of Accountants and Auditors of Montenegro, was used until 2007 in Montenegro.

The Decree on verifying the affairs of state administration bodies competent for auditing and accounting (Official Gazette of the Republic of Montenegro 44/07) prescribes affairs delegated to the Institute of Certified Accountants of Montenegro, as the institution responsible for the contract on Consortium, with the Faculty of Economy of Montenegro and the Association of Accountants and Auditors of Serbia, as members of the Consortium. The Institute of Certified Accountants of Montenegro, as the bearer of the Contract on Consortium, has been delegated the following affairs, among other:

- Adopting, translating and publishing International Accounting Standards (IAS), International Financial Reporting Standards (IFRS) and International Standards of Auditing (ISA) promulgated by the IASB, and
- Adopting, translating and publishing new or amended International Accounting Standards (IAS), International Financial Reporting Standards (IFRS) and International Standards of Auditing (ISA) promulgated by the IASB.

The Institute of Certified Accountants of Montenegro accepts and utilizes the translations of the Association of Accountants and Auditors of Serbia, which is a full member of IFAC. The translations are available at the Institute to all interested parties.

v. Is there any endorsement process? If so, who is in charge of it? Does it have the power to introduce changes?

Refer to the previous question.

13. Which accounting standards are applied by entities that do not apply IFRS?

In accordance with the Law on Accounting and Auditing all legal entities are obliged to prepare their statements in accordance with IAS/IFRS, and therefore economic operators that do not implement international standards for their financial reporting do not exist.

i. Is there a national accounting standard setter? The role of the Accounting council is not clear – please provide explanations.

National standards do not exist in Montenegro; therefore a body for defining national accounting standards does not exist.

The Council for Accounting and Auditing is constituted of representatives of relevant institutions and stakeholders (representatives of the Ministry of Finance, Ministry of Economy, Central Bank of Montenegro, Securities Commission, Commercial Court, Insurance Supervision Agency) and

institutions which have been delegated affairs of state administration bodies competent for accounting and auditing by a competent body, and which have the accounting, finance and auditing knowledge. The task of the Council for Accounting and Auditing is to consider and take positions on the following matters: development and promotion of accounting and auditing practices in Montenegro; providing advice to persons creating policies, regulators and state bodies; providing professional assistance for improving the quality of financial reporting and other matters significant for using and promoting accounting and auditing practices in Montenegro.

ii. Have the IV and VII Directive "to be "adopted" by 2009" been adopted by now?

In the EC Questionnaire, question No. 23 was: Do those reforms include the Fourth (78/660) and Seventh (83/349) Directive? In the answer to the stated question the following was said: Yes, all relevant Directives of the EU (IV, VII, VIII) concerning accounting and auditing are taken into account. The accounting system of Montenegro has started the harmonization with the EU Directives in 2002, by adopting the forms of financial reporting and manner of reporting defined by the above mentioned Directives, and by introducing positions required by the Directives into official balance schemes. The amendment and alignment of balance-sheet positions was performed in 2006, and the latest change in balance-sheet positions in accordance with the Directives and implementation of ISA/IFRS and their amendments created in the period, thus far, is currently ongoing, and their adoption is envisaged by the end of 2009.

The Fourth Directive (78/660) regulates annual financial reporting. Small size trade companies prepare an abbreviated balance sheet according to the Directive, as regulated by the Law on Accounting and Auditing (Official Gazette of the Republic of Montenegro 69/05 and Official Gazette of Montenegro 80/08).

Balance schemes had not been adopted by the end of 2009, due to the reason that the chart of accounts had not been adopted, the adoption and publishing of which is expected by the end of the third quarter, after which balance schemes will be adopted as well, and aligned with the IV and VII Directive.

iii. Are your national accounting standards consistent with the IV and VII Directive?

National accounting standards do not exist in Montenegro, therefore international standards are implemented (IAS, ISA and IFRS).

B. Statutory auditors Ref. to the Additional questions set no 1 /ELARG C4/es D (2009) 108320, 23.12.2009

14. (Ref to Q. 1 of the additional question set no 1): Please provide an English version of the secondary legislation mentioned in the reply to Question 1. In particular, the Law on Accounting and Auditing (Official Gazette of the Republic of Montenegro 69/05 and Official Gazette of Montenegro 80/08). Is there any specific plan to amend existing legislation on accounting and auditing?

Amendments to the Law on Accounting and Auditing are adopted in December 2008, and the adoption of the new Law on Accounting and Auditing is planned for 2012, which will be fully aligned with the EU Directives.

15. (Ref to Q. 1 of the additional question set no 3): What actions have been taken by the Ministry of Finance for the establishment of "the body for public control of auditors"? Is there any draft legislation in this regard? Please provide an English version of the Strategy and the Action Plan for improving the financial reporting? In particular, the reference to the establishment of an independent body for control of auditors (Chapter 5.2.3.).

A special body carrying out a public system for control of auditors has not been established, thus far. One of the basic goals of the Strategy and Action Plan for the Promotion of Financial Reporting³ is the establishment of an independent body for control of auditors and quality control. The stated document defines the scope and responsibility of the future independent body.

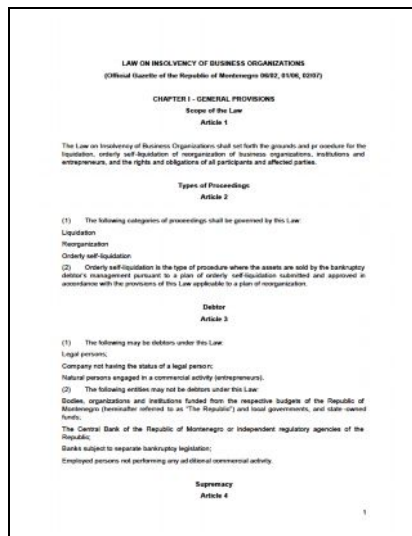
Activities regarding the establishment of a body for the control of auditors have begun, and the specific experiences are exchanged through the participation in the regional REPARIS⁴ project of the Centre for Financial Reporting Reform of the World Bank.

³ Strategy and the Action Plan for the Promotion of Financial Reporting in Montenegro, p.70, Chapter 5.2.3 (<http://www.gov.me/files/1239019320.pdf>)

⁴ REPARIS- Road to Europe: Program of Accounting Reform and Institutional Strengthening

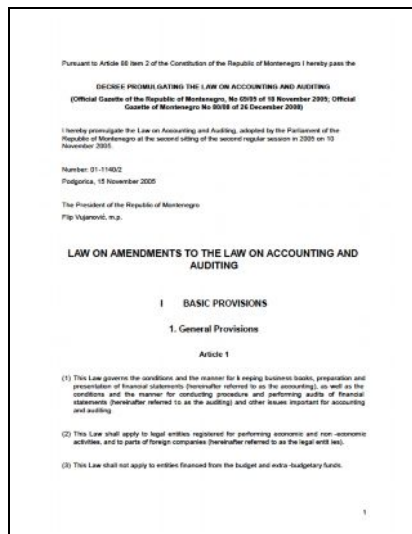
Annex

1. Law On Insolvency Of Business Organizations



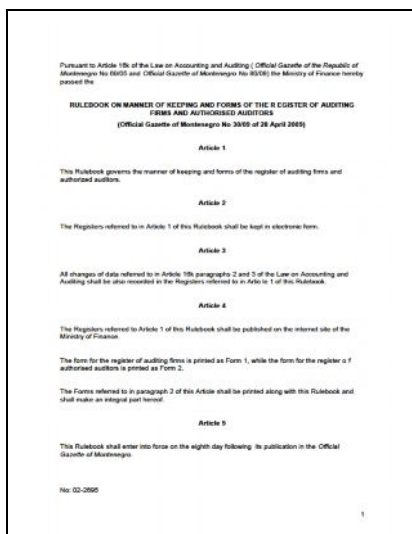
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2. The Law On Accounting And Auditing



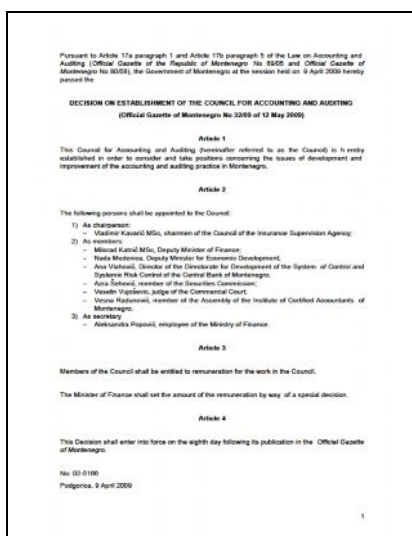
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3. Rulebook On Manner Of Keeping And Forms Of The Register Of Auditing Firms And Authorised Auditors



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4. Decision On Establishment Of The Council For Accounting And Auditing



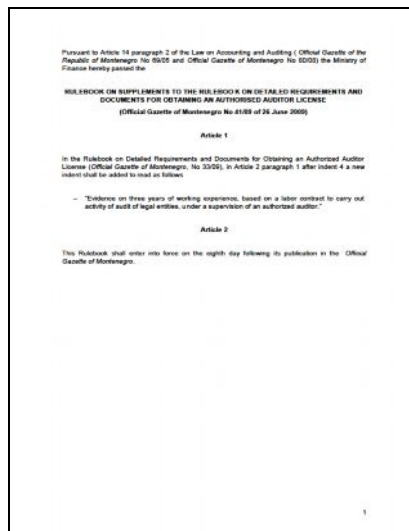
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5. Rulebook On Detailed Requirements And Documents For Obtaining An Authorised Auditor License



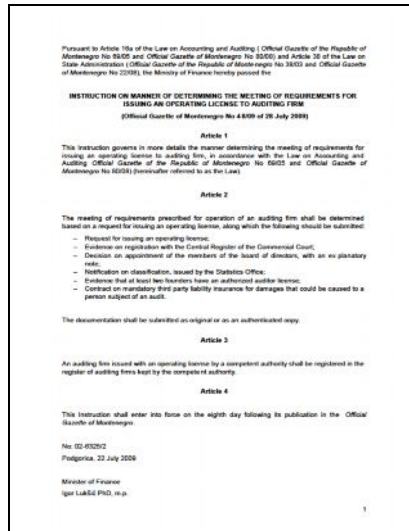
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6. Rulebook On Supplements To The Rulebook On Detailed Requirements And Documents For Obtaining An Authorised Auditor License



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7. Instruction On Manner Of Determining The Meeting Of Requirements For Issuing An Operating License To Auditing Firm



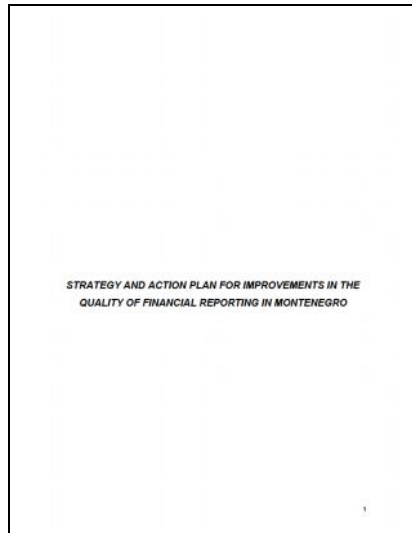
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8. Rulebook On Sum Insured For Mandatory Third Party Liability Insurance For Auditing Firms And Authorised Auditors For Damages That Could Be Made To A Person Subject Of An Audit



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9. Strategy And Action Plan For Improvements In The Quality Of Financial Reporting In Montenegro



Please double click to open the whole document