**Government of Montenegro**

**Ministry of Finance**

# 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

# 09 Financial services

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# *I. BANKS AND FINANCIAL CONGLOMERATES*

**General questions**

**1. What is the current situation with regard to right of establishment and cross-border supplies of services in your country for EU credit institutions? Which conditions apply? Are there specific conditions regarding the opening of branches by foreign banks? Regarding the establishment of a foreign subsidiary?**

Foreign bank, with its registered seat in EU member states, as well as with its registered seat in states outside the EU, may conduct its business activities in Montenegro through its branch office with previously obtained approval for the work of the branch issued by the Council of the Central Bank of Montenegro in compliance with the Law on Banks (Articles 139-144). Pursuant to Article 3 of the Law on Banks, the branch is part of a bank that does not have the status of a legal person, and conducts all or part of the activities of such bank.

For obtaining the approval for the work of a foreign bank branch office, pursuant to Article 140 of the Law on Banks, the application is submitted to the Central Bank of Montenegro. In addition to the application, the following documents are submitted:

1) statement from appropriate register of a country in which registered seat of a foreign bank is located, which cannot be older than 30 days;
2) statute or other appropriate document of a foreign bank;
3) policies and procedures of the foreign bank on risk management;
4) information on members of board of directors and other foreign bank bodies;
5) financial statements of a foreign bank for the last three years with opinion of external auditor;
6) evidence on long-term credit rating of a foreign bank, determined by an internationally recognized rating agency;
7) description of operations that a branch will conduct and a business plan for the following three years of operations;
8) information on foreign bank owners;
9) documents and information on foreign bank shareholders, legal persons owning more than 5% of voting stock, which specifically contain a statement of registration or other appropriate statement from public register, their related parties and their connected interest;
10) documents, data and information on foreign bank shareholders, natural persons owning more than 5% of voting stock, which specifically contain their names and addresses of permanent or temporary place of residence and other identification data, their related parties and their connected interest;
11) evidence that a foreign bank is included in a deposit protection system and information on the amount of protected deposit, as well as an evidence that a branch will be included in the deposit protection system in the country of a foreign bank minimum to the level and extent of coverage prescribed for banks operating in Montenegro,;
12) document of supervisory authority of a country in which registered seat of a foreign bank is located, which gives approval to a foreign bank to start with operations in Montenegro through a branch or appropriate document of such authority that such approval is not required pursuant to the regulations of that country;
13) data and information on persons who will conduct branch operations;
14) documentation on business premises and technical capabilities for branch operation.

In addition to the specified, the Central Bank may request from the foreign bank to submit additional information and data in the procedure for issuing the approval.

Upon obtaining the approval for the work of a branch, the obligation is prescribed of the branch of a foreign bank to perform its operations in Montenegro so that towards its parent bank (Article 144 of the Law on Banks) at any moment has payables above receivables.

For establishment of a daughter bank, subsidiary, there are no limitations regarding the freedom of establishment and operations in Montenegro.

**2. Are foreign credit institutions, once authorised, treated in every respect as a national undertaking?**

Upon obtaining the approval for work of the bank or approval for the work of a branch of foreign bank, the branch of foreign bank or bank in Montenegro have the same treatment as national bank.

**Legal framework:**

**Conditions of admission**

**3. What are the essential requirements for the authorisation to take up the business of credit institutions (legal form, level of own funds, number and conditions concerning the persons who direct the business, others?)**

The Central Bank of Montenegro issues the approval for work of the bank in compliance with the provisions of the Banking Law. The following are important requirements for obtaining the approval for work of the bank:

1) minimal monetary amount of founding capital is EUR 5 000 000 (Article 8 of the Banking Law);

2) legal form for the establishment of a bank is joint stock company; bank may have one founder and bank may be established by domestic and foreign legal and/or natural person (Article 7 of the Law on Banks);

3) documents necessary to submit with the application for issuing the approval for work (Article 21 of the Banking Law) are the following:
- authorization for a person who will cooperate with the Central Bank in the procedure of considering the application for a bank license;
- proposal of the statute;
- statement of the founders on the payment of monetary amount of the founding capital and evidences on sources of these funds;
- documents and information on legal persons with qualified participation in a bank, which specifically contain a statement of registration or other appropriate statement from public register, financial reports for the last three years with authorized external auditor opinion, their related parties and their connected interest, including data on parties that have significant influence based on ownership, or in any other way, on the operations of such group of related parties;
- appropriate document of the supervisory authority that there are on obstacles for a foreign bank or other financial institution to be founder of a bank;
- documents, data and information on natural persons with qualified participation in a bank, which specifically contain their names and addresses of permanent or temporary place of residence and other identification data, appropriate evidence on sources of monetary amount of founding capital, their related parties and their connected interest;
- biography data on proposed members of the board of directors that as a minimum contain the following: information on identification, professional qualifications and working experience and information on their achieved and planned education;

- business plan of the bank for the first three years of operations, which specifically contains an overall strategy of a bank, expected targeted market, projections of the balance sheet and income statement and cash flow projections;
- proposal of a strategy for capital management and strategy for risk management in a bank;
- documentation on technical capabilities and organizational structure, which specifically contains evidence on the use of business premises and equipment required for the performance of projected activities, proposal of rules and regulations on organization and job position scheme, and detailed description of organization of accounting and programme policy;
- in addition to the specified, the Central Bank may request additional information and data.

4) The bank is governed by the board of directors consisting of at least five members (Article 30 of the Banking Law);

5) Banking Law (Article 24) also determines the reasons for rejection of the issuance of the approval for work, and these are the following:
-prescribed or requested documentation and data have not been submitted by founders, or the submitted documentation contains untrue or inaccurate data;
- proposed bank statute is not in compliance with the law;
- the proposed members of the board of directors of the bank do not meet the requirements to be elected as members of the board of directors as determined by this Law;
- one or more founders owning more than 5% of participation in bank's capital or voting rights do not meet the conditions for acquisition of qualified participation in a bank as specified by this Law;
- the bank business plan is not done in a quality manner from the methodological point of view, the contradiction between particular elements of business plan is evident, or projected balance sheet and income statement of a bank or cash flows are not based on realistic assumptions;
- the ownership structure of a bank disables effective bank supervision;
- the law and other regulations in the country of bank founders disable supervision on consolidated basis.

**Conditions of operation**

**4. What are the provisions concerning prudential ratios:**

**a) solvency ratio;**

Solvency ratio, as a relative ratio of bank capital adequacy, is prescribed by the Banking Law (Official Gazette of Montenegro 17/08), and the manner for its calculation is regulated in more details by the Decision on Bank Capital Adequacy (Official Gazette of Montenegro 60/08).

The solvency ratio is the percentage ratio of bank's own funds to the sum of risk weighted assets for credit risk, market risks, operational risk and other risks.

Bank's own funds mean the sum of core elements of own funds (initial capital), supplementary capital I and supplementary capital II. The manner for calculating the amount of own funds is regulated in details by the Decision on Bank Capital Adequacy.

The methodology for calculating the total risk weighted assets for credit risk is prescribed by the Decision on Bank Capital Adequacy. Risk weighted assets for credit risk, for operational risk and for other risks are calculated by multiplying the required capital for such risks, calculated in accordance with the provisions of the Decision on Bank Capital Adequacy, by 10 (reciprocal value of solvency ratio).

Article 70 of the Banking Law prescribes that banks are obliged to maintain solvency ratio at the level that cannot be lower than 10%. In accordance with Article 71 of the Law on Banks, the Central Bank of Montenegro may determine a higher level of solvency ratio for a certain bank if it determines that the bank operates with excessive risk.

**b) liquidity ratio.**

Liquidity ratio is used as indicator for monitoring of the liquidity of the banks and it is defined by the Decision on Minimum Standards for Liquidity Risk Management in Banks (Official Gazette of Montenegro 60/08). Liquidity ratio of the bank is the ratio of the sum of liquid assets to the sum of due liabilities, and the bank is obliged to maintain the liquidity ratio so that the liquidity ratio amounts at least:

- 0.9 – when calculated for one working day;
- 1.0 – when calculated as average of liquidity indicators for all working days in one decade.

**Indicate the average level of these ratios for the industry.**

**5. Is there a deposit guarantee scheme? Describe the main elements of it.**

Scheme for protection of deposits exists in Montenegro from July 2003, when the Deposit Protection Fund was established pursuant to the Deposit Protection Law (Official Gazette of the Republic of Montenegro 40/03 and 65/05) (Annex 34).

Participation of the banks operating in Montenegro in the Deposit Protection Fund is obligatory, and at the moment all 11 banks are included in the deposit protection system.

In compliance with the applicable Law, the Deposit Protection Fund must, in the event of initiating bankruptcy procedure in a bank, which is the member of the Fund, provide payment of deposits up to the amount of EUR 5 000 to each depositor regardless of the type and number of deposits he/she has in the bank. Guaranteed amount encompasses corresponding interests to the day of adopting decision on opening bankruptcy procedure, and it is reduced by total amount of depositor's liabilities towards the bank.

In the annex of this answer, we are submitting the Deposit Protection Law (Official Gazette of the Republic of Montenegro 40/03 and 65/05) (Annex 34) where you may see the manner of regulation of each individual issue regarding deposit protection and manner of work of the Fund as responsible institution.

It should be noted that the draft of the new Deposit Protection Law is prepared, and it should enter into the Parliament procedure soon. The draft is prepared by the Deposit Protection Fund and the Central Bank of Montenegro and it represents the result of several month long efforts to fully apply all applicable principles of the European Directive 2009/14/EC. In the aforementioned draft, progressive growth of the guaranteed amount is planned: in 2010 it would amount EUR 20 000, in 2011 EUR 35 000 and from 2012 it would amount EUR 50 000 as it is prescribed by the aforementioned Directive. In addition, term for payment of guaranteed deposits is harmonized with the Directive, thus it is reduced from the applicable 90 days to 30 days, with the transition period – in 2010 the guaranteed deposits would be paid out within 45 days.

**6. What are the activities which a credit institution is authorised to carry on?**

Article 6 of the Law on Banks determines operations conducted by the banks. These are the banking operations defined as accepting cash deposits and approving loans for its own account by Article 3, paragraph 1 item 2 of the Banking Law. In addition to these operations, the bank may perform the following operations as well:

1) issue guarantees and assume other off balance sheet obligations;
2) purchase, sell and collect claims (factoring, forfeiting, etc.);
3) issue, process and record payment instruments;
4) domestic and foreign payment operations pursuant to the regulations governing the payment system;
5) financial leasing;
6) operations with securities in accordance with the regulations governing the securities;
7) trade on its own behalf and for its own account or for the client's account in:
- foreign means of payment, including exchange operations,
- financial derivatives;
8) safe keeping operations;
9) development of analyses and giving of information and advice on creditworthiness of business organizations and entrepreneurs, and other issues with respect to the operations;
10) offering safe deposit boxes;
11) activities that are part of banking operations, activities that are of ancillary nature in relation to the operations of the bank, and other activities directly related to the operations of that bank in accordance with the bank statute.

The bank may also perform, with the prior approval obtained from the Central Bank, other operations in accordance with law.

Article 25 of the Banking Law prescribes that the Central Bank in the decision on granting the license to the bank specifies operations that bank may perform.

Hereby we note that the Banking Law provides for the establishment and business operations of micro-credit financial institutions, credit unions and credit guarantee funds, as financial institutions allowed to perform credit operations, but not operations regarding collection of deposits.

Pursuant to Article 153 of the Banking Law, micro-credit financial institutions may perform the following activities:

a) grant loans for specified purposes for development projects to business organizations, for business improvement to entrepreneurs and specified purpose loans to natural persons, from its own funds and from the funds acquired on the money market;

b) invest in short-term securities issued by the Government of Montenegro and in other high quality short-term instruments of the financial market;

c) provide financial leasing services; and

d) provide consulting services.

Pursuant to Article 161 of the Banking Law, credit union may perform the following activities:

- receive deposits from Union members;
- grant loans to Union members, from their own funds, deposits of Union members and funds acquired on the money market;
- issue guarantees and undertake other similar activities for Union members;
- perform inland payment operations services for the Union members, in accordance with the agreement signed with the bank at which it has accounts for regular operations;
- invest available funds in short-term securities issued by the Government of Montenegro or other high-quality short-term instruments of the money market;
- provide financial leasing services for Union members.

**7. Which accounting prudential and statistical information is the bank required to give to the supervisory authority in respect of its business? Please indicate periodicity of such information.**

***Article 103 of the Law on Banks*** prescribes the obligation of banks, branches of foreign banks and micro-credit financial institutions and credit unions as well as other persons licensed by the Central Bank to prepare and in timely manner submit to the Central Bank correct reports and other data on their financial condition and business operations.

**I Accounting Reports**

***Article 100 of the Law on Banks*** proscribes the obligation of the banks to submit to the Central bank annual financial statements, with the report and opinion of an external auditor, within 150 days upon the end of the business year the report refers to.

Annual consolidated financial statements of the banking group, with the report and opinion of an external auditor, the superior company in the banking group must submit to the Central Bank within 180 days upon the end of the business year the report refers to.

Annual financial statements, pursuant to Article 2 of the Law on Accounting and Auditing (Official Gazette of the Republic of Montenegro 69/05 and Official Gazette of the Republic of Montenegro 80/08), encompass the following:

- Balance Sheet,
- Income Statement,
- Cash flow statement,
- Statement of equity,
- Accounting policies and notes to the Financial Statements.

**II Prudential and Statistical Reports**

Prudential and statistical reports make common database used for monetary and supervision purposes. Decision on Reports to be Submitted to the Central Bank of Montenegro (Official Gazette of Montenegro 68/08 and 41/09) determines types, form, contents and deadlines for submission of reports and other data submitted to the Central Bank of Montenegro, pursuant to the Law on Banks.

2.1 Bank Reports – types and periodicity of reporting

Daily reports

1) Report on available liquid assets, liabilities and performed payments,
2) Report on total number of orders and total amount within payment system,
3) Report on the cash balance.

Daily reports are submitted to the Central Bank on the following business day.

Decade report

- Report on liquidity ratio.

The Report is submitted to the Central Bank not later than five days from the end of the decade the report refers to.

Monthly reports

1) Report on condition and operations of the assets on accounts;
2) Report on data for credit risk monitoring;
3) Report on monetary assets and deposit accounts at deposit institutions;
4) Report on securities held to maturity;
5) Report on credits and claims based on leasing operations;
6) Report on credits and leasing operations that are in delay with repayment;
7) Report on credit structure by purpose;
8) Report on credit and leasing operations with natural persons;
9) Deposit Report;
10) Report on deposits and credits by business activities;
11) Report on taken loans;
12) Report on investments in equity of other legal persons;
13) Report on reserves for potential losses;
14) Report on claims and obligations towards banks and financial institutions under bankruptcy and liquidation – balance and off-balance items;
15) Report on weighted average deposit interest rates;
16) Report for credit risk monitoring;
17) Report for liquidity risk monitoring.

The reports are submitted to the Central Bank not later than eight days upon the end of the month the reports refer to.

Quarterly reports

1) Report on bank's own assets;
2) Report on necessary capital of the bank for credit risk, market risks and country risk;
3) Report on solvency ratio of the bank;
4) Balance sheet with additional forms;
5) Income statement;
6) Report for credit risk monitoring ;
7) Report for market risk monitoring ;
8) Report for liquidity risk monitoring ;
9) Report on shareholder structure of the bank.

The reports are submitted to the Central Bank at the latest within 20 days upon the end of the quarter the reports refer to.

Exceptionally, the reports for the final quarter of the business year, the bank must submit to the Central Bank based on the final data at the latest by February 15$^{th}$ of the following year.

Annual reports

Annual reports on business operations of the bank must contain at least the following:

1) review and assesment of operating conditions of the bank;
2) information on important business events;
3) information on relations with other legal persons;
4) information on work of the Board of Directors;
5) review of organization and personnel;
6) review and assesment of business operations and financial position;
7) review of development investment activities for the next investment period.

Annual report on business operations of the bank is submitted to the Central Bank with the annual financial statements of the bank.

**8. Is there a specific regulation concerning the annual accounts and consolidated accounts of banks? Explain the main rules applying to the format of the balance sheet and to the publication of the annual accounts.**

Obligation of preparing annual financial statements of banks arises from Article 6 of the Law on Accounting and Auditing (Official Gazette of Montenegro 69/05), which prescribes that all legal persons are obliged to prepare financial statements and consolidated financial statements as of 31st of December of the business year, or on the day of the registration of status changes (merger, acquisition, division), as well as on the day the decision on voluntary liquidation of the legal person is made. Financial statements, in terms of the above mentioned Law are:

- balance sheet;
- income statement;
- cash flow statement;
- statement of equity;
- accounting policies and notes to the financial statements.

Article 93 of the Banking Law prescribes that banks are obliged to keep business books, draw up accounting statements, evaluate assets and liabilities and prepare financial statements in accordance with this Law, regulations adopted under this Law, International Accounting Standards and International Financial Reporting Standards.

In accordance with Article 3 of the Law on Accounting and Auditing, legal persons are obliged to prepare financial statements in compliance with the International Accounting Standards (IAS), or International Financial Reporting Standards, in the form aligned with the above mentioned standards.

Decision on Financial Statements Submitted to the Central Bank under the Banking Law (Official Gazette of Montenegro 68/08) prescribes the forms of the Balance Sheet and the Income Statements for banks, in compliance with IAS/IFRS.

Under Article 100 of the Banking Law, banks are obliged to submit annual financial statements, with the report and opinion of an external auditor, to the Central Bank within 150 days since the end of the business year to which the report refers to. The superior company in a banking group is obliged to submit annual consolidated financial statements of a banking group, with the report and opinion of an external auditor, to the Central Bank within 180 days from the end of the business year to which the report refers to.

Under the Law on Accounting and Auditing, annual financial statements of banks and reports on audits conducted with the auditor's opinion are published on the website of the Commercial Court. In addition, in accordance with Article 100, paragraph 3 of the Banking Law, a bank, or a superior company are obliged to publish a shorter version of the auditor's report in a minimum one daily newspaper distributed on the territory of Montenegro

**9. How are capital requirements determined? Can banks use their own models for determining risk and regulatory capital?**

On the basis of authorizations from the Banking Law, the Central Bank of Montenegro adopted a Decision on Capital Adequacy of Banks, in September 2008 (Official Gazette of Montenegro 60/08). In accordance with this Decision, banks use methodologies for calculating capital requirements which represent the implementation of methodologies contained in the Directive 2006/48 EC. Banks are obliged to implement a standardised approach for calculating capital requirements for credit risk. All the approaches contained in the Directive 2006/48, excluding internal models, are prescribed for calculations of capital requirements for market risks. Banks can use a simple approach (basic indicator approach) and standardised approach for calculations of capital requirements for operational risk. Banks are obliged to use methodology prescribed by the

Decision on Methodology for Calculations of Capital Requirements for Country Risk in Banks (Official Gazette of Montenegro 60/08) for the calculation of capital requirement for country risk. Banks can independently determine the methodology for calculating capital requirements for other risks for which there is no methodology prescribed.

The Banking Law prescribes the authorization of the Central Bank to determine, by a special regulation, conditions under which banks may use internal models for calculating capital requirements. That regulation has not been adopted yet, but it is planned to be adopted by the end of 2010.

**10. Is there a regulation concerning the capital adequacy relating to risks other than credit risks?**

Decision on Capital Adequacy of Banks (Official Gazette of Montenegro 60/08), in addition to the capital requirements for coverage of credit risk, contains provisions which refer to capital requirements for market risk exposure (position risk, settlement risk and counterparty risk) and operational risk.

Decision on Methodology for Calculations of Capital Requirements for Country Risk in Banks (Official Gazette of Montenegro 60/08) prescribes the methodology which is used by banks for calculating capital requirement for country risk coverage.

Article 153 of the Decision on Capital Adequacy of Banks obliges banks to establish a proper internal methodology for establishing the amount of required capital for risks for which the Central Bank has not established appropriate methodologies for calculating capital requirements (banking book interest rates risk, liquidity risk, reputation risk, reconciliation risk, and the like), taking into account its risk profile, risk management system and risk mitigation techniques.

The total amount of capital requirement of a bank, defined by Article 158 of the Decision on Capital Adequacy represents a sum of:

1) required capital for credit risk, market risks, and operational risk, calculated by implementing methodologies set out in this Decision,
2) required capital for country risk calculated in accordance with the Central Bank regulation prescribing the methodology for the calculation of required capital for country risk,
3) required capital for other risks calculated by implementing selected methodologies.

**11. Is there a regulation concerning the large exposures? Describe the main elements of it.**

The term „large exposure" is defined by Article 58, paragraph 3 of the Banking Law which stipulates that the exposure of a bank to one party or a group of related parties is considered large if it is equal to or larger than 10% of bank's own funds.

The exposure of a bank to one party or a group of related parties is defined as the total amount of all bank claims on loans and other assets, including the amount of off-balance sheet obligations and uncollected assets written off, decreased by the amount of claims that is secured by qualitative instruments of security of claims, in accordance with the regulation of the Central Bank. Article 10 of the Decision on Minimum Standards for Credit Risk Management in Banks (Official Gazette of Montenegro 60/08) prescribes that the calculation of total exposures does not include the following:

1) exposure to the Government of Montenegro and governments and central banks of OECD countries which have “A” rating or higher, determined by the external institution “Standard & Poor’s”, or the equivalent rating determined by another recognized external institution;
2) exposures which are secured by:
- unconditional guarantees issued by the Government of Montenegro, or by governments and central banks of OECD countries which meet the requirement from paragraph 2, item 1 of this Article;
- unconditional guarantees issued by banks which have “A” rating or higher, determined by the external institution “Standard & Poor’s”, or the equivalent rating determined by another recognized external institution;
- cash deposit in convertible currencies, up to the amount of deposited funds, provided that the funds are deposited in the bank, and only the bank can manage these assets up to the amount of due uncollected claims, and the deadline for the payment of the deposit expires only after the full settlement of obligations of the debtor;
- a collateral in form of securities which are issued by governments or central banks of OECD countries, whose market value is higher than the uncollected amount of exposure in the minimum of 25%;
- collateral in the form of money market instruments issued in developed financial markets, whose market value is in the minimum of 30% higher than the unsettled amount of credit, with the approval of the Central Bank.

Total exposure to one party, or a group of related parties, can not be higher than 25% of bank’s own assets, and the sum of all large exposures of a bank can not be higher than 800% of bank’s own assets.

**12. Is there a regulation concerning the supervision on a consolidated basis? Describe the main elements of it.**

Bank supervision on a consolidated basis is regulated by the Banking Law and the Decision on Methods of Preparation of Consolidated Financial Statements of Banking Group (Official Gazette of Montenegro, 29/09). These regulations contain provisions related to the identification of a banking group, consolidation methods, reporting to supervisors by banking groups and implementation of regulatory norms and limits.

Article 3, item 16 of the Banking Law defines a banking group as a group of related parties in which a bank or a financial holding with a head office in Montenegro is superior in relation to one or more banks, financial institutions or other parties providing financial services, the operations of which are governed by other laws. In addition, the Banking Law (Article 3, items 18, 19 and 20) defines the following terms: financial holding, superior financial holding in a banking group and mixed holding.

Provisions of the Banking Law (Articles 130 - 135) prescribe the manner of performing supervision (direct and indirect), define the party obliged to report on a consolidated basis and conditions for excluding certain members of a banking group from consolidation.

Article 137 of the Banking Law prescribes the obligation of a superior bank in a banking group to provide that the following operating indicators of the banking group, reported on the consolidated basis, do not exceed the limits stipulated for banks by the law and regulations of the Central Bank:

1) solvency ratio,
2) investments in capital, real estate and fixed assets,
3) exposure to individual party or groups of related parties,
4) sum of large exposures,
5) exposure to bank related parties.

Article 3 of the Decision on Methods of Preparation of Consolidated Financial Statements of Banking Group prescribes the following methods of consolidation:

- Financial reports of inferior members of a banking group under the control of a superior bank, or the superior financial holding, are included in consolidated financial statements of the banking group by implementing the method of full consolidation, except financial statements of insurance companies, investment fund management companies and voluntary pension fund management companies.
- Participation of a bank in inferior members of a banking group which are insurance companies, companies for management of investment funds or voluntary pension funds are presented in consolidated financial statements of a banking group on the basis of the participation method.
- Financial statements of inferior banking groups members in which the superior bank, or the superior financial holding, participates in capital from 20% to 50%, are included in consolidated financial statements of the banking group by implementing the participation method.
- Exceptionally, a bank may use a method of proportional consolidation for an inferior member of the banking group, if it can prove to the Central Bank of Montenegro (hereinafter: the Central Bank) with documentation that the responsibility of the superior member of the banking group is limited only to a share of capital it owns, having regard to the responsibility of other shareholders of the inferior member, whose solvency must be satisfactory.
- Proportional consolidation can also be applied to shares in capital of a bank or financial institution managed by the banking group member in Montenegro, along with one or more banks or financial institutions which are not members of the banking group of Montenegro, if the responsibility of those parties is limited to the level of their participation in capital of that party.

Bank obliged to report on a consolidated basis submits the following reports to the Central Bank:
- unaudited consolidated financial statements of the banking group and statements on operating indicators of the banking group as of 30 June of the current year – not later than 90 days following that of their preparation.;
-annual audited consolidated financial statements and statements on operating indicators of the banking group as of 31 December of the current year, within 180 days following that of their preparation.

**13. Are the institutions issuing electronic money regulated? If so, in which way?**

Institutions issuing electronic money are not regulated by existing regulations for the time being.

We would like to indicate that drafting of the Electronic Money Institutions Law was envisaged by the plan of activities for 2008, in compliance with the Directive 2000/46 EC.

However, after being informed of the activities of the European Commission to amend the above mentioned Directive, it was decided that the matter of electronic money be regulated by a special regulation after the adoption of the new Directive.

**Supervisory authorities**

**14. Which is the competent authority to grant a license to a credit institution and to supervise it? Please indicate name and address. Has this authority other functions? Which? Does the supervisory authority publish an annual report? If so, could it provide the Commission with a copy or a summary in one of the EU languages?**

The competent authority for granting licenses to credit institutions and supervision over their work is the Central Bank of Montenegro. Competence of the Central Bank for performing these functions is based on the provision of Article 143 of the Constitution of Montenegro, which determines that the Central Bank of Montenegro is an independent organization, responsible for monetary and financial stability and functioning of the banking system. The Central Bank of Montenegro Law, in Article 11, paragraph 1, item 1 determines the competence of the Central Bank to grant and revoke licences for operation of banks and financial institutions as well as to regulate and supervise their operations.

The head office of the Central Bank is in Podgorica, Petar Cetinjski Boulevard No.6.

In addition to the authorities for granting operating licenses to banks and financial institutions and to regulate and supervise their operations, the Central Bank of Montenegro also has other functions determined by the Central Bank of Montenegro Law, Article 11, and those are the following:

1) carry out the bankruptcy and liquidation procedures of banks and financial institutions;
2) grant loans from its reserves to banks licensed to operate in Montenegro, under the conditions determined by this Law;
3) prescribe and take measures, regulate and supervise the payment system, settlement and inter-bank clearing in Montenegro;
4) perform and supervise the payment system in the country and with foreign countries;
5) act as a banker, adviser and fiscal agent of bodies and organizations of Montenegro;
6) purchase and sell currencies and precious metals for its own account or for the account of Montenegro;
6a) buy and sell securities, at the secondary market, issued by Montenegro, a European Union Member state, or other state designated in a regulation of the Central Bank;
7) perform regular macroeconomic analysis, including monetary, fiscal, financial analysis and the analysis of balance of payments of the economy of Montenegro, and give recommendations to the Government in the field of economic policy;
8) prepare and participate in the preparation of laws and other regulations from monetary, foreign exchange and banking system, in accordance with international standards, including determination of reserves for different types of deposits;
9) provide banking services on behalf of foreign governments, foreign central banks, as well as on behalf of international organizations and other international institutions in which the Central Bank or Montenegro participate;
10) accept deposits from banks, state bodies and organizations;
11) open and keep accounts for the needs of state bodies and organizations, domestic and foreign banks, international financial institutions and donor organizations;
12) prescribe the manner of performing activities of dealers and banks in foreign exchange transactions, determine limits on foreign exchange positions of dealers and banks and supervise them;
13) may own and manage one or more payment systems including a system of real time gross settlement of big payments;
14) may manage a system of net settlement of small value payments;
15) provide notes and coins in quantities adequate for fulfilling the needs of financial transactions;
16) perform other operations determined by this and other laws.

Central Bank of Montenegro publishes its annual reports on a regular basis which encompass the entire activity on all functions determined by the Law, including supervisory activities with all relevant information. The report is also published in English language and it is enclosed with this answer.

**15. Does the supervisory authority have institutional cooperation with other domestic supervisory authorities and with home supervisory authorities of foreign banks present in the market?**

The Central Bank carries out an efficient cooperation with other domestic supervisory bodies. The Central Bank has concluded bilateral agreements on mutual cooperation with the Administration for the Prevention of Money Laundering and with the Deposit Insurance Fund. In addition, the Central Bank has concluded a multilateral agreement on cooperation towards the preservation of financial stability with the Ministry of Finance and Deposit Insurance Fund.

In respect of home countries of foreign banks operating on the territory of Montenegro, the Central Bank signed the Agreement on Cooperation with: Bank of Slovenia, National Bank of Serbia, Hungarian Financial Supervisory Authority, Bank of Greece, and Bank of France. The Agreement is not signed only with the Bank of Austria although signing of this Agreement was initiated several times by the Central Bank of Montenegro

**16. Explain how do the Montenegrin supervisory authorities coordinate with the European Central Bank and other countries' Central Banks, notably home supervisory authorities of foreign banks established in Montenegro?**

The Central Bank of Montenegro has signed the Agreement on Cooperation with: National Bank of Serbia, Bank of Slovenia, Bank of Albania, National Bank of the Republic of Macedonia, Hungarian Financial Supervisory Authority, Central Bank of Bosnia and Herzegovina, Banking Agency of the Republic of Srpska and Banking Agency of Bosnia and Herzegovina, Central Bank of the Russian Federation, Supervisors of South-East Europe (Bank of Greece, Bank of Albania, Bulgarian National Bank, Central Bank of Bosnia and Herzegovina, Central bank of Cyprus, National Bank of the Republic of Macedonia, National Bank of Romania, National Bank of Serbia, Banking Agency of Bosnia and Herzegovina, Banking Agency of the Republic of Srpska) and the Bank of France.

Central Bank of Montenegro is a member of the Group of Banking Supervisors from Central and Eastern Europe (BSCEE Group). The Central Bank of Montenegro cooperates intensively with the members of BSCEE group, participates in the preparation of Annual Report and meets undertaken obligations on the plan of strengthening regional cooperation in the area of bank supervision with other members, organizes meetings with other supervisors on a regular basis, as well as bilateral contacts on different managerial levels, and has its own representative not only in BSCEE, but also in a number of other European forums, committees and working groups.

CBM does not have an established cooperation with the ECB which would be carried out in continuity, or according to established procedures, but it is based on meeting ad hoc requirements of ECB. In this respect, CBM cooperates with EU Neighbouring Regions Division to which data from 2004 on the level of deposits and loans (in Euros) are submitted within the preparation of the Review of the International Role of the Euro.

Central Bank of Montenegro is a member of Central Bank Governors Club in the region of Black Sea, Balkans and Central Asia. The membership in this organization ensures the Bank further strengthening of regional cooperation in monetary, financial and banking area and establishment of closer relations with central banks from the region.

**17. What specific measures have been taken in order to improve the evaluation of credit risk and the quality of the loans' portfolios? Are international standards in relation to the recognition of bad debts and provisioning in place?**

Decision on Minimum Standards for Credit Risk Management in Banks (Official Gazette of Montenegro 60/08), adopted in 2008, prescribes the minimum standards for credit risk management in banks. This Decision prescribes the obligations of banks in matters of credit risk management, including obligations related to credit requests analysis, credit risk measurement, analysis of the entire credit portfolio, securing adequate diversification of credit portfolio, as well as the procedures for the improvement of position of credit portfolio in banks.

Amending the Decision on Minimum Standards for Credit Risk Management in Banks from June 2009 (Official Gazette of Montenegro 41/09) in the part of the treatment of assets and off-balance sheet obligations according to the days of delay, this regulation is aligned with Basel Standards according to which the non-quality assets represent claims for which there is a delay in payment over 90 days, as opposed to different solutions from the Decision according to which the non-quality assets were treated as claims for which the debtor delays the payment for the period exceeding 60 days. In addition, the amendments to the Decision define that claims which are delayed for a period exceeding 270 days are classified in the category of "loss", as opposed to the earlier decision which defined that claims being delayed for a period exceeding 180 days are classified in the same category. Data on assets rating are submitted to the CBM on a monthly basis through a new system of reporting which entered into force in March, 2009.

Furthermore, data from the Regulatory Credit Bureau, containing the information on indebtedness, including potential obligations, regularity in paying off the credit, for all bank clients and micro-credit financial institutions in Montenegro, are available to banks from January 2008. These data represent a good basis for higher quality risk management in banks or a better assessment of credit capacity of potential borrowers.

International Standards in relation to the recognition of bad debts and provisioning are not implemented in Montenegro, but domestic standards determined by the Decision on Minimum Standards for Credit Risk Management in Banks are being implemented, which prescribe the manner and criteria for rating of assets and off-balance-sheet items, as well as allowance for potential credit losses according per asset items.

**18. Are there particular areas of difficulty in banking supervision? What is the degree of independence of the supervisory authorities and how has this changed in recent years and/or are expected/planned to change? How efficient is co-ordination of supervisory authorities and institutions?**

Pursuant to the Constitution of Montenegro, the Law on Central Bank and the Law on Banks, supervision of banks is performed by CBM, being an independent organization, responsible for monetary and financial stability and functioning of the banking system. The Law regulates and establishes competences of the Central Bank in resolving and decision making regarding individual crucial matters of banking system functioning. The need to re-examine certain legal solutions has been noticed with the aim of further strengthening regulatory and supervisory function of the Central Bank of Montenegro. In this respect, the Ministry of Finance and the Central Bank, with the consultant assistance of the World Bank and the International Monetary Fund, are preparing the text on amendments to the laws in the area of banking system, which should complete the regulatory framework, as well as to perform additional harmonization with directives regulating the banking system.

The subject of special attention of amendments to the Law on Banks will be:

- defining of related persons, in accordance with the provisions of EU Directive 2006/48; requirements which must be met by candidates for members of the Board of Directors of banks;
- regulation of gaining qualified participation in banks, pursuant to Article 9 of the EU Directive 2006/48;
- authorities of the Central Bank in implementing interim administration in banks as a procedure for bank rehabilitation with the aim of full protection of depositors and creditors;
- imposing corrective and coercive measures by the CBM.

From the aspect of operational activities of the Central Bank problems do not arise in the supervision of banks. Relation of banks towards the supervisory body can be estimated as a cooperative and acceptable one. Measures imposed by the supervisory body are accepted and implemented by banks with a high degree of responsibility and implementation. Since 2001, only two cases exist when banks initiated court proceedings (administrative dispute) against a

resolution made by the supervisory body in the process of bank supervision. In addition, cases of prevention or obstruction of supervisory procedure by banks have not been recorded.

Central Bank of Montenegro, which is also the supervisory body of the banking system, is established and constituted by the adoption of the Law on Central Bank of Montenegro in 2000. That Law determines the Central Bank as the independent organization of the Republic (the State of Montenegro) and the only Bank responsible for monetary policy, establishment and maintenance of a sound banking system and efficient payment operation system in Montenegro. Article 2 of this Law fully defines and establishes the independence of the Central Bank by an explicit provision which is: “The Central Bank acts independently within the limits of its authorities determined by this Law”.

It is necessary to emphasize that the Law on Central Bank of Montenegro was adopted before the declaration of independence of Montenegro (2006), and before the adoption of the Constitution of Montenegro (October 2007). The Constitution of Montenegro has completely established the independence of the Central Bank of Montenegro and stipulated, by Article 143, the Central Bank as the independent organization, responsible for monetary and financial stability and functioning of the banking system.

Acknowledging the fact of the legal system development based on the Constitution of Montenegro and harmonization of laws with the Constitution of Montenegro, a procedure of developing a new Law on Central Bank of Montenegro is in progress.

Furthermore, with the aim of completely defining mutual relations with these institutions, the Central Bank has concluded bilateral agreements on mutual cooperation with the Administration for Prevention of Money Laundering and Deposit Insurance Fund, while it concluded multilateral agreement with the Deposit Insurance Fund and Ministry of Finance.

**19. How many professionals are employed by the supervisory authority? What are the professional qualifications required?**

Supervisory Department employs professional staff in the total number of 39 employees. General requirements which are to be met by employees refer to the university degree and adequate duration of work experience.

Depending on the position assigned to the employee, he/she – independent associate, associate and supervisor must have the minimum of one year of work experience, a higher supervisor the minimum of two years of work experience, heads of divisions and special advisors – minimum of three years of work experience, while the directors of directorates and departments must have a minimum of five years of work experience.

Furthermore, in addition to meeting the above mentioned general requirements, an employee must have appropriate specialist knowledge depending on the position he/she is assigned to (specialist banking knowledge and knowledge for using the software package: risk assessment, statistical package, portfolio management and as well as English language knowledge, passed judicial exam).

**20. What powers does the supervisory authority possess in order to require supplementary periodical information? Can the authority carry out on the spot verification?**

Article 45 of the Central Bank of Montenegro Law (Official Gazette of the Republic of Montenegro 52/00, 53/00, 47/01 and 04/05) stipulates that, upon the request of the Central Bank, banks and financial institutions having the licence to operate are obliged to submit information concerning their operations and financial position, without delay, in the manner prescribed by the Central Bank. The CBM is authorized to perform direct supervision of banks on the spot.

**21. Can the supervisory authority ensure that managers and directors act in a fit and proper way? Intervene if they do not?**

Pursuant to Article 32 of the Banking Law, authority of the Central Bank to issue approvals for members of the Board of Directors of a bank is determined, if it "estimates that the candidate meets the requirements for the appointment for a member of the Board of Directors".

The Council of the Central Bank has determined the Guidelines for the assessment of meeting the requirements for candidates for membership in the Board of Directors, with the aim of providing legal security and transparency in operations and decision making in the course of assessing the meeting of requirements for the membership in the Board of Directors of the bank, which are publicly disclosed and submitted to all banks in Montenegro.

In addition, the Central Bank has the possibility and obligation to revoke the approval for a member of the Board of Directors if it assesses that it is issued on the basis of false information or if any of the circumstances from Article 31 of the Banking Law arise (limitations for the appointment of the member of Board of Directors).

In performing the supervisory function, the Central Bank has the possibility to undertake a measure against a bank – request for the bank to suspend or replace a member of the Board of Directors of the bank or a member of the managing body. In addition, the Central Bank has the possibility to punish financially the executive directors and members of the Board of Directors, by obliging them to pay a certain amount of cash to the Deposit Insurance Fund, in the amount of two fold to ten fold of the amount of average net salary of bank employees.

In the course of drafting the amendments to the Law on Banks, the subject of special attention will be the issue of regulatory framework which defines the procedure and criteria for issuing approvals for a member of the Board of Directors of the bank for the purpose of its further promotion.

**22. What are the powers of intervention of the supervisory authority in case of undertakings in difficulties? Under what circumstances may the authorisation of a credit institution be withdrawn?**

Pursuant to Article 83 of the Banking Law, the Central Bank has the possibility to restrict or limit payment of dividends to shareholders or interest payment on other elements of its own funds, if the payment of dividends jeopardizes or would jeopardize capital adequacy, liquidity or bank's operations.

Article 116, paragraph 2 of the Banking Law envisages that the Central Bank, before undertaking other measures determined by this Law, may prohibit the bank, by way of an order, to engage in one or more activities specified in the respective license or approval issued by the Central Bank, if the level of the bank's own funds, solvency ratio and/or other capital adequacy indicators of the bank are under the prescribed level.

In accordance with Article 120 of the Banking Law, the Central Bank introduces interim administration in a bank if the level of bank's own funds and/or solvency ratio is below an amount equal to one half of the prescribed level. In addition, the Central Bank may, pursuant to the same Article, introduce interim administration in a bank if:
1) the bank has been ordered to undertake one or more measures referred to in Article 116, paragraph 3 of this Law, and the bank has not carried out completely the ordered measures within the time limit prescribed for their enforcement;
2) bank's own funds and/or solvency ratio are below an amount equal to two thirds of the prescribed level;
3) it has been determined, during the period allowed for eliminating irregularities in bank's operations, that the bank has become illiquid or the bank's liquidity has worsened down to the level that threatens interests of depositors and other creditors of the bank.

In accordance with Article 129 of the Banking Law, the Central Bank revokes operating licences if:

a) the bank has been acting, a number of times or for a longer time, contrary to the Law, other regulations or standards of prudential operations, thereby threatening the safety of deposits;
b) the license was issued on the basis of false information;
c) the bank no longer meets the requirements under which the license was granted;
d) application for registration in the Central Registry of the Commercial Court was not submitted within the prescribed time limit or the bank did not start performing banking operations within 60 days since the day of the registration.
Also, the Central Bank may revoke licences if:
e) it determines that the bank has committed one or more violations of provisions of law;
f) the bank does not meet its obligations with respect to deposit protection;
g) the bank ceased to engage in deposit taking and lending operations for more than six months, or if it performs these operations in a scope significantly disproportionate to earlier or planned volume of such operations.

In addition to the above mentioned measures against banks with difficulties, Bank Bankruptcy and Liquidation Law (Official Gazette of the Republic of Montenegro 47/01 and Official Gazette of Montenegro 62/08), authorises the Central Bank to decide upon initiating the bankruptcy procedure of the bank, when the bank is insolvent, under the Banking Law, and when the bank has reached the position of illiquidity for a period of more than 90 days continuously, or discontinuously in the period of 120 days.

After revoking the licence for bank operation, the procedure of liquidation in a bank is conducted in accordance with the Bank Bankruptcy and Liquidation Law.

**23. Do you apply any special measure for the supervision of financial conglomerates, as defined in Directive 2002/87/EC? If so, please describe them.**

Existing legal regulations and secondary legislation in Montenegro do not define special measures for supervising financial conglomerates, under the Directive 2002/87/EC. It needs to be pointed out that financial conglomerates do not exist in the existing structure of financial system of Montenegro, in the terms of the above mentioned Directive.

**24. How is the operational independence of the supervisory authority ensured, in line with international standards (Basle Committee, the International Organization of Securities Commissions (IOSCO) and the International Association of Insurance Supervisors ... - IAIS core principles)?**

Constitutional position of the Central Bank of Montenegro, as an organization that performs bank supervision, is determined by Article 143 of the Constitution of Montenegro, which defines the Central Bank of Montenegro as an independent organization, responsible for monetary and financial stability and functioning of the banking system.

Article 2 of the Law on Central Bank of Montenegro stipulates that the Central Bank of Montenegro is “independent within the limits of its authorities determined by this Law”.

Central Bank is managed by the Council of the Central Bank which consists of four executive officers and three external members appointed by the Parliament of Montenegro. Member of the Council of the Central Bank may be relieved from duty by the Parliament of Montenegro, solely due to reasons determined by Article 23 of the Central Bank of Montenegro Law.

Central Bank finances its operations independently, generating revenues from fees for performing supervisory function determined by the Decision on the Central Bank Fee for Performing the Supervisory Function (Official Gazette of Montenegro 48/08), generating revenues from services, determined by the Decision on Central Bank Rates for Charging Services (Official Gazette of Montenegro 37/01 and 53/03) and other revenues from its operations.

Central Bank is independent in determining revenues and expenditures, and the financial plan, in accordance with Article 56 of the Central Bank of Montenegro Law, is submitted to the Government of Montenegro, solely for purposes of providing information.

**25. Are professionals employed by the supervisory authority subject to limitations (time or other) regarding the possibility to be employed as senior staff in commercial banks? Please explain.**

Limitations of employment in commercial banks for employees of the Central Bank of Montenegro are prescribed by the Central Bank of Montenegro Law, as well as by the Banking Law. In that manner, Article 27 of the Central Bank of Montenegro stipulates that a member of the Council of the Central Bank may not be an official person or an employee in a bank operating in Montenegro one year after his/her term of office in the Council has ended.

In addition, Article 31, paragraph 1, item 3 of the Banking Law prescribes that the member of the Board of Directors of a bank may not be a person who has been employed in the Central Bank for the previous 24 months, concerning activities which would give that person the access into information on banks' operations which are considered a secret and the knowledge of which might lead to the competitive advantage over other banks.

# *II. INSURANCE AND OCCUPATIONAL PENSIONS*

**General questions**

**26. What is the current situation with regard to right of establishment and cross-border supplies of services in your country for EU insurance companies? Which conditions apply?**

Article 4 of the Law on Insurance (Official Gazette of the Republic of Montenegro 78/06 and 19/07) prescribes that insurance activities can be performed only by a company having the status of a legal person and established on the territory of Montenegro and licensed by the Insurance Supervision Agency. All insurance companies with registered office outside Montenegro are entitled to establish an insurance company on the territory of Montenegro in accordance with the aforementioned provision of the Law.

Property and persons in Montenegro can be insured only by companies established in accordance with law.

Exceptionally, aircraft and sea transportation above compulsory transportation insurance and foreign persons with permanent and temporary residence in Montenegro may be insured by foreign insurance companies.

Performance of these activities by representative offices of companies with their registered offices abroad, that would open their branch offices without the status of a legal person in Montenegro, would be allowed by harmonisation of this Law with the Directives regulating this area, envisaged to happen by 2012.

**27. Are foreign insurance companies, once authorised, treated in every respect as a national undertaking?**

Taking into consideration that all insurance companies in Montenegro are established as joint stock companies in accordance with the provisions of the Law on Insurance (Official Gazette of the Republic of Montenegro 78/06 and 19/07) and the Law on Business Organisations (Official Gazette of the Republic of Montenegro 06/02, 17/07 and 80/08), they all have the equal treatment.

**28. Is there a legal monopoly in one or more insurance branches (e.g. motor insurance)?**

There is no legal monopoly in one or more insurance branches.

**Legal framework**

**Supervisory Authority**

**29. What is the set-up and structure of the financial supervisory authority in your country? Who supervises the insurance company's business overall, its state of solvency and its technical provisions and the assets covering them (please indicate name and address)?**

In accordance with the Law on Insurance (Official Gazette of the Republic of Montenegro 78/06 and 19/07), an independent regulatory body has been established to perform supervision of insurance activities -

Insurance Supervision Agency
Kralja Nikole Street 27a/III, Podgorica
Montenegro

It is founded by the Republic and the rights on behalf of the founder are exercised by the Agency Council. Managing bodies in the Agency are the Council consisting of three members and Director, and its organisation is divided into three departments: Insurance Market Supervision Department; Regulations, Development and Cooperation Department; and General Affairs Department. The existing job description act envisages jobs for 16 persons.

The Insurance Supervision Agency performs supervision of the performance of the entire insurance activity especially insurance companies, in accordance with specific laws regulating this area – Law on Insurance (Official Gazette of the Republic of Montenegro 78/06 and 19/07), Law on Compulsory Transportation Insurance (Official Gazette of the Republic of Montenegro 46/07), and the Law on Bankruptcy and Liquidation of Insurance Companies (Official Gazette of the Republic of Montenegro 11/07), as well as secondary legislation adopted on the basis of the aforementioned laws and general regulations governing the operations of business organisations

**30. What powers does the supervisory authority have**

**a) in order the require the necessary supplemental information**

a) The Insurance Supervision Agency may require additional documentation, beginning from the initiation of the procedure for issuing licences to do business to all entities to be engaged in insurance activity and to all persons performing these activities and who are subject to the supervision of the regulatory body, always when there is a need to do so, within the deadline and in the manner determined by the Agency.

**b) to carry out on-site inspections**

The Insurance Supervision Agency is authorised to carry out indirect (offsite) and direct (onsite) controls of operations of insurance companies:
1) by inspecting general acts, business policy acts and business books of insurance companies, as well as by inspecting all other acts, documentation and data regarding the operations of insurance companies;
2) by acquiring information and explanations regarding the operations of insurance companies, from members of the Board of Directors, internal auditor, authorised actuary and management, who are obliged to provide them within their scope of work;
3) by temporary seizing the documentation indicating the activities having the elements of a criminal offence, economic offence or administrative offence.

**c) in order to ensure that managers work in a fit and proper way**

The Agency gives a prior consent to members of the Board of Directors and Executive Director, in accordance with the Law on Insurance (Official Gazette of the Republic of Montenegro 78/06 and 19/07) and the Rulebook on more detailed requirements for issuing licenses for performing insurance activities, insurance brokerage, insurance agency and insurance ancillary services

(Official Gazette of the Republic of Montenegro 08/07). The following requirements must be met: professional qualifications and working experience in the same or similar activities, not to be convicted, not to have a share in other insurance companies, not to be related with a legal entity in which the insurance company has qualified participation, not to be a member of management in the company under bankruptcy or liquidation proceedings or whose license was revoked.

**d) in case of insolvency**

In case of insolvency, the measures can be imposed to ensure liquidity, match guarantee reserve and solvency margin, temporary prohibit or limit the disposition of the property, order the transfer of portfolio to another insurance company, introduce interim administration, or initiate bankruptcy proceedings in accordance with the Law on Bankruptcy and Liquidation of Insurance Companies (Official Gazette of Montenegro 11/07).

**e) to sanction and remedy violations of the law?**

In case of violation of the law, the Agency may impose measures for removing illegalities and irregularities in operations, measures imposed due to incompliance with the rules on risk management, propose the initiation of administrative offence or criminal procedure, propose special measures against responsible persons, introduce interim administration and revoke the license for performing some or all insurance activities that the licence is issued for (Article 129, paragraph 1 of the Law on Insurance).

**31. How many actuaries are employed by the supervisory authority?**

The Agency currently does not employ any actuaries, consultants are engaged to perform such activities and two persons employed with the Agency are being trained to perform actuary work.

**32. What are the requirements of professional secrecy with respect to the members of the supervisory authority?**

Article 189 of the Law on Insurance (Official Gazette of the Republic of Montenegro 78/06 and 19/07) prescribes that all employees of the Agency, as well as members of the Council, have the obligation to keep the data on entities subject to supervision performed by the Agency as confidential, while they are employed and for the period of three years after the termination of their function or work in the Agency.

**33. Which provisions exist with regard to the exchange of information with supervisory authorities of third countries?**

Article 128 of the Law on Insurance (Official Gazette of the Republic of Montenegro 78/06 and 19/07) prescribes that the cooperation with other supervisory and regulatory bodies, for the purpose of carrying out more efficient supervisory and regulatory function, is established on the basis of bilateral agreements, and the exchange of information in accordance with such an agreement is not considered as disclosure of confidential information. The Insurance Supervision

Agency has signed so far the Memorandums of Understanding with regulatory bodies on the insurance market from Austria and Slovenia.

**34. Does the supervisory authority publish an annual report? Could it provide the Commission with a copy or a summary of the report in one of the EU languages? What are the powers of intervention in case of insolvency, abuses of authorisation?**

The Insurance Supervision Agency prepares, on an annual basis, the Report on the state of the insurance market that is submitted to the Parliament of Montenegro for adoption. Upon the adoption, the Report becomes a public document published on the website of the Agency and it is accessible to interested parties (Annex 37).

The answer to the insolvency question is given within the answer No. 30. d).

In case of violation of the law due to misuse of the licence, the Agency may impose a wide range of measures - from the measures for removing illegalities and irregularities in operations, measures due to incompliance with risk management rules, through proposals for measures against responsible persons, to introducing interim administration and revoking the license to perform some or all insurance activities that the license is issued for (Article 129, paragraph 1 of the Law on Insurance).

**35. How is the operational independence of the supervisory authority ensured, in line with international standards (Basle Committee, the International Organization of Securities Commissions (IOSCO) and the International Association of Insurance Supervisors ... - IAIS core principles)?**

The Agency is established as independent regulatory body whose Council is appointed directly by the Parliament of Montenegro and whose employees must meet general requirements for entering employment in state administration bodies, as well as specific requirements regarding non-existence of conflict of interest and compliance with the rules on ethics regarding independence and impartiality in work.

Separation of the Agency from other state administration bodies is the ground for independent and autonomous performance of activities for the purpose of protecting policyholders and other insurance users and in order to provide for stability and development of the activity.

Furthermore, the Agency has its own budget consisting of fees paid by insurance companies in accordance with the Decision on Fees of the Insurance Supervision Agency (Official Gazette of Montenegro 04/08).

Article 115 of the Law on Insurance (Official Gazette of the Republic of Montenegro 78/06 and 19/07) also prescribes that in performing supervision, in addition to legislation, the Agency shall comply with the Basic Principles for Efficient Supervision of Insurance Companies.

**Conditions of admission and licensing**

**36. Which conditions are required of new insurance companies by national law before taking up the business of direct insurance? In particular, what are the requirements regarding:**

**a) prior authorisation**

Insurance companies are established upon obtaining the licence issued by the Agency.

Requirements for issuing the licence to perform insurance activities are prescribed by Article 30 of the Law on Insurance (Official Gazette of the Republic of Montenegro 78/06 and 19/07) and they include: foundation agreement and charter; proof that funds equal to minimum capital requirement from Article 21 of this Law and funds for covering foundation and other start-up expenses have been provided for; business plan of the insurance company for the following three years, with the opinion of an authorised actuary; proposals for business policy acts; data on shareholders - list, their relationship with other entities; financial reports; proof of suitability of managing bodies; data on actuary; prescribed organisation; personnel and technical capacity of the insurance company for performing the activities for which licence is asked for; business premises where the activity will be performed; and other proofs and data as requested by the regulatory body.

**b) schemes of operations / soundness of business plan**

Business plan should contain:

1) an outline of business policy;
2) group or types of insurance that the licence is issued for (insurance conditions and premium tariffs);
3) table of maximum retention amounts for all types of insurance that the license is issued for;
4) reinsurance program;
5) amount of expected solvency margin, determined in accordance with this Law;
6) planned foundation expenses and manner of their coverage;
7) liquidity plan of the company;
8) a study of expected results of business operations, particularly the expected income from premiums, expected expenses for damages and amount of technical provisions and provisions prescribed by this Law, expected values of funds and their sources and preliminary cost estimate for conducting insurance business, together with economic viability study related to the market size and structure.

**c) suitability of shareholders / owners**

Qualified holders submit proofs of financial capacity, paid taxes, number of shares and their mutual relations.

**d) limiting itself to the business of insurance**

It is obligatory to separate life and non-life insurance. The licence may be issued only for one group of insurance.

**e) legal form**

The obligatory legal form is a joint stock company.

**f) needs test?**

It is not required to have a feasibility test, and insurance companies within the business plan give assessment of economic viability with respect to the market size and structure.

**37. What are the rules with regard to the change of control of an insurance company (e.g. approval requirement, notification, standards to be met)?**

In case of change in control of the insurance company by acquiring qualified participation in the shareholding, it is necessary to get a prior consent of the Insurance Supervision Agency in accordance with Article 23 of the Law on Insurance, and in order to get the consent, it is necessary to submit the request together with the following documentation:

1) in case of legal persons:

- proof of registration from a competent registration authority;
- list of founders, with the information on the total nominal value of their shares and percentages of participation in the initial capital of the insurance company;
- financial reports with the certified auditor's report, for the last three years;
- proof of the amount of paid tax on property and gain for the last three years;

2) in case of natural persons:

- proof that the person has not been a member of the board of directors or individual endowed with special authorities in a legal person which has undergone the liquidation or bankruptcy procedure, for the last three years;
- proof that the person has not been unconditionally convicted of criminal offences against the economy, property, malpractice and corruption, and sentenced to imprisonment for more than three months;
- proof issued by the competent administration body regarding the amount of paid tax on property and the total personal income for the last three years;

3) list of persons who are related to qualified holders with the proof of the nature of such relations as defined in Article 24 of this Law.

**38. What are the rules applicable to insurance intermediaries operating in your country? What conditions do they have to fulfil before they may take up their business (e.g. registration, tests, professional requirements)?**

Intermediaries in insurance business are divided into two groups: insurance brokerage and insurance agency, and such a separation of the activities is obligatory.

Insurance brokerage activities are the activities related to connecting an insured person or party contracting the insurance with an insurance company in order to negotiate on the conclusion of the insurance contract based on the order of the insurance company established under the provisions of this Law, or the order of the insured person or party contracting the insurance.

Insurance agency activities are the activities regarding the conclusion of insurance contracts in the name and for the account of insurers (policy issuing), collection of premiums, as well as other related activities.

Insurance brokerage activities may be carried out only by legal persons, whereas insurance agency activities may be performed by legal persons and entrepreneurs. Legal persons must have

the form of a joint stock company or limited liability company. They can employ only the persons who receive appropriate authorisation from the Agency.

The Agency issues a priori licence to the company/entrepreneur. In addition to general requirements, a person who will be a director must have professional capacity.

In order to obtain the licence, insurance brokerage companies submit the following documents:

1) foundation agreement;
2) proposal of the charter;
3) list of shareholders or owners, together with the information as defined in Article 30, paragraph 2, items 6 to 8 of this Law;
4) business plan for the three year period;
5) proof that the persons nominated as members of the board of directors and executive director meet the requirements referred to in Article 30 of this Law ;
6) proof of the staffing and technical capacities of the company;
7) proof of participation in the capital or participation in voting rights of the insurance companies or insurance brokerage companies;
8) pre-agreement or agreement on insurance against liability for damages resulting from performance of the business activity or an unconditional financial guarantee from a bank, accepted by the Central Bank of Montenegro (hereinafter: the Central Bank) for the insured sum, i.e. for an amount of at least EUR 100 000.00;
9) proof of relatedness, based on capital or other interests, with insurance companies, insurance agency companies or insurance brokerage companies;
10) other proofs and infomation as may be required by the regulatory authority.

In order to obtain the license, insurance agency companies submit the following documents:

1) foundation agreement;
2) proposal for the charter;
3) list of shareholders or owners, together with the data as defined in Article 30, paragraph 2, items 6 to 8 of this Law;
4) business plan for the three year period;
5) proof that the persons nominated as members of management bodies meet the requirements referred to in Article 30 of this Law;
6) proof of the staffing and technical capacities of the insurance agency company;
7) proof of the participation in the capital or voting rights of the insurance companies or insurance brokerage companies;
8) pre-agreement or agreement on insurance agency with insurance company, which has to contain the provision on the right of the insurance company to permanently supervise the agency's execution of such agreement;
9) proof of relatedness, based on capital or other interests, with insurance companies or insurance agency companies or insurance brokerage companies;
10) other proofs and information as may be required by the regulatory authority.

In order to obtain the licence, entrepreneurs dealing with insurance agency activities submit the following:

1) proof of identity of the insurance agent (name, ID card number and unique citizen registration number);
2) proof of permanent residence of the insurance agent;
3) proof of professional qualifications of the insurance agent;
4) proof that, for the last three years, the insurance agent has not been a member of management, supervisory board or has not had any special powers in the legal person that was subject to liquidation or bankruptcy proceedings;
5) proof that the insurance agent has not been unconditionally convicted to imprisonment exceeding three months;
6) proof from a competent administration body about the amount of paid property tax and total personal income tax for the last three years;

7) proof that the insurance agent possesses the authorisation for insurance agency activities pursuant to Article 71of this Law;
8) business plan for three years;
9) pre-agreement or agreement on agency activities signed with an insurance company, which has to contain the provision on the right of the insurance company to permanently supervise the agent's execution of the agreement;
10) proof of the staffing and technical capacity of the insurance agent;
11) proof of ownership or lease of the business premises in which the insurance agent will conduct this business;
12) certificate of registration with the Central Registry of the Commercial Court;
13) proof on relatedness based on capital or other interest with insurance companies or insurance agency companies or insurance brokerage companies;
14) other proofs and information as may be required by the regulatory authority.

**Conditions of operation**

**39. What are the requirements imposed by national law as regards prior approval of premia or policy conditions for non-compulsory or compulsory insurance?**

- Compulsory insurance

Insurance conditions and premium tariffs and their amendments are determined by the insurance companies in accordance with the bases for calculation of premium and premium structure (premium system) for compulsory transportation insurance determined by the Association - National Bureau. The Association - National Bureau is a legal person established for the purpose of realizing common interests of insurance companies performing compulsory transportation insurance activities in the Republic.

The Insurance Supervision Agency gives the consent to insurance conditions and premium tariffs for compulsory transportation insurance, without which the aforementioned conditions and premium tariffs cannot be applied.

The regulatory body publishes the lowest premium tariffs for auto liability insurance in the Official Gazette of Montenegro.

- Non-compulsory insurance

The regulatory body is not obliged by law to issue consent to insurance conditions and premium tariffs for non-compulsory insurance.

**40. What are the rules concerning the establishment of technical provisions? Are life/non-life insurance companies are obliged to employ actuaries?**

The regulatory body determines, in the form of its rulebooks, the criteria and the manner for calculating technical provisions separately for each type of insurance.

Insurance companies must have an authorised actuary who is obliged to give an opinion on conditions and premium tariffs, as well as on adequacy of technical provisions.

**41. What is the definition of solvency margin?**

Solvency margin is a quantitative indicator representing a minimum excess of liquid assets of the

insurance company over its liabilities.

On the basis of Article 96, paragraph 2 and Article 198, paragraph 3 of the Law on Insurance (Official Gazette of the Republic of Montenegro 78/06), the Ministry of Finance adopted the Instructions on the manner for determining the level of solvency margin (Official Gazette of the Republic of Montenegro 24/07).

**42. What are the solvency margins broken down by life/non-life insurance companies operating in your market?**

Solvency margins of companies dealing with life insurance or non-life insurance are prescribed by the following Articles of the Instructions on the manner for determining the level of solvency margin:

4.1. Solvency margin for life insurance is calculated in the following manner:

a) for life insurance, annuity insurance, as well as for other types of life insurance

- the amount of the total mathematical provisions on the last day of the current accounting period is multiplied by 0.04 and then by a coefficient obtained by dividing mathematical retention provisions by the total mathematical provisions, both as of the last day of the current accounting period, provided that the coefficient cannot be lower than 0.85;

b) supplementary insurance in addition to life insurance - in the manner determined by item 2 of this Instructions;

4.2. Solvency margin for non-life insurance is calculated in the following manner:

a) for types of non-life insurance referred to in Article 9, items 5 to 23 of the Law on Insurance (Official Gazette of the Republic of Montenegro 78/06) (hereinafter referred to as: the Law), except for the voluntary health insurance -one of the amounts calculated in the manner referred to in indents 1 and 2 of this sub-item, whichever is greater;

- sum of the amount of the total premium for the last twelve months up to EUR 10 000 000 multiplied by 0.18 and the remaining amount of that premium multiplied by 0.16 is multiplied by a coefficient that is obtained by dividing the total retention premium by total premium, both for the last 36 months, provided that the coefficient cannot be lower than 0.50;

- sum of the average amount of damages determined for the last 36 months, or 84 months up to EUR 7 000 000 multiplied by 0.26 and the remaining part of these damages multiplied by 0.23 is multiplied by the coefficient that is obtained by dividing the amount of determined retention damages by determined damages, both for the last twelve months, provided that the coefficient cannot be lower than 0.50;

b) for voluntary health insurance - as one third of one of the amounts calculated in the manner referred to in indents 1 and 2 of sub-item a) of this item, whichever is greater.

Solvency margin for non-life insurance, except for voluntary health insurance, for the calculations during the year until the expiration of three years from the day this Instructions comes into force, and in case of insuring credits, crops and fruits - until the expiration of seven years from the day this Instructions comes into force, as well as on the day of transferring the portfolios of those insurances, is calculated in the manner referred to in indent 1, sub-item a), of this item.

Solvency margin for voluntary health insurance, for the calculations during the year until the expiration of three years from the day this Instructions comes into force, as well as on the day of transferring portfolio of such insurance - is calculated as one third of the amount calculated in the manner referred to in indent 1, sub-item a), of this item.

4.3. If the amount of solvency margin of the company is lower than the amount of initial capital of the company prescribed by Article 21 of the Law, the amount of initial capital will be taken as the amount of solvency margin.

4.4. Company dealing with reinsurance activities and the company dealing with life and non-life insurance activities until the deadline prescribed by Article 202 of the Law - calculates the solvency margin as a sum of calculated solvency margins for life and non-life insurance.

4.5. Calculated solvency margin of the company at each moment must be lower than the guarantee reserve of that company.

4.6. The company is obliged to use data from its business books for calculating solvency margin.

**43. What are the minimum levels of capital / minimum guarantee fund?**

The minimum monetary amount of the initial capital for establishing an insurance company is:

1) for life insurance, EUR 800 000.00.
2) for non-life insurance:
- accident insurance and voluntary health insurance, EUR 500 000.00;
- compulsory transportation insurance, EUR 1 250 000.00;
- other insurance of property, including vehicle insurance - hull insurance, EUR 1 000 000.00;
- all types of non-life insurance, EUR 2 250 000.00.
3) for reinsurance, EUR 2 000 000.00.

**44. What are the rules for investing funds of an insurance company (e.g. diversification, limits on the amounts)?**

In dealing with insurance funds, an insurance company shall be obliged to undertake all necessary measures to provide for safety of depositing or investing of funds, in order not to affect their real value and liquidity of the company in meeting its obligations under insurance contracts and other obligations.

The Law on Insurance prescribes the types of property that the insurance company can deposit and invest technical provisions and guarantee reserves in.

In accordance with Article 90 of the Law on Insurance, the company may deposit and invest technical provisions in:

1) securities issued by the Republic, central banks and governments of foreign countries that are rated at least “A” or its equivalent by widely-accepted, internationally recognized rating agencies;
2) bonds or other debt securities traded on the organised securities market in the Republic;
3) bonds, or other debt securities not traded on the organised securities market, if the issuer is the legal entity with the registered office in the Republic;
4) shares traded on the organised securities market in the Republic;
5) with banks having their registered offices in the Republic.

The Ministry of Finance can prescribe other types of depositing and investing of technical provision funds, which are, with respect to safety, yield and marketability, adequate for depositing and investing.

Insurance company is obliged to deposit and invest at least one third of the insurance funds of the established guaranty reserve in types of property referred to in Article 90 of this Law.

The Ministry of Finance has prescribed other types of depositing and investing of technical provision funds of the insurance company, as well as limitations to depositing and investing of technical provision funds and guarantee reserve funds of the insurance company, by the Rulebook on limits on depositing and investing technical provision funds and guarantee reserve funds of the insurance company, published in the Official Gazette of Montenegro 38/09 and 43/09. The aforementioned Rulebook is attached in the (Annex 35).

**45. What are the rules with respect to insurance and the means of electronic commerce?**

The Law on Insurance did not prescribe the rules with respect to insurance and the means of electronic commerce.

**46. What are the rules relating to distance marketing of insurance contracts?**

The Law on Insurance did not prescribe the rules relating to distance marketing of insurance contracts.

**47. What information has to be provided to a customer with respect to concluding a contract?**

In accordance with the Law on Obligations (Official Gazette of Montenegro 47/08), insurance policy, which represents a document about the concluded insurance contract, must state the following: parties to the contract, insured property or person, risk covered by insurance, duration of insurance and coverage period, amount of insurance and whether the insurance is unlimited; premium or contribution, policy issuance date, and signatures of parties to the contract.

Insurer is obliged to warn the person to be insured that general and specific insurance requirements are the integral part of the contract, and deliver them to the person to be insured, if the requirements are not printed on the insurance policy.

Furthermore, insurance companies are obliged, in accordance with Law, to offer to insured person insurance requirements and inform him/her about the rules on premium calculation.

**Information provided to the supervisory authority**

**48. Which rules apply to insurance companies with regard to the format of the balance sheet, net or gross presentation, acquisition costs (profit and loss accounts), valuation of investments (historical vs. current value), unrealised investment gains?**

Insurance companies in Montenegro are using:

- Chart of accounts from 1997 adjusted to operations of insurance companies and harmonised with international accounting standards; the Insurance Supervision Agency plans the adoption of the Rulebook on chart of accounts for insurance companies and Rulebook on evaluation of balance positions of insurance companies, which will fully harmonise these areas with the applicable international accounting standards.
- Gross assets and liabilities statement;
- Segregation of insurance acquiring expenses in accordance with the Law on Insurance and international accounting standards;
- Assessment of investments in accordance with the applicable international accounting standards;
- Assessment of unrealised gain from investments in accordance with the applicable international accounting standards.

**49. What specific rules apply to the publication of annual accounts of insurance companies?**

Article 172 of the Law on Insurance (Official Gazette of the Republic of Montenegro 78/06 and 19/07) prescribes the obligation to publish a summary of audited financial report in at least one printed media distributed on the whole territory of Montenegro.

In accordance with Article 6 of the Law on Accounting and Auditing (Official Gazette of the Republic of Montenegro 69/05 and 80/08), legal persons are obliged to submit financial statements in hard and soft copy to the Central Registry of the Commercial Court at the latest until 28 February of the current year for the previous year. Balance sheet and income statement are published on the website of the Central Registry of the Commercial Court.

Furthermore, in accordance with Article 6b of the aforementioned Law, a joint stock company and other legal person issuing securities and other financial instruments traded on the organised market, as well as a parent legal person obliged to prepare consolidated financial statements, shall be obliged to prepare and submit annual and quarterly financial statements to the Securities Commission, in a hard and soft copy. The Securities Commission publishes financial statements on its website.

Article 12 of the aforementioned Law prescribes the obligation to publish the Report on audit with the opinion on financial statements on the website of the Securities Commission.

**50. Which annual accounting, prudential and statistical information is the insurance undertaking required to give to the supervisory authority in respect of its business?**

Articles 123 and 124 of the Law on Insurance (Official Gazette of the Republic of Montenegro 78/06 and 19/07) prescribe the obligation of regular annual and quarterly reporting, by submitting the following data:

- *Article 123 – regular reporting*

1) annual financial report and annual report on operations, with the opinion of the certified actuary and report of the external auditor;
2) report on carrying out policy of coinsurance and reinsurance, with the opinion of certified actuary;
3) the charter, other general acts, business policy acts;
4) notification about changes in the company's capital structure;
5) notification about change of certified actuary and auditor;
6) proofs of changes in data that are registered in the Central Registry of the Commercial Court;
7) notification about convening the general meeting of shareholders and minutes from the general meeting of shareholders;
8) other notifications, reports and data set forth in the law and regulations adopted on the basis of the law.

- *Article 124 – quarterly reporting*

a) capital structure;
b) co-insurance and reinsurance of excess risks above maximum retention limit, with the certified actuary's opinion;
c) amount and structure of collected premiums;
d) number and amount of claims reported and paid and claims under dispute, with the certified actuary's opinion;
e) technical provisions, with the certified actuary's opinion;
f) depositing and investing of technical reserves funds, status and changes of other assets;
g) liquidity of the company, with the certified actuary's opinion;
h) guaranty reserve, with the certified actuary's opinion;
i) depositing and investing of funds of guarantee reserve;
j) solvency margin, with the certified actuary's opinion;
k) internal audit findings, with the evaluation of the board of directors;
l) other prescribed data.

More detailed contents of the aforementioned data are prescribed by the Rulebook on the contents of reports, notifications and other data to be submitted by the insurance company to the Insurance Supervision Agency and on the manner and deadlines for their submission (Official Gazette of Montenegro 70/08).

**51. What are the rules relating to requests of the supervisory authority for additional information?**

The answer to this question is given within the answer to question No. 30. a).

**52. What are the rules governing on-site inspections / on the spot inspections?**

The rules are prescribed by Articles 117 to 122 of the Law on Insurance (Official Gazette of the Republic of Montenegro 78/06 and 19/07), regarding the performance of all controls, including on-site and off-site controls. Article 118 provides for the possibility to regulate in more details the performance of supervision by the regulation of the Ministry of Finance.

**Compulsory insurance**

**53. Which insurances are compulsory?**

In accordance with the Law on Compulsory Transportation Insurance (Official Gazette of the Republic of Montenegro 46/07) the following types of insurance are compulsory:

1) insurance of passengers in public transportation against accidents;
2) insurance of owners or users of motor vehicles against liability for damages caused to third parties;
3) insurance of owners or users of aircrafts against liability for damages caused to third parties;

4) insurance of owners or users of vessels against liability for damages caused to third parties.

**54. What are the specific legal provisions relating to compulsory insurance to be fulfilled by an insurance company?**

Insurance company dealing with compulsory transportation insurance shall be obliged to:

- become a member of the National Bureau of Insurers of Montenegro;
- pay a determined contribution to the Guarantee Fund, which is an organisational unit of the National Bureau of Insurers;
- comply with the premium system determined by the National Bureau of Insurers (Articles 5 and 6 of the Law on Compulsory Transportation Insurance);
- keep statistical and other data, in the manner determined by the National Bureau of Insurers.

**Motor insurance**

**55. Is motor insurance compulsory in your country?**

Motor vehicle insurance is compulsory.

**56. What are the damages covered (esp. both damages to things and injuries to persons)? Are there exclusions in the persons covered?**

The damages incurred to passengers in public transportation, third parties as a result of using motor vehicles, aircrafts and vessels, as well as damages to the property of those persons are also covered.

In accordance with Article 24, the following persons are not entitled to compensation of damage:

1) an owner, co-owner and any other user of the motor vehicle causing damage or authorised possessor of the motor vehicle in case of damage to things;
2) a driver of the motor vehicle who caused the accident, and his/her legal successors in case of bodily injury, impaired health or death of the driver;
3) a person that has performed or participated in illegal deprivation of motor vehicle, the use of which has caused damage, regardless of whether he/she has driven the vehicle at the moment of causing the damage;
4) a passenger who voluntary entered the vehicle which caused damage, if the insurer proves that the passenger knew that the unauthorised driver drove such vehicle;
5) a passenger who voluntary entered the vehicle which caused damage, if the Association proves the passenger knew that the unauthorised driver drove such vehicle;
6) a person to whom damage has been incurred:
- due to the use of a motor vehicle during officially approved car and karting competitions and parts of such competitions at closed roads, which have as their objective the achievement of the fastest speed, as well as during tests (trainings) for such events;
- due to an earthquake;
- due to the effect of nuclear energy during the transportation of radioactive materials;
- due to military operations, military manoeuvres, revolts or terrorist acts, if it was proved that the damage was incurred as a result of such events..

In accordance with Article 25 of the Law on Compulsory Transportation Insurance, the insured party loses the rights from the insurance contract, if:

1) the driver drives the motor vehicle without the appropriate driver's license;
2) the driver did not use the vehicle for the purpose for which it was intended;
3) the driver has been trained for driving the motor vehicle, with all the traffic on the roads, without the oversight of the authorised driver–instructor;
4) the driver uses the motor vehicle without the knowledge and approval of the owner or authorised user of such vehicle;
5) the driver drove the vehicle under the influence of alcohol above the set limit, narcotics, psychoactive medications or other psychoactive substances;
6) the driver caused the damage intentionally;
7) the damage occurred because the vehicle was technically defective and the driver was aware of such circumstance;
8) the driver came into illegal possession of the motor vehicle.

**57. Is there a maximum amount of coverage in the law?**

There is a maximum amount of coverage for compulsory insurance as prescribed by the Law on Compulsory Transportation Insurance, Articles 19, 27, 35 and 38.

As far as insurance of passengers in public transportation against accidents is concerned, Article 19 of the aforementioned Law prescribes that the insured sums specified in this Article represents the obligation of the insurance company, unless higher insured sum is agreed under the insurance contract.

The lowest insured sum applicable to the insurance of passengers in public transportation against accident per one passenger are the following:
1) against death of passenger EUR 8 000;
2) against permanent loss of general working capacity (disability) of a passenger EUR 16 000;
3) against temporary incapacity to work, for compensation of loss of earnings and actual and necessary costs of passenger's medical treatment EUR 4 000.

The owner or user of transportation means referred to in Article 17, paragraph 2 of this Law may sign the insurance contract for the amount higher than the lowest insured sum referred to in paragraph 2 of this Article.

As far as insurance of owners of motor vehicles against liability for damages incurred to third parties is concerned, Article 27 of the aforementioned Law prescribes that the liability of an insurance company arising from auto liability insurance is limited to the insured sum applicable on the day the damage was incurred, unless the insurance contract stipulates a higher sum.

The lowest insured sum, on which auto liability insurance can be concluded, is the following:

A) in respect of damage due to death, bodily injury and impaired health:
1) buses and cargo vehicles EUR 250 000;
2) other motor and unknown vehicles EUR 150 000;
3) vehicles carrying hazardous substances EUR 300 000;

B) in respect of damage due to the ruin or damage of the thing:
1) buses and cargo vehicles EUR 100 000;
2) other motor vehicles EUR 80 000;
3) vehicles carrying hazardous substances EUR 150 000.

If there are more claimants, and the total compensation of damage exceeds the amount referred to in paragraph 2 of this Article, the rights of the claimants towards the insurance company are proportionately reduced to the insured sum specified in paragraph 2 of this Article.

The insurance company that paid one claimant the amount higher than the amount the claimant was entitled to, because the insurance company did not know or could not know that there are also other claimants, proportionately reduces compensation to other claimants in accordance with paragraph 3 of this Article, and it remains liable to such claimants only up to the remaining amount of the insured sum referred to in paragraph 2 of this Article.

As far as third party liability insurance of owners of aircrafts is concerned, Article 35 of the aforementioned Law prescribes that the liability of an insurance company represents the insured sums referred to in this Article unless the insurance contract stipulates a higher sum.

The lowest sum insured, for which the insurance can be agreed to referred to in paragraph 1 Article 34 of this Law is the following:

1) for aircrafts used for public transportation of passengers and goods in domestic and international air traffic:

- with weight up to 2 700 kg EUR 150 000;
- with weight from 2 701 kg up to 5 700 kg EUR 300 000;
- with weight from 5 701 kg up to 27 000 kg EUR 500 000;
- with weight from 27 001 kg up to 72 000 kg EUR 1 000 000;
- with weight over 72 000 kg EUR 1 600 000.

2) for other aircrafts regardless of their purpose (hang-gliders, ultra light gliders, paragliders, gliders, balloons, engine power hang-gliders, ultra light engine power aircrafts, self-propelled aircrafts and other aircrafts) EUR 40 000.

As far as third party liability insurance of owners of vessels is concerned Article 38 of the aforementioned Law prescribes that the liability of an insurance company represents the sums insured referred to in this Article, unless the insurance contract stipulates a higher sum.

The lowest sum insured for which the insurance can be agreed on referred to in paragraph 1 Article 37 of this Law is the following:

1) for ships:
- size up to 1000 GRT EUR 100 000;
- size from 1001 up to 10000 GRT EUR 200 000;
- size from 10001 up to 20000 GRT EUR 300 000;
- size from 20001 up to 30000 GRT EUR 400 000;
- size over 30000 GRT EUR 500 000;

2) for other vessels for sport and recreation:

- motor boats EUR 50 000;
- yachts, hydro motorboats, motor scooters and motorboats EUR 200 000.

**Third Country Branches or Agencies**

**58. What are the principles and conditions for authorisation of an undertaking whose head office is outside the country?**

In accordance with the Law on Insurance, insurance activities may be performed only by legal persons established in accordance with domestic laws, which means by meeting the requirements prescribed by Article 30 of the Law on Insurance. They must have a registered office in Montenegro, and companies with registered office abroad are not allowed to open branch offices without the status of a legal person.

**Other**

**59. Are there any insurance classes (e.g. credit insurance) for which a specialisation requirement exists to the exclusion of other classes, meaning that an insurance company offering that class of insurance can only operate in this area to the exclusion of the others?**

In accordance with the existing Law on Insurance, there are no classes of insurance, but it is obligatory to separate life and non-life insurance activities.

**60. What are the rules on portfolio transfer (e.g. authorisation, publication, rights of policy holders)?**

Transfer of insurance portfolio is prescribed by Articles 148 to 152 of the Law on Insurance, which prescribe that the Insurance Supervision Agency needs to give prior consent to the transfer. It is not necessary to get the consent of insured party, but the decision of the Agency approving the transfer is published in the Official Gazette of Montenegro.

An insurance company that has transferred the insurance portfolio is obliged to inform insurance contractors whose insurance contracts are included in the transfer of insurance portfolio, directly in a written form or through mass media, on the name and registered office of the insurance company taking over the insurance portfolio and the deadline for finalizing the transfer of insurance portfolio, within 15 days upon receiving the decision approving the insurance portfolio transfer.

A policyholder has the right to cancel the contract of insurance, and he/she informs the insurance company that took over the insurance portfolio thereon in writing, within 30 days upon receiving the notification referred to in paragraph 1 of this Article .

Non-life insurance policyholders in the case referred to in paragraph 2 of this Article have the right to a premium portion that corresponds to the remaining time for which the contract is still valid, whereas life insurance policyholders have the right to the amount of mathematical provision calculated on the day of insurance portfolio transfer, provided that life insurance funds are sufficient to cover that amount, or to the amount reduced proportionately to the decrease in life insurance funds.

On the day of the portfolio transfer, the insurance company taking over the insurance portfolio becomes a party to the transferred insurance contracts and assumes all the rights and obligations from these contracts, whereas the company transferring the insurance portfolio is released from obligations to the policyholders.

The transfer of insurance portfolio not approved by the regulatory body is not legally valid.

**61. What are the rules concerning the winding up of an insurer (e.g. notification, approval, publication, rank of insurance claims, rank of creditors)?**

Liquidation of insurance companies is prescribed by the Law on Bankruptcy and Liquidation of Insurance Companies (Official Gazette of Montenegro 11/07).

Voluntary liquidation of insurance company is regulated by the provisions of the aforementioned Law governing bankruptcy of insurance company, with a prior consent of the regulatory body.

Creditors are informed in the form of a notice on the commencement of the bankruptcy procedure, which is published in the Official Gazette of Montenegro, printed media and on the website of the Agency.

The resolution on commencing the bankruptcy proceedings is submitted to the insurance company under bankruptcy proceedings, the reinsurance company, the bank where the funds are deposited, the Central Registry of the Commercial Court in Podgorica and the Public Prosecutor.

If an insurance company performs life insurance activities, and the decision on the commencement of bankruptcy or liquidation proceedings is adopted, life insurance contracts along with the funds related to them may be transferred, by the contract, to other insurance companies..

Claims shall be satisfied from the bankruptcy estate of the insurance company in the following order of priority:
1) secured claims up to the value of their collateral, reduced for reasonable costs of sale;
2) fee of a bankruptcy administrator or liquidator and costs related to performance of these activities;
3) claims of creditors on the basis of life insurance contracts up to the amount of liabilities stated in the mathematical provision funds in accordance with the law regulating insurance and claims of creditors on the basis of accident insurance contracts;
4) claims of creditors on the basis of other types of insurance;
5) other claims of creditors;
6) claims of the company shareholders.

- *Liquidation*

President of the competent Commercial Court appoints a liquidator for the insurance company that made a decision on voluntary liquidation from the list of bankruptcy administrators determined by the regulatory body and the activities conducted in liquidation proceedings shall also be applicable in case of bankruptcy proceedings, and the provisions regarding bankruptcy procedure regulating voidance of legal actions are not applied.

If, in determining liquidation asset balance, it is determined that the requirements for commencing the bankruptcy proceedings are met, a liquidator shall be obliged to submit such proposal to the regulatory body.

**62. What is the set-up of the supervision of insurance groups and financial conglomerates (e.g. different capital adequacy rules, solvency requirements, intra-group transactions)? Is there an additional supervision of these entities?**

There are no specific regulations governing supervision of groups and conglomerates. The type of additional supervision might be implemented through the cooperation with regulatory bodies competent for other companies of the same group/conglomerate that the Agency has the concluded cooperation agreements with.

# *III. FINANCIAL MARKET INFRASTRUCTURE*

**63. To which extent is the financial market infrastructure aligned to the directive on financial collateral arrangement?**

Securities may be used as financial collateral. REPO transactions, i.e. transactions with securities purchased in accordance with the contract of resale and securities sold in accordance with the contracts of repurchase are not defined by the Law on Securities, but the Securities Commission is authorised to adopt regulations governing REPO transactions.

Financial collateral arrangements and transfer of ownership of financial collaterals are possible.

**64. Please, provide details about existing mechanisms to reduce the systemic risk linked to the insolvency of a participant in payment and securities settlement system and to which extent are they in line with the directive on settlement.**

Mechanisms for reducing system risk linked to the insolvency of participants in the settlement system are covered by the provisions of the law, prescribing that:
- The funds on the client's accounts are in the ownership of the client and not of the authorised participant, and they are not included in the property of the authorised participant, nor in the liquidation or bankruptcy estate, nor can they be used for satisfaction of claims to the client (Article 82, paragraph 3 of the Law on Securities).
- Securities and monetary funds of members of the Central Depository Agency are not the part of its assets, or bankruptcy or liquidation estate, and they cannot be subject to a court enforcement procedure against this Agency (Article 93 of the Law on Securities).

As a mechanism for reducing the system risk associated with the insolvency of participants in the system of settlement and payment, the Law on Securities prescribes that the Commission may revoke a license to do business issued to the authorised participant - legal person, upon the adoption of the decision on bankruptcy or liquidation.

Therefore, as soon as the decision on bankruptcy and/or liquidation is adopted, the requirements for suspending the licence are met. The Law explicitly prescribes that suspension or revocation of the license does not affect the following:
1) execution of transactions with securities concluded prior to suspension or revocation of the licence, where one of the parties is a person whose licence has been suspended or revoked;
2) right, obligation, or liability arising from such transactions.

With respect to the protection in case of insolvency of the participant, trading orders entered in the system prior to opening of the bankruptcy procedure can be appealed and they are binding. The decision to commence a bankruptcy procedure does not have a retroactive effect on rights and obligations of the participants in a transaction. Trading orders cannot be cancelled and withheld after the settlement.

By doing so, the system of clearing and settlement and rights and obligations of the participants in the settlement procedure are harmonised with the obligations determined in Article 3 of the Settlement Directive.

Processing of transactions is done in the trading system and it is automatically transferred in the clearing and depositary system as *locked-in* transactions. Clearing module of the system performs standard functions, including reports on trading, corrections, cancellations, confirming settlement of obligations from transactions involving institutional investors, issuance of reports on settlement, on participants, and similar. In accordance with the provisions of the Law on Securities that does not allow over the counter market, receive-delivery versus payment instruction and matching of orders of institutional investors in the clearing and depositary system are not done.

During the initial period of operations, it is planned that settlement of transactions is done based on Trade-for-Trade method. In accordance with the needs of the market, it is possible to move to cash netting method in a later phase.

With the view of reducing the systemic risk linked to the insolvency of participants in inter-bank payment system, the National Payment System Law (Official Gazette of Montenegro 61/08) has incorporated provisions of the Directive 98/26/EC on settlement finality in payment and securities settlement systems, as regards finality of settlement in payment system and provisions related to insolvency procedure.

Provisions of the mentioned Law specify that insolvency of a participant in the payment system cannot have a retroactive impact on orders of the insolvent participant, once they are considered final and irrevocable in the RTGS system. Furthermore, the Law prescribes that a collateral previously pledged by the insolvent participant (funds that the participant in the payment system has pledged with the view of securing the credit taken for its liquidity needs, as well as for the execution of obligations arising from its participation in the payment system) could be also used after its insolvency for the purposes that it was originally pledged for. The Law provides that the settlement of all inter-bank transfers is performed in RTGS payment system, wherein every individual transfer is executed at gross principle in real time.

# *IV. SECURITIES MARKETS AND INVESTMENT SERVICES*

**General questions**

**65. Is there an authority in charge of supervising regulated markets? If yes, please indicate name and address. Does the supervisory authority publish an annual report? Could it provide the Commission with a copy or a summary of the report? Is this authority also in charge of supervising collective investment undertakings?**

The Securities Commission of Montenegro, with the registered office in Podgorica, Kralja Nikole 27a/III, is the body responsible for supervision and control of regulated markets. The Securities Commission is the national regulatory and supervisory body responsible for adoption and implementation of secondary regulations regarding the issue and trade in securities, as well as for issuing operating licences to participants in the securities market and the control of their operations. The establishment of the Securities Commission is prescribed by the Law on Securities (Articles 7 to 23 of the Law on Securities) as an independent organisation of Montenegro, having the status of a legal person.

In performing the activities determined by the Law, the Commission is independent and autonomous and accountable for its work to the Parliament of Montenegro. The Commission is obliged to be independent based on the principles of the International Organisation of Securities Commissions (IOSCO), the Commission being its full and regular member since gaining the independence of Montenegro in 2006.

The Securities Commission, in accordance with Article 6 of the Law on Investment Funds (Official Gazette of the Republic of Montenegro 49/04) is competent and authorised to perform supervision of the establishment and operations of management companies and investment funds, in accordance with the provisions of this Law and the law regulating securities.

Furthermore, in accordance with Article 6 of the Law on Voluntary Pension Funds (Official Gazette of the Republic of Montenegro 78/06 and 14/07), the Securities Commission is competent and authorised to perform supervision of the establishment and operations of management companies and pension funds, in accordance with the provisions of this Law and the law regulating securities.

The Commission, not later than six months from the end of each financial year, prepares the report on operations and condition of the securities market and submits it to the Parliament and the Government. Together with the report, the Commission submits financial statements for the previous year with the auditor's report (Article 23, paragraphs 1 and 2 of the Law on Securities) (Annex 36)

Together with this EU questionnaire, the Report on Operations of the Securities Commission for 2009 is submitted. All reports of the Commission may be downloaded on the website of the Commission www.scmn.co.me.

**66. Is there a central securities register? Please provide details.**

The Law on Securities introduces, for the first time in Montenegro, the institution of the Central Registry and depository for securities. For the purpose of rendering such services, the Central Depositary Agency a.d. (joint stock company) has been established.

The mission of the Central Depositary Agency (CDA) is to provide the services of the central registry and depositary for all securities and to contribute to competitiveness of the capital market by providing efficient services regarding clearing, settlement and registration of securities.

The Central Depositary Agency is a fundamental part of the infrastructure of the capital market in Montenegro, which performs the activities regarding registration of dematerialised securities, clearing and settlement of concluded transactions with the securities, and other activities regarding dematerialised securities.

The CDA is authorised to perform the following services, designed to satisfy the needs of issuers, investors and authorised participants:

- to register and keep dematerialized securities,
- to keep the accounts of issuers and owners of securities, and issue a certificate of the condition and changes in the accounts,
- to transfer, deposit, settle and perform clearing upon the concluded activities in transactions with securities,
- to perform corporate activities of issuers regarding the distribution of different ownership rights,
- to render the services regarding the issuance of ISIN number (International Securities Identification Numbers) to issuers in Montenegro,
- to undertake measures and activities that prove to be useful or necessary for realizing and improving the purpose of the company.

With the help of USAID, a complete system for registration, clearing and depositary has been provided. In March 2001, the system for registration of securities was installed, whereas other two components were implemented by the end of 2001.

The processing of transactions is done in the trading system and it is automatically transferred into the system of clearing and depositary as *locked-in* transactions.

Clearing module of the system performs standard functions, including reports on trading, corrections, confirming settlement of obligations from transactions involving institutional investors, issuance of reports on settlement to participants, and similar. In accordance with the provisions of the Law on Securities that does not allow over the counter market, receive-delivery versus payment instruction and matching of orders of institutional investors in the clearing and depositary system are not done.

During the initial period of operations, it is planned that settlement of transactions is done based on Trade-for-Trade method. In accordance with the needs of the market, it is possible to move to cash netting method in a later phase. For the purpose of using the advantages provided by the centralised settlement system developed and used by the National Bank of Montenegro - Payment Operations (former ZOP), several cycles of transaction settlement are carried out on a daily basis. Furthermore, the system enables the implementation of Real-Time Gross Settlement System

**Legal framework**

**67. Please indicate the principal legislation adopted in this area and its implementation.**

The principle Law governing the area of capital market is the **Law on Securities** adopted in December 2000. The Law on Amendments to the Law on Securities, adopted in April 2006, has further harmonised this area with the European Union law.

On the basis of these laws, the Commission has adopted the following secondary legislation:

-Rules on the manner of registration and keeping the registry of issuers of securities with the Securities Commission (Official Gazette of the Republic of Montenegro 6/01 and 57/01);

- Rules on issuing the licence to the Central Depositary Agency (Official Gazette of the Republic of Montenegro 02/01);

- Rules on issuing the licence to Stock Exchange (Official Gazette of the Republic of Montenegro 16/01, 45/01 and 68/03);

- Rules on issuing the licence to authorised participants on the securities market (Official Gazette of the Republic of Montenegro 16/01, 26/06 and 52/07);

- Rules on the contents of the prospectus for public offering of the issue of equity and long-term debt securities (Official Gazette of the Republic of Montenegro 34/07);

- Rules on the contents of the abbreviated prospectus and the manner and procedure for recording closed offers of equity and long-term debt securities (Official Gazette of the Republic of Montenegro 34/07 and 39/08);

- Rules on recording issues of securities when the issuer is the Republic of Montenegro and when the securities are issued to already known acquirers (Official Gazette of the Republic of Montenegro 34/07, 11/08 and 39/08);

- Rules on determining more detailed conditions for issuing, registering and trading in short-term debt securities (Official Gazette of the Republic of Montenegro 34/07);

- Rules on controlling transactions with securities (Official Gazette of the Republic of Montenegro 28/07);

- Rules on the manner of operations of authorised participants on the securities market (Official Gazette of the Republic of Montenegro 57/01, 23/03 and 64/03);

- Rules on trading in block of shares (Official Gazette of the Republic of Montenegro 67/06, 75/06 and 66/08);

- Rules on determining more detailed requirements for acquiring the title of broker, dealer and investment manager (Official Gazette of the Republic of Montenegro 34/07)

- Rules on the contents, deadlines and manner of publishing financial reports of issuers of securities (Official Gazette of Montenegro 20/09).

Law on Investment Funds (Official Gazette of the Republic of Montenegro 49/04) is the first law that regulates the establishment and operations of investment fund management companies and investment funds.

On the basis of this Law, the Commission has adopted the following secondary legislation:

- Rules on issuing the licence to investment fund management companies and investment funds (Official Gazette of the Republic of Montenegro 68/04, 78/04, 05/05 and 72/05);

- Rules on the contents of the prospectus for the initial Issue of shares of the investment fund (Official Gazette of the Republic of Montenegro 68/04);

- Rules on more detailed contents of the contract of managing the investment fund (Official Gazette of the Republic of Montenegro 68/04);

- Rules on the methodology for calculating net asset value of investment funds (Official Gazette of the Republic of Montenegro 68/04 and 48/09);

- Rules on reporting on keeping monetary assets of investment funds (Official Gazette of the Republic of Montenegro 68/04);

- Rules on more detailed requirements and manner for promoting investment fund operations (Official Gazette of the Republic of Montenegro 68/04);

- Rules on the contents and publishing of the report on operations of investment fund Management companies and investment funds (Official Gazette of the Republic of Montenegro 68/04 and 26/09);

- Rules on more detailed requirements, manner and procedure for supervising operations of investment fund management companies and investment funds (Official Gazette of the Republic of Montenegro 68/04);

- Instruction on calculation and collection of fee of investment fund management companies (Official Gazette of the Republic of Montenegro 68/04).

Law on Voluntary Pension Funds (Official Gazette of the Republic of Montenegro 78/06) regulates, for the first time in Montenegro, the requirements for the establishment of voluntary pension fund management companies and the formation of voluntary pension funds on the basis of the individual capitalised savings, as well as their operations.

On the basis of this Law, the Commission has adopted the following secondary legislation:

- Rules on issuing the licence to voluntary pension fund management companies and the licence to form voluntary pension fund (Official Gazette of the Republic of Montenegro 57/07);

- Rules on contents, more detailed requirements and manner for publishing information prospectus of voluntary pension fund (Official Gazette of the Republic of Montenegro 57/07);

- Rules on more detailed contents of the contract of membership in voluntary pension fund (Official Gazette of the Republic of Montenegro 57/07);

- Rules on accounting points of voluntary pension funds and conversion of paid contributions into accounting points (Official Gazette of the Republic of Montenegro 57/07);

- Rules on the contents of certificate of share on the basis of the payment made in the voluntary pension fund (Official Gazette of the Republic of Montenegro 57/07);

- Rules on calculating the yield of voluntary pension fund (Official Gazette of the Republic of Montenegro 57/07);

- Rules on the methodology for calculating net value of assets, liabilities and accounting points of voluntary pension funds (Official Gazette of the Republic of Montenegro 57/07);

- Rules on reporting on keeping monetary assets of voluntary pension funds (Official Gazette of the Republic of Montenegro 57/07);

- Rules on determining the requirements for acquiring the title of voluntary pension fund Investment manager (Official Gazette of the Republic of Montenegro 57/07);

- Rules on the contents and publishing of the reports on operations of voluntary pension fund management companies and voluntary pension funds (Official Gazette of the Republic of Montenegro 57/07);

- Rules on more detailed requirements, manner and procedure for supervising the operations of voluntary pension fund management companies and voluntary pension funds (Official Gazette of the Republic of Montenegro 57/07);

- Rules on performing custody activities (Official Gazette of the Republic of Montenegro 57/07).

Law on Takeover of Joint Stock Companies (Official Gazette of the Republic of Montenegro 81/05) defines the requirements and the procedures for obliging acquirers/investors to carry out obligatory public offering for takeover above the prescribed threshold (40% of shares with voting rights), for the purpose of protecting the interests of shareholders and investors.

All regulations adopted for implementation of the Law are fully implemented.

**Investment firms**

**68. Please outline the legal framework adopted for the operation of investment companies, mutual funds, pension funds.**

The framework for operations of brokers (intermediation in purchase and sale of securities based on a client's order (his own name and for the client's account), charging a commission in return (brokerage activities); dealers (trade in securities in his own name and for his own account to make a difference in a price - dealer activities); investment managers (managing the portfolio of securities belonging to another person); underwriting and investment adviser activities are regulated by the Law on Securities and regulations adopted on the basis of the Law on Securities.

In accordance with the Law, all companies for providing investment services – brokerage firms and dealer firms – must be organised as joint stock companies and they must meet the minimum capital requirements (stated below in the text as answer to the question No. 69).

Companies for managing investment funds and investment funds are regulated by the **Law on Investment Funds.** The Law on Investment Funds regulates only closed-end investment funds organised as joint stock companies whose shares are traded on the stock exchange, as in case of shares of other joint stock companies. Managing structure of investment funds differs from the managing structure of other joint stock companies, since the bodies of the investment fund are the general meeting of shareholders and the supervisory board.

Investment fund is managed by the investment fund management company that can be organised as a joint stock company or limited liability company.

In accordance with the Law on Investment Funds, 8 investment fund management companies and 8 investment funds have been established, in the following manner: 6 were formed by transformation of privatisation fund management companies into investment fund management companies, and by transformation of privatisation funds into investment funds; whereas 2 management companies and 2 funds are newly established. On 30 June 2009, one of the two newly established investment fund management companies and one investment fund have been transformed by changing their business activity, so that now there are 7 investment fund management companies and 7 mutual investment funds on the Montenegrin market.

For the period until the end of 2009, the adoption of the amendments and the Law on Amendments to the Law on Investment Funds is planned, which will be fully harmonised with relevant EU acts.

Amendments to the Law on Investment Funds will be adopted for the following purposes:

- Since the existing Law prescribes the establishment and functioning of only closed-end investment funds that are not regulated by the European Union legislation, the amendments will regulate open-end investment funds with public offering and rules for investing regarding these funds in a comprehensive manner;

- To expand the business activity of management companies enabling them to perform, in addition to the core business activity i.e. investment management, the activities regarding individual portfolio management and some other ancillary services (giving advice on investments and keeping assets of investment funds);

- To give investment fund management company the so-called European Passport;

- To remove all barriers in cross-border marketing and allow investments in a wide range of financial instruments, based on which it is possible to establish monetary funds, derivative funds, index funds, as well as funds investing in other funds, provided that the limits on investment in each financial instrument are imposed;

- To enable the placement of collective investment scheme units in all Member States of the European Union, and upon obtaining the authorisation in the country where the registered office is located, to enable the establishment and the sale of the units of the so-called mutual funds, unit trusts, and similar.

**Law on Voluntary Pension Funds** regulates the issues of importance for the establishment, organisation and operations of voluntary pension funds. The Law regulates the establishment of pension funds as special type funds, i.e. their assets are kept separately but they do not have the status of a legal person, and they are organised for the purpose of collecting monetary assets by collecting contributions from the fund members, and investing such funds to increase the asset value of the fund and to ensure the payment of pensions to the fund members. The basic principles that the solutions from the Law on Voluntary Pension Funds are based on are:

- Affirmation of voluntary pension funds, as specific and subtle mechanisms for collecting and concentration of assets;

- Providing legality, meaning the compliance with all rules (prescribed by law and secondary legislation) relevant for operations of voluntary pension funds;

Funds paid in the voluntary pension fund may be disposed with in two ways: by leaving one pension fund and joining the other pension fund and by resignation from the voluntary pension fund system (upon reaching 50 years of age). After the death of a member of the voluntary pension fund who made the payments in the pension fund, the saved funds will be inherited by his/her successors, in accordance with the general rules on inheritance.

The basic models for paying out the funds from the account of a voluntary pension fund member are:

1) to pay out 30% in cash at the most, on the day of meeting the requirements determined by the Rules on management and the contract of membership, and the residual part in monthly or periodical annuities within the deadline not longer than three years from the day of leaving the pension fund, or

2) to transfer the total amount of funds upon the order of the member to the company dealing with pension payments, in accordance with regulations.

The Law on Amendments to the Law on Voluntary Pension Funds planned to be adopted by the end of 2012 will be fully harmonised with the Directive 32003L0041 on activities and supervision of institutions for occupational retirement provision and the Council Directive 31998L0049 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community.

Amendments to the Law on Voluntary Pension Funds will be adopted for the purpose of:

- Introducing the freedom for cross-border operations of pension schemes of employers and the obligation of cooperation among supervisory bodies;

- Providing for cross-border payments of contributions for the purpose of enabling smooth movement of workers and self-employed persons within Member States, regulating the position of workers who are sent to work to another Member State, as well as the manner of informing members of voluntary closed-end pension fund and potential members about the rights and obligations arising from the membership, as well as providing for cross-border payments in supplementary pension systems of other Member States;

- Eliminating the prescribed minimum number of members of the pension fund and sanctions in case the pension fund does not have at least 200 members, in order not to limit the freedom of entrepreneurship, since the pension fund represents the assets of its members and it is not appropriate to introduce any restrictions regarding the limitation of freedom of choice of individual member and freedom of entrepreneurship;

- Harmonising the regulations on allowed investments of pension fund assets.

**69. Is the provision of investment services subject to authorisation in your country? Is there any exception (undertakings which do not provide services for third parties, investment services not carried out on a professional basis)? How are investment services defined? Which activities require previous authorisation to be carried on? Are credit institutions and/or insurance undertakings authorised to carry on any of these activities? Do they need specific authorisation? What conditions are new investment firms required to meet by national law before taking up their businesses (legal form, initial capital, good repute and sufficient experience for persons who direct the business, fit and proper test for shareholders)?**

In accordance with the explicit provision of Article 65 of the Law on Securities prescribing the requirements for obtaining the licence to do business, it is stipulated that persons not licensed by the Commission in accordance with this Law cannot perform transactions with securities. The licence determines transactions with securities that the authorised participant may perform.

There are no exceptions to the rule prescribed by Article 65 of the Law on Securities that explicitly requires the licence for rendering investment services to be issued by the Securities Commission.

Investment services are defined by Article 62 of the Law on Securities. In the Law, the term "investment services" is not used, but the term "transactions with securities". Transactions with securities performed by authorised participants, under this Law, are:

1) intermediation in purchase and sale of securities based on a client's order (in his own name and for the client's account), charging a commission in return (brokerage activities);
2)trade in securities in his own name and for his own account to make a difference in a price (dealer activities);
3) managing the portfolio of securities belonging to another person (investment manager activities);
4) undertaking the entire new issue of securities for the purpose of further sale for the benefit of the issuer or guaranteeing to the issuer that the unsold portion of the undertaken issue will be purchased by the undertaker (underwriting);
5) giving to investor or potential investor advice on advantages of the purchase, sale, subscription or underwriting of securities (activities of the investment adviser);
6) other activities determined by the Commission to represent transactions with securities.

Transactions with securities are carried out by authorised participants on the securities market, whose only business activity is performance of these activities in accordance with the licence. Authorised participants are established as joint stock companies in accordance with provisions of the law regulating business organisations. Exceptionally, activities of the investment adviser may be performed by a legal person established also as a limited liability company or a natural person, provided that they meet more detailed requirements determined by the Commission (Article 63 of the Law on Securities). Exceptionally, the Commission may issue a licence to perform transactions with securities to a bank that has the approval of the Central Bank of Montenegro, provided that it has a special organisational part dealing exclusively with transactions with securities (Article 66, paragraph 5 of the Law on Securities).

Banks must obtain the licence to perform the transactions with securities prior to commencing the performance of these transactions. The Securities Commission issues the licence to perform transactions with securities.

The minimum amount of the monetary part of the initial capital is prescribed by the Law on Securities, as follows:

1) EUR 10 000 for investment advisor;
2) EUR 25 000 for broker;
3) EUR 125 000 for dealer and investment manager;
4) EUR 250 000 for performing the underwriting activities.

The monetary portion of the initial capital of the management company that manages only one investment fund cannot be lower than EUR 125 000. If the management company manages more than one investment fund, the monetary portion of the initial capital must be increased for EUR 75 000 prior to the submission of the request for managing each following investment fund.

The minimum initial capital of the investment fund is EUR 500 000.

The monetary portion of the initial capital of the management company for managing voluntary pension fund cannot be lower than EUR 250 000.

In addition to the aforementioned minimum amounts of the monetary part of the initial capital prescribed by the relevant law, the Commission determines the minimum amount of monetary part of the initial capital for the performance of other transactions with securities.

The Law on Securities does not prescribe the requirements for good business reputation and sufficient experience for persons who manage operations and fit and proper tests for shareholders of joint stock companies that perform transactions with securities. The requirements for business reputation and experience of persons who manage operations, as well as fit and proper tests for shareholders are prescribed for the companies for managing voluntary pension funds and companies for managing investment funds. In accordance with the provisions of the Law on Voluntary Pension Funds:

- Executive director of the voluntary pension fund management company may be a person:
1) holding a university degree;

2) having at least five years of working experience in jobs related to managing and disposing with financial funds; and
3) not convicted of criminal offences in the area of payment operations, economic activities and abuse of official duty.

- A member of the Board of Directors or Executive Director of the voluntary pension fund management company cannot be a person who is a member of the Board of Directors or Executive Director:
1) of another management company;
2) custody;
3) any party related to the abovementioned parties.

- The voluntary pension fund management company must have minimum two persons employed for open-ended period of time licensed to perform investment manager activities of the pension fund. The investment manager may be a person:
1) holding a university degree;
2) who has passed the professional examination for investment manager, the contents and form of which are determined by the Commission;
3) not convicted of criminal offences in the area of payment operations, economic activities and abuse of official duty.

The Law on Investment Funds prescribes also specific criteria to be met, i.e. limitations imposed on some legal persons to appear as founders of investment fund management company. The Law on Investment Funds thus prescribes that the founders of investment fund management company cannot be:

- a broker or a dealer who acts, for the management company, as intermediary in trading in securities from the investment fund portfolio;
- insurance company with which the fund is insured;
- domestic legal persons, with the state capital in the amount of 50% or more and their related parties, cannot be the founders or acquire shares of the management company;
- the same party cannot be a founder of more than one management company;
- natural persons who were responsible persons in the management company that managed the fund in which bankruptcy proceedings or court liquidation proceedings were initiated,
- persons who were convicted of criminal offences in the area of payment operations, economic activities and abuse of official duty.

In accordance with the provisions of the Law on Investment Funds:

- Members of the Supervisory Board of the investment fund cannot be:
1) members of bodies or employees of the legal person that is the founder of the management company, or natural persons who are founders of the management company;
2) members of bodies or employees of the management company, depository bank, Central Depository Agency, broker, dealer or auditor, as well as members of their families (spouse, parents, children, brothers and sisters);
3) officials and employees of state bodies and organisations;
4) persons convicted of criminal offences in the area of payment operations, economic activities and abuse of official duty

- A person with university degree, three years of working experience in the same or similar jobs, who has not been convicted of criminal offences in the area of payment operations, economic activities and abuse of official duty, may be appointed as executive director of the investment fund management company.

- Managing bodies, executive director and investment managers of the management company are obliged to publicly announce the data on their financial interest in the companies from the fund portfolio and they cannot participate in making decisions on investing in those companies (contracts, loans, shares, and similar).

- The investment manager of the investment fund management company may be a person:
1) holding a university degree;

2) who passed the professional examination for investment manager of the management company, whose program and manner of conducting is determined by the Commission;
3) who has not been convicted of criminal offences in the area of payment operations, economic activities and abuse of official duty.

**70. Is the acquisition of holdings in investment firms subject to specific requirements?**

Investment firms, which are called “authorised participants” in the Law, are established as joint stock companies in accordance with the provisions of the Law regulating business organizations and provisions of this Law. It is not necessary to meet any special requirements to establish authorised participants and/or acquiring shares (holdings) of authorised participants.

**71. Are there prudential ratios (solvency, liquidity)? Are they applied on a consolidated basis?**

Prudential ratios are not prescribed by law. The Securities Commission is not authorised by law to determine the manner for calculating and threshold of solvency for legal persons licensed by the Commission.

**72. What is the current situation with regard to right of establishment and cross-border supplies of services in your country for EU investment firms? Which conditions apply?**

Foreign legal persons authorised by foreign authorities to perform transactions with securities may establish a branch office in Montenegro, in accordance with regulations, for performing transactions with securities and custody operations, on the basis of the licence issued by the Commission (Article 77b of the Law on Securities).

Provisions of the Law on Securities regarding authorised participants, as well as provisions of the law regulating business organisations relating to foreign company branches, apply to the aforementioned branch offices.

The Commission prescribes more detailed requirements for obtaining licences for work of branch offices of foreign legal persons performing transactions with securities in the Republic.

**Collective Investment Undertakings**

**Please elaborate your responses to the following questions:**

**73. Are collective investment undertakings subject to authorisation requirements in your country? Which legal forms and structures of collective investment undertakings are provided? Are there rules governing the investment policy of a collective investment undertaking (eligible assets, investment limits)? Are there risk-management processes**

**employed to monitor and measure the overall risk of a collective portfolio?**

Collective investment companies are subject to the obligation to obtain licences. Upon holding the statutory general meeting of shareholders of the investment fund, the management company submits the request for obtaining the licence for the investment fund to the Commission. When the Commission determines that all requirements for issuing the licence are met, the Commission adopts the decision on issuing the licence to the investment fund (Article 34, paragraphs 1 and 4 of the Law on Investment Funds). Collective investment companies are investment funds established and operating exclusively in the form of a joint stock company. Investment fund is a joint stock company established for the purpose of raising monetary funds and investing the raised funds into securities, cash deposits and real estate, in compliance with this Law. Investment funds raise monetary funds through the public offering of its shares (Article 4, paragraphs 1 and 2 of the Law on Investment Funds). In Montenegro, there are no open-end investment funds and they are not allowed by the Law on Investment Funds.

Investment limitations and investment structure are regulated by the Law on Investment Funds. Investment fund may invest the funds raised in accordance with this Law in:

1) securities;
2) cash deposits;
3) real estates.

The investment fund may invest in domestic securities and foreign securities listed on the organised markets of OECD countries, as well as on other markets meeting the standards of transparency in operations with securities, which are determined by the supervisory board of that fund. The investment fund may keep cash deposits in domestic banks. (Article 54 of the Law on Investment Funds)

Limitations to investments are prescribed by Article 55 of the Law on Investment Funds, which stipulates that the investment fund is obliged to invest at least 20% of its assets in the Republic.

Prohibitions regarding investments are prescribed by Article 56 of the Law on Investment Funds, which stipulates that the investment fund must not invest into:

1) other investment funds;
2) management companies;
3) depository bank;
4) authorised participant on the securities market performing brokerage activities in trading in securities from the investment fund portfolio for the management company;
5) legal entities that are the owners of more than 10% of shares of the management company managing the investment fund.

There are no open-end investment funds in Montenegro, and they are not allowed by the Law on Investment Funds. Closed-end investment funds are now organised as mutual investment funds (6 investment fund management companies and 6 investment funds formed by the transformation of privatisation fund management companies and privatisation investment funds respectively, and one investment fund management company and one mutual investment fund).

Mutual investment fund is a special form of investment fund. Mutual investment fund may invest the assets raised in accordance with this Law in securities, cash deposits and real estate without the limitations determined by Articles 55 and 56 of the Law on Investment Funds, in accordance with investment policy determined independently by competent bodies of the mutual investment fund.

Asset value of the investment fund is calculated and evaluated by investment fund management company. Asset value of the fund is the sum of values of securities from the fund portfolio, value of real estates owned by the fund, and monetary funds of the fund. Asset value of the fund is calculated on a daily basis and it is determined on a monthly and annual basis. The Law on Voluntary Pension Funds regulates voluntary pension funds, as special forms of collective investment. Pension fund is subject to obtaining the licence, and the licence to form the voluntary pension fund is issued to the management company that initiates the organisation of a voluntary

pension fund. Voluntary pension fund keeps its assets separately and it does not have the status of a legal person, whereas voluntary pension fund management company must be organised as a joint stock company.

Funds of the pension fund may be invested in the following types of assets:

1) treasury bills and other short term securities issued by the Republic and local self-government units and short term bank deposits in the manner determined by the Commission;
2) long-term bonds and other long–term securities issued by: the Republic and local self-government units; joint-stock companies registered with the Commission whose shares are traded on stock exchanges in the Republic; other states that are traded with on organised capital markets in OECD countries and European Union Member States; foreign non-state entities, that are traded with on organised capital markets in OECD countries and European Union members;
3) shares: issued by joint stock companies registered with the Commission and that are traded on stock exchanges in the Republic; issued by foreign joint-stock companies and closed-end investment funds that are traded on organised capital markets in OECD countries and European Union Member States;
4) interests of domestic and foreign open-end investment funds if those investment funds invest into securities of issuers registered in the Republic or one of the OECD countries and European Union Member States,
5) any other form of investments set by the Commission regulations except investments under Article 39 of this Law;
6) real estate on the territory of the Republic. The pension fund may acquire at the most 10% of the issue of certain security. The pension fund may invest at the most 10% of its funds in securities issued by a single issuer. Exceptionally, funds of the pension fund may be invested in treasury bills and other short-term securities issued by the Republic and local self-government units and short-term bank deposits and long-term bonds and other long-term securities issued without limitations.

Prohibited investments of the pension fund assets are defined by the Law on Voluntary Pension Funds which prescribes that the pension fund assets cannot be invested in:

- shares, bonds and other securities not traded on stock exchange or organised markets, except for interests in the open-end investment funds;
- assets that, under law, cannot be divested of;
- material property not traded on organised markets, whose value cannot be determined with certainty (antiquities, art works and motor vehicles);
- shares, bonds and other securities issued by: shareholders of the management company; custody of the pension fund; other person who is related party to the persons referred to in indents 1 and 2 of this item; management company; broker-dealer company and authorised bank that is performing intermediary activities in trading in securities for the management company;
- other property determined by the Commission.

Risk management procedures used for monitoring and assessing general risk associated with the joint portfolio are not prescribed by the law, but it is prescribed that the management company is obliged to manage the assets of the investment fund in compliance with the established investment policy, and on the contrary it is liable to the investment fund for the damage caused. In investing in securities, cash deposits and real estates, the management company is obliged to take into account risk diversification in compliance with this Law, on the contrary it is liable to the investment fund for the damage caused.

**74. Are the assets of collective investment undertakings entrusted to a depositary? Which further obligations have to be fulfilled by the depositary? Is the depositary subject to prior approval? Which requirements apply for the depositary?**

**Entrusting of investment fund assets to a depositary:**

Investment fund may keep monetary funds with authorised banks licensed by the Central Bank of Montenegro. The management company is obliged to conclude a contract with the bank licensed by the Central Bank of Montenegro that authorises that bank to perform the activities related to cash operations of the investment fund. Depository bank shall be determined by the general meeting of the investment fund, at the proposal of the management company. The management company may authorise, by the contract, the depository bank to carry out some other technical and administrative activities regarding the investment fund management (Article 24 of the Law on Investment Funds).

The contract must regulate the following:

1) keeping the account of the investment fund;
2) receipt of payments for investment fund shares;
3) execution of orders of the management company;
4) distribution of investment fund dividend;
5) collection of return on securities from the investment fund portfolio;
6) amount of the fee for carrying out contracted activities.

The management company shall be obliged to open a business account for each investment fund (Article 25 of the Law on Investment Funds).

**Entrusting of voluntary pension fund assets to a depositary:**

Voluntary pension fund management company must sign a contract with a business organisation which meets the requirements for carrying out custody activities set by the Commission, by which it shall authorise the custody to carry out activities related to supervision of management of the pension fund assets.

Custody bank may perform custody activities if it meets the requirements regarding personnel, organisational and technical capacities and other requirements ensuring: organisation and functioning of the internal control system regarding the operations of organisational part of the bank dealing with custody activities, the assignment of tasks and activities by which possible conflicts of interest between custody bank clients and employees are avoided, adequate protection of confidential information and data on custody bank clients from unauthorised use and misuse.

Custody activities, in accordance with the law regulating voluntary pension funds, in addition to custody bank, may be performed by a business organisation meeting the following requirements: to have the status of a legal persons; to have the initial capital in the amount of at least EUR 1 000 000.00; that its only business activity is the performance of custody operations in accordance with the law regulating voluntary pension funds.

Voluntary pension fund may keep monetary funds as sight deposits and as short-term and long-term deposits with authorised banks in the country and abroad.

The Securities Commission issues the licence to custody bank for the performance of custody activities, if the bank has a separate organisational part dealing exclusively with custody activities.

**75. Are companies providing collective investment management services (management companies, investment companies) subject to authorisation? What are the authorisation requirements? Which additional activities of a management company may also be authorised? Which operating conditions apply?**

Investment fund management company must obtain a licence to manage an investment fund from the Commission (Article 13 of the Law on Investment Funds). Article 13, paragraph 5 of the Law on Investment Funds prescribes that the Commission, in the form of its rules, determines the contents of the request and documentation, as well as the proofs to be attached to the request for obtaining the licence. In accordance with this provision of the Law, the Securities Commission has adopted

the Rules on issuing the licence to investment fund management companies and investment funds (Official Gazette of the Republic of Montenegro 68/04, 78/04, 05/05 and 72/05).

Together with the request for issuing the licence to management company, the founders are obliged to submit the following documentation to the Commission: foundation agreement of the management company; proof of identity of founders; charter of the management company; business plan for managing the investment fund for the following three years; proof that the founders of the management company provided the amount of the initial capital in accordance with the law regulating investment funds and foundation agreement, as follows: in cash in the minimum amount of EUR 125,000 for managing a single investment fund and at least another EUR 75,000 for each following investment fund it manages, or contributions in-kind or rights above that amount; proofs of the staff, technical and organisational capacity of the management company; proof of the manner for providing appropriate business premises for the operations of the management company; proposal for appointment of members of the Board of Directors and executive director; proof of the intent to employ two investment managers for each investment fund the management company wants to manage; information on persons nominated for members of the Board of Directors and Executive Director of the management company, as follows: first and last name, year of birth, qualifications; total years of experience and activities the person performed until the submission of the request, as well as information on whether the person was convicted of criminal offences against payment operations and economic activities or official duty.

Management company is a joint stock company or limited liability company established for the purpose of establishing and managing an investment fund, and it cannot perform other activity (Article 3 of the Law on Investment Funds). Management company cannot get a licence to perform additional activities under no circumstances.

Voluntary pension fund management company is a joint stock company, and it must obtain the licence to manage the pension fund from the Commission (Article 18, paragraph 1 of the Law on Voluntary Pension Funds), and it cannot perform other activity, except the activity regarding the management of voluntary pension fund (Article 9 of the Law). Together with the application for obtaining the licence of management company, the founders are obliged to submit the following documentation to the Commission: foundation act of the management company; proof of identity of founders and proofs of their related parties and the nature of their relation; charter of the management company; proposal of the rules on managing the pension fund; proofs that the founders have paid in the monetary part of the initial capital prescribed by the law; proof of staff, technical and organisational capacity of the management company; proof of the manner of providing the adequate business premises for the management company; proposal for appointment of the members of the board of directors and executive director with the statement that they accept to perform these functions; proofs of the intention to employ two investment managers; other information and proofs requested by the Commission (Article 6 of the Rules on issuing the license to voluntary pension fund management companies and licence to form a pension fund (Official Gazette of the Republic of Montenegro 57/07).

**76. Which information has to be supplied to the unit holders (full and simplified prospectus, annual report)?**

Management company prepares periodical and annual reports on operations and submits them to the Commission (Article 16, paragraph 5 of the Law on Investment Funds). The annual report and periodical reports on operations of the management company and investment fund are prepared and published by the management company. Periodical reports on operations of the management company and investment fund are prepared for the periods January – March, January – June, January – September, and January – December of the current year.

In accordance with the Rules of the Securities Commission on the contents and publication of the reports on operations of investment fund management companies and investment funds (Official Gazette of the Republic of Montenegro 68/04 from 05 November 2004, Official Gazette of Montenegro 26/09 from 10 April 2009), the management company is obliged to submit to the

Securities Commission (hereinafter: the Commission) the annual report of the management company and investment fund it manages at the latest four months upon the completion of the business year. The management company is obliged to submit the periodical report of the management company and investment fund it manages to the Commission at the latest 30 days upon the expiration of the period that the report is submitted for (Article 4, paragraphs 1 and 2 of the Rules of the Securities Commission on the contents and publication of the reports on operations of the investment fund management companies and investment funds). Management company is obliged to publish information and data from the annual and periodical reports at least in one daily newspaper published on the territory of the Republic of Montenegro. In addition to the publication in accordance with Article 6 of these Rules, the management company is obliged to make accessible the annual and periodical reports of the investment fund to shareholders of the fund at its registered office (Articles 6 and 7 of the Rules of the Securities Commission on the contents and publication of the reports on operations of investment fund management companies and investment funds).

Voluntary pension fund management company prepares periodical and annual reports on operations and submits them to the Commission (Article 22 of the Law). The management company is obliged to publish the information prospectus for each pension fund it manages. Information prospectus is the statement of the pension fund management company including comprehensive, accurate and objective information on the pension fund and the company managing that fund based on which a potential member of the fund may bring a decision on membership in a pension fund (Article 51 of the Law). The management company is obliged to:

1) publish the information prospectus of the pension fund minimum once a year,
2) enable access to the prospectus to any person applying for membership in the pension fund managed by that management company before acquiring the membership in that fund,
3) submit information prospectus to every member of the pension fund at his/her request (Article 51, paragraph 4 of the Law).

**77. What is the situation of collective investment undertakings from EU Member States in your country? How is the right of establishment and cross-border supplies of services of EU management companies being dealt with?**

Collective investment vehicles from EU cannot directly provide services on the territory of Montenegro, except if they form a special management company (which can be organized as a joint stock company or limited liability company) which has a registered office, which is established and which operates on the territory of Montenegro in accordance with the Law on Investment Funds.

The Law regulates only the establishment and management of investment fund organized as a joint stock company and headquartered in Montenegro.

Management company from EU cannot directly manage the investment fund on the territory of Montenegro, because the law prescribes that it must have the registered office on the territory of Montenegro, which means that a foreign management company must establish a joint stock company or limited liability company in Montenegro that needs to obtain a license to manage the investment fund prior to starting this business.

The Law on Investment Funds prescribes that this Law regulates the establishment and operations of investment fund management companies and investment funds. The Law does not state that the provisions of this Law will apply in case a foreign investment fund wants to offer its shares on the territory of Montenegro. The Law on Investment Funds does not explicitly prescribe that the Commission is in charge of this issue.

**The Commission recalls that Chapter 4 of the EC Treaty on free movement of capital has also to be respected.**

**Markets**

**78. Are there regulated markets? How are such markets defined? Are there national rules which limit the number of persons which have access to those markets? Can credit institutions become members of a regulated market?**

In Montenegro, trade in securities is performed exclusively on regulated markets – Stock Exchanges. It is not allowed to have over-the-counter market. Markets (Stock Exchanges) are defined by the Law on Securities, which prescribes that trade in securities is conducted on the securities markets established for the purpose of creating the conditions for matching the supply and demand of securities. Securities Exchanges perform securities market business (Article 45, paragraphs 1 and 2 of the Law on Securities). A Securities Exchange may be established by at least eight founders, i.e. the Securities Exchange must have at least that number of shareholders (Article 50, paragraph 1 of the Law on Securities).

There are two Stock Exchanges in Montenegro: New Securities Exchange of Montenegro (Nova berza hartija od vrijednosti Crne Gore) and Montenegro Stock Exchange (Montenegroberza).

There are no national rules limiting the number of persons who have the access to the markets. Shareholders of Stock Exchange and other persons may be members of Stock Exchange (Article 50, paragraph 2 of the Law on Securities). Only legal persons may be the founders of Stock Exchange (Article 4, paragraph 1 of the Rules on issuing the licence to Stock Exchange, Official Gazette of the Republic of Montenegro 16/01, 45/01, 68/03). Banks may become members of the regulated market.

**79. What are the information requirements vis-à-vis competent authorities and investors on transactions performed on regulated markets?**

The Securities Exchange is obliged to inform the Commission on:

1) realized trade in securities;
2) submitted applications for admission and termination of the Securities Exchange membership;
3) submitted applications for admission to listing of the Securities Exchange, admission of securities to listing of the Securities Exchange and withdrawal of securities from the listing of the Securities Exchange.

The Commission may also determine other facts important for the functioning of the securities market that the Securities Exchange is obliged to report on. (Article 56 of the Law on Securities).

The Commission has enabled the monitoring of trades in the system of Stock Exchanges in real time. All authorised participants in the market: brokers, dealers, and others performing transactions with securities for clients, as well as other users who want to do so, can have a direct access to the server for trading in securities: on-line access to the current information on receiving, changing and realizing orders for trading in securities.

In addition to the aforementioned, Article 25, paragraphs 1, 4 and 5 of the Rulebook on the manner of operations of authorised participants in the securities market (Official Gazette of the Republic of Montenegro 57/01, 23/03, 64/03) prescribes the obligation of Stock Exchange to prepare a collective report, at the end of every trading day, on all transactions concluded on that trading day. Stock Exchange is obliged to submit this report to the Commission at the latest by 12 o'clock on the day following the trading day. The report contains the following information:

a) symbols and number of securities subject to transaction;
b) time of transaction;
c) price of securities per each individual transaction;
d) type of client's order;
e) number of client's order;

f) name of authorised participant;
g) official price list calculated in accordance with the rules of Stock Exchange; and
h) other information requested by the Commission in order to get comprehensive information for execution of clients' orders and settlement of transactions.

Investors get the information on transactions executed on the market by authorised participants (brokers and dealers). In accordance with the regulations, in performing the activities, authorised participant must acquire the information from Stock Exchange, in one of the following two manners: to be a member of all Stock Exchanges or to have an active visual access to information from Stock Exchange (Article 1 of the Rules on operations of authorised participants on the securities market, Official Gazette of the Republic of Montenegro 57/01, 23/03, 64/03).

**80. Which instruments can be dealt in on regulated markets? What are the conditions required for the admission of these instruments to official listing on the regulated markets?**

The Law on Securities prescribes securities, both equity and debt securities, that can be traded on securities market. Equities mean shares denominated as a share of capital of a joint-stock company and collective investment schemes units, issued in accordance with a specific law, as well as securities that grant the acquisition right for these securities (convertible bonds, options, futures, and similar). Debt securities mean securities issued in series that grant to the holder the right to a payment of nominated value, with or without interest, as well as other rights in accordance with regulations and decision on the issue. According to this Law debt securities that can be traded in on securities market (Stock Exchanges) are: bonds, certificates of deposit, treasury bills issued by the Republic of Montenegro; other financial instruments determined by regulations of the Securities Commission of the Republic of Montenegro (hereinafter referred to as: the Commission) as securities, but not including: checks and bills of exchange; commercial papers (trade order, letter of credit, goods order, bill of lading, warehouse receipt); other instrument determined by the Commission not to be securities for the purpose of this Law.

The manner for forming different lists for trading in securities and requirements for listing on Stock Exchange are determined by a separate Listing Rulebook adopted by Stock Exchanges. The Securities Commission gives the consent to rules of Stock Exchanges and Listing Rulebooks and their amendments.

The Listing Rulebook of the New Securities Exchange of Montenegro (Official Gazette of the Republic of Montenegro 12/02) prescribes the listing requirements, as follows:
- Securities listed on Stock Exchange may be entered into A list, B list and free market.
- Securities, which meet the following requirements, may be admitted to listing on the Exchange: they are issued in dematerialised form; they are registered with the Central Depositary Agency; they are fully paid in; they are freely transferable; they may be traded on the organised securities market; the issuer by its activities fulfils listing criteria, stated in this Rulebook.

- The issuer whose shares, bonds or other securities are to be entered into the A list, must meet the following requirements:
1) it must have the request and the decision of the competent body on submitting the request;
2) it has to be registered as a legal person for at least 3 years; if the issuer is a newly founded joint stock company, which has been established by merger of several companies, or by division of an existing company, the date of registration is the date of registration of one of the companies that has merged, or that was divided;
3) the minimum share capital has to be EUR 2.5 million;
4) the minimum size of the issue of securities must be EUR 100 000;
5) the issuer must not have losses in the last operating year;
6) no late payments of dividends to shareholders or payment of principle and interest on issued securities;
8) under no conditions, no limitations on the turnover of securities or on the rights of owners of securities;

9) the issuer has to prepare and disclose financial reports in accordance with the Law on Securities. Exceptionally, securities may be entered in the A list, without meeting the stated requirements, if the average daily turnover on the Exchange of that particular security exceeds EUR 10 000 in the last three months.

- The issuer, whose shares, bonds or other securities are to be entered into the B list, must meet the following requirements:
1) it must have the request and the decision of the competent body on submitting the request;
2) it has to be registered as a legal person for at least a year; if the issuer is a newly founded joint stock company, which has been established by merger of several companies, or by division of an existing company, the date of registration is the date when one of the companies that has merged, or that was divided, was registered;
3) the size of the issue of securities must be at least EUR 25 000;
4) no late payments of dividends to shareholders or payment of the principle and interests on the issued securities;
5) under no conditions, no limitations on the turnover of securities or on the rights of owners of securities;
6) the issuer must prepare and disclose financial reports in accordance with the Law on Securities.

- Securities, which were issued by the Government of the Republic of Montenegro and local self-government units, shall be entered in a separate list, within free market.

The Listing Rulebook of the Montenegro Stock Exchange prescribes the listing requirements, in the following manner:

- Securities listed on Stock Exchange may be entered into A list, B list, C list and free market. C list is for the investment funds that can also be listed on the aforementioned lists, depending on the requirements they are meeting.
- Securities, which meet the following requirements, may be admitted to listing on the Stock Exchange: they may be traded on the organised securities market; they are fully paid in, except for shares of the new issue, in the primarily sale, only of the issuers whose shares are already listed on A or B list; they are freely transferable; they are issued in dematerialised form; they meet the listing criteria with respect to issuer's activities; they are registered with the Central Depositary Agency.
- The issuer whose shares, bonds or other securities are to be entered into the A list, must meet the following requirements: it has to be registered as a legal person for at least three years; if the issuer is a newly founded joint stock company, which has been established by merger of several companies, or by division of an existing company, the date of registration is the date of registration of one of the companies that has merged or that was divided; the minimum share capital has to be EUR 2 million; the minimum size of the issue of securities must be EUR 100 000; the issuer must not have late payments of dividends to shareholders or payment of principle and interest on issued securities; under no conditions, the issuer cannot have limitations on the turnover of securities or on the rights of owners of securities; the issuer must not have losses in the last operating year; the issuer prepares and publishes financial reports in accordance with the Law on Accounting and Auditing and the Law on Securities.
- The issuer whose shares, bonds or other securities are to be entered into the B list, must meet the following requirements: it has to be registered as a legal person for at least one year; if the issuer is a newly founded joint stock company, which has been established by merger of several companies, or by division of an existing company, the date of registration is the date of registration of one of the companies that has merged or that was divided; the minimum size of the issue of securities must be EUR 20 000; the issuer must not have late payments of dividends to shareholders or payment of principle and interest on issued securities; under no conditions, the issuer can have limitations on the turnover of securities or on the rights of owners of securities; the issuer prepares and publishes financial reports in accordance with the Law on Accounting and Auditing and the Law on Securities.

Companies listed on any Stock Exchange are subject to current requirements for publishing information. Companies whose shares are traded in on the free market are subject only to some of the requirements for publishing the information. Companies listed on the free market are preparing annual reports in accordance with the Business Organisation Law.

**81. Can EU – issuers have access to official listing on regulated markets?**

A part of this Rulebook prescribing the admission of securities to listing on Stock Exchange shall apply to admission of securities issued by a foreign issuer, i.e. foreign business organisation established in accordance with regulations of the country where it is headquartered, i.e. outside Montenegro.

**Supervisory authorities**

**82. As regards the regulatory and supervisory framework, what are the main features of the law on the Securities Market? Is supervision considered to be satisfactory? As in banking (above), what steps are planned to address potential problems of co-operation between supervisors on a consolidated basis?**

The main characteristics of solutions prescribed by laws regarding regulatory and supervisory framework of the securities market are the following ones:

- Competency of the regulatory body should be clearly and objectively defined.

- The Law on Securities gives significant authorisations to the Commission regarding investigation. The Commission can carry out the investigation of both regulated and non-regulated entities. The Commission may ask the regulated entity to issue documents, give explanations, and answer questions in the form of documents or personally. The Commission may also enter the premises of the regulated entity without prior notification and may block the documents. In case of non-regulated entities, the Commission may ask them to provide the documents and to answer the questions, as well as to give explanations. However, administrative sanctions are not applied to natural persons. This gap in the Law may impede the Commission to carry out investigation of such persons, both from legal and practical aspect.

- The Law gives the Securities Commission a wide range of rights to obtain any information from any person during the investigation procedure.

- The Securities Commission may impose a set of sanctions on regulated persons - including the suspension of the licence, revocation of the licence, and so on. However, there are no clear sanctions for non-regulated persons who may be involved in illegal actions or may simply act as witnesses who are requested to give information in order to complete the investigation. No one has rejected, so far, to provide the Commission with the information.

- The Commission does not have the authorisation to apply administrative sanctions against regulated and non-regulated entities. Although the Commission has considerable authorisations through licensing of participants in the market and registration of issuers, it does not generally have disciplinary authorisations. The Commission may withdraw or suspend licence of regulated entities (in case of both natural persons and legal persons), or suspend trading in securities, but it cannot impose a pecuniary fine or another sanction on a natural or legal person.

Representatives of IMF, Monetary and Capital Market Department, visited the Securities Commission in Podgorica in the period from 5 to 12 March 2008, with the task of examining the regulatory program of the Securities Commission of Montenegro, and focusing on preconditions for effective implementation, investigation and processing of manipulation cases on the market, insider trading and financial frauds, as well as on international cooperation.

On that occasion, the officials of the International Monetary Fund (IMF) prepared a report on implementation of the regulations on securities, which is the most relevant for assessment of the regulatory and supervisory framework and regulatory solutions.

The IMF report emphasized the following, with respect to the main characteristics of the regulatory and supervisory framework and legislative solutions:

"**Montenegro has a modern securities regulation system.** The Securities Commission (hereinafter referred to as: the Commission) has significant authorisations, and it establishes regulation framework. The Commission has adopted detailed rules regulating investment funds, issuers, participants in the market and Stock Exchanges. The Commission has excellent and trained personnel and it implements the active regulation and supervision program. The personnel of the Commission show a very thorough knowledge of regulatory issues and concepts and they are well informed about the international best practices. The process of harmonisation of all laws with EU Directives that the Commission will implement during the following five years will additionally strengthen the legislative framework. The most important challenge is to improve the implementation of laws and regulations.

**Securities Regulatory system in Montenegro has all the conditions for good regulation.** The Law has many necessary elements and there is an independent regulatory agency with well trained personnel. The level of development is, in fact, impressive for such a newly established organization. Further improvements of the laws will happen over time along with the harmonisation process with EU. The Commission personnel understand extremely well the EU requirements and they will not have problems in completing this complex task. The current interaction at the international and European level will improve the skills of the personnel and their knowledge of the international standards and practice".

**As in banking (above), what steps are planned to address potential problems of co-operation between supervisors on a consolidated basis?**

The Commission has concluded a set of bilateral agreements with foreign regulatory bodies of securities markets regarding the exchange of information and cooperation.

The Commission has signed IOSCO Multilateral Memorandum of Understanding on the Exchange of Information and Cooperation. By signing of this Memorandum, the Securities Commission has become a part of the international network of regulators and it has obtained significant means to undertake cross-border actions. Signing of this Memorandum shows the capacity of the Securities Commission to ensure the compliance with the regulations and full implementation of regulations on securities. Furthermore, it confirms the capacity and readiness of the Securities Commission to provide foreign regulators of securities markets with the greatest possible assistance in order to facilitate the performance of their functions on the securities market.

Signing of this Memorandum represents a very important step for the Commission because it enables the Commission to exchange information with all important jurisdictions in the world and brings Montenegro into full compliance with the international best practices.

The framework for providing this cooperation is established to a large extent.

**Is supervision considered to be satisfactory?**

IMF Report was also focused on the issues regarding efficiency of Securities Commission supervision. With respect to this issue, the IMF in its report states the following:

"The Commission is active in application of its rules, but ultimately it is limited because it does not have the right to impose administrative sanctions. The Commission has significant authorisations for investigations and it has shown that it is willing to apply them. However, it has to rely on administrative or criminal courts for imposing sanctions on both regulated and non-regulated entities.

**The improvement of the system should clearly include not only entities in the financial sector but also the entities outside the financial sector.** Although the Law on Securities defines offences such as insider trading, manipulations on the market and dissemination of information, which apply to natural persons (individuals) and legal persons, and it authorises the Commission to investigate both natural and legal persons; administrative offence sanctions, according to this Law, are imposed only on natural persons. This gap must be immediately resolved, since entities not subject to regulation of the Commission may significantly contribute to violations of the Law on

Securities, such as for example: insider trading or market manipulations. The Law on Securities also needs to define clear consequences for failure to act in compliance with the request of the Commission regarding submission of information (in writing or verbal testimony), as well as consequences for giving false information. Criminal sanctions must also be more severe. The Criminal Code does not contain specific definitions of the basic misuses on the financial market: insider trading, illegal operations or dissemination of false information.

**The Commission needs to strengthen its investigative authorisations.** It is necessary to have far more advanced technological supervision system - it currently relies excessively on the limited personnel potentials. The Commission needs more significant capacities for its investigations and undertaking of measures, including also more employees. In order to attract and keep trained persons for a long period of time, the Commission needs to find funds to give competitive salaries to its employees.

**The Commission, Stock Exchanges, and Public Prosecutor must jointly focus on taking of measures.** Stock Exchanges must resolve the issue of merger and competition and focus more on taking of measures. Furthermore, the Commission must use its authorisations in order to enable this to happen.

**The Commission has shown it is willing to sign the Multilateral Memorandum of Understanding Concerning the Exchange of Information and Cooperation with IOSCO.** The signing of this Memorandum will include the Commission in the international network of regulators and provide significant means to take cross-border measures. The framework has been established to a significant extent and compliance with many recommendations referred to in this Report will give a good tone to the framework and show the path of further development".

**83. Describe the powers and duties of supervisory authorities on the securities sector (to carry out on-the-spot verifications, to require supplementary information, to cooperate with third countries authorities). Are supervisory authorities bound to secrecy as to information received from third countries competent authorities in particular? How many people are employed by these supervisory authorities? What are the professional qualifications required?**

The Law on Securities gives the Commission significant investigative authorisations. The Commission may carry out investigation of both regulated entities (entities licensed by the Commission) and non-regulated entities (entities not licensed by the Commission).

The Commission is authorised to request, in writing, from the persons licensed by the Commission to submit the information on their operations in accordance with this Law, at the time and in the manner determined by the Commission.

The Commission may require the submission of information on acquisition, divesture of or holding of securities from:

1) a person registered as the owner of securities;
2) a person who is reasonably considered to be the owner of securities;
3) a person who is reasonably considered to have rights from securities;
4) a person who is reasonably considered to acquire or divest of securities; or
5) a person to whom it issued the licence.

If the Commission requires the information on acquisition, divesture of or holding of securities, the person must not: without justifiable reason, fail to submit to the Commission the required information in his/her possession; submit the required information to the Commission, knowing that it contains false or misleading information.

The Commission may, without prior notice, perform the control of operations of a person that has or had the licence, which operates or operated in accordance with provisions of this Law, rules adopted on the basis of this Law or requirements stipulated in the license.

The Commission may appoint a person to perform the activities regarding control for the Commission, in accordance with the rules of the Commission, or control may be performed by employees of the Securities Commission (controllers).

The person, whose operations are subject to control, is obliged to provide the authorised person with the access to registries and other records required for exercising the control and ensure that his/her employees provide required information.

A person, who is reasonably believed or suspected by the investigator to have in his/her possession or under his/her control a document containing the information important for the investigation, is obliged to:

1) submit to the required document to the investigator, at the time and place determined by the investigator;
2) at the request of investigator, provide the explanation or additional information regarding the required document;
3) act on the request of the investigator and respond to the investigator's questions regarding the subject of investigation in a true and best manner possible.

It is forbidden to destroy, falsify, conceal or otherwise dispose of, or give permission for destruction, falsification, concealment or disposition of any document important for performing the control or investigation of the Commission.

**Control procedure:**

The Commission carries out direct control onsite, in the premises of the controlled entity or another entity if it reasonably believes that it can obtain from it data and facts regarding the control, by inspecting registries, other records, business books and other documentation relevant for the control.

In carrying out the control, the Commission controllers are entitled, without limitations, to make copies or temporarily seize original business books, financial and other reports, notifications and other documentation, as well as to use and temporarily seize electronic and other means of communication installed at the controlled entity.

In performing direct control, the Commission shall be entitled to require necessary explanations of responsible persons of the controlled entity about data and facts regarding their transactions with securities. Responsible persons are obliged to provide the Commission with necessary explanations. Statements and explanations can also be taken from other persons who are employed in the controlled entity, as well as from persons who, on other grounds, perform activities for the controlled entity, and which as the Commission believes have information important for exercising the control of operations. It can be requested that statements and explanations are given in writing or can be entered into the minutes on the spot - in the premises of the controlled entity or by inviting the responsible person to come to the premises of the Commission.

The Commission may carry out the control even if the responsible person of the controlled entity is not present during the control. If the Commission believes that it is not possible to carry out the control without the presence of the responsible person of the controlled entity, the Commission controller may leave, on the spot, the invitation to the responsible person to be present at a certain time for the purpose of supervision. The controlled entity is obliged to ensure, at the request of the Commission and at the time when the Commission controllers are carrying out the control of operations in the premises of the controlled entity, that responsible persons of the controlled entity, who may give statements and explanations relevant for the control, are present. If, in its findings, the Commission determines that there were no irregularities in the operations of the controlled entity and when the controlled entity, within the deadline prescribed by these rules, contests, by its remarks based on grounds, the findings from the minutes on the performed control on the irregularities in the operations, the Commission makes the conclusion that the controlled entity, as far as this specific control is concerned, operated in accordance with the regulations. If the controlled person does not submit the remarks, within the prescribed deadline, on the minutes or does not contest, based on grounds by its remarks, the findings of the minutes that established irregularities in transactions with securities, the Commission adopts the decision on taking

measures ordering the controlled entity to take one or several measures, within a certain deadline, in order to remove the established irregularities.

The controlled entity is obliged, within the deadline determined by the decision on taking measures, to submit the documentation and proofs of removing the established irregularities. The deadline for removing the established irregularities and duration of the taken measures are determined based on the nature of the taken measure, as well as on the established illegality or irregularity in operations, i.e. as long as there are reasons for duration of the imposed measure.

**Authorisations for taking measures in the control procedure:**

When the controlled entity fails to remove the irregularities established during indirect (offsite) control or it fails to act in accordance with the order of the Commission regarding the removal of irregularities established by direct (onsite) control, as well as when the Commission determines that irregularities are such in nature that cannot be removed, the Commission adopts the following decision on taking measures:

1) decision on excluding certain securities from the trade on Stock Exchange;
2) decision on prohibiting the listing of certain securities on Stock Exchange;
3) decision on delisting of certain securities from Stock Exchange;
4) decision on temporary or permanent prohibition of the authorised participant to trade in certain securities;
5) decision on temporary prohibition to perform certain activities that the licence is issued for;
6) decision on temporary or permanent prohibition imposed on authorised participant to manage the securities portfolio;
7) decision on imposing the warning to Stock Exchange, authorised participant or Central Depositary Agency due to irregularities in operations;
8) decision on public disclosure that the authorised participant is violating regulations in transactions with securities;
9) decision on revoking the executive director of Stock Exchange, authorised participant or Central Depositary Agency;
10) decision on cancelling the decision on approving the prospectus for public offering of issue of securities;
11) decision on cancelling certain transaction with securities;
12) decision on temporary prohibition of disposition with securities registered in the Central Registry of the Central Depositary Agency;
13) decision on temporary delay in settlement of a certain transaction with securities;
14) decision on temporary suspension of settlement of a certain transaction with securities;
15) decision on temporary prohibition of disposition with monetary assets paid in a relevant account of the Central Depositary Agency for settlement of transactions with securities;
16) decision on imposing a warning, proposing pecuniary fine or another penalty or imposing a measure regarding suspension or revocation of licence issued to natural persons - brokers or dealers due to illegality or irregularity in operations;
17) decision by which it is suggested to the Board of Directors or Executive Director of the controlled entity to reconsider the liability of certain employees due to irregularities in operations with securities and take appropriate measures against them;
18) decision on suspending or revocation of the licence issued to Stock Exchange, authorised participant or Central Depositary Agency;
19) decision on taking any other measures that the Commission believes are the best for removing illegalities or irregularities in operations with securities.

The Commission may adopt the decision on revocation of the licence issued to Stock Exchange, authorised participant or Central Depositary Agency only upon the implementation of direct (onsite) control. Exceptionally, the Commission may revoke the licence without direct control when it determines that these entities do not perform the activities they are licensed for at least six months.

**Do supervisory bodies must comply with confidentiality provision, especially with respect to the information obtained from the supervisory bodies of third countries?**

Members or former members, and employees or former employees of the Commission, are obliged to keep information obtained during operations of the Commission, or otherwise, that are

considered, in accordance with regulations, to be official secret. The prohibition ceases to be valid once this information ceases to be official secret. The obligation to keep insider information lasts until the information loses its insider status. (Article 18 of the Law on Securities).

The Commission is also obliged, as signatory to IOSCO Memorandum of Understanding, to keep confidential data and information shared with foreign regulators of securities markets. Disclosure of official secret is sanctioned as a criminal offence in accordance with Article 425 of the Criminal Code (Official Gazette of the Republic of Montenegro 70/03, 13/04, 47/06, Official Gazette of Montenegro 40/08).

**How many people are employed with the supervisory bodies? What are the professional qualifications needed to work in such bodies?**

The Securities Commission currently employs 28 persons, out of which 5 members of the Commission perform their function on a professional basis (they are fully employed in the Securities Commission.

In accordance with the Law on Securities, a member of the Commission may be a person having a university degree, work experience of at least 5 years in the activities in the area of law, monetary, economic or financial system and worthy to be a member of the Commission.

The following persons cannot be members of the Commission:

1) persons elected, appointed or employed in state bodies;

2) members of governing and managing bodies, executive bodies and secretaries of the securities issuers;

3) shareholders and employees of the Securities Exchange, authorised participant on the securities market and the Central Depository Agency;

4) persons in matrimony or kinship either in an ascendant or collateral line, up to the third degree.

**The Commission has formed the following organizational units: Cabinet of President; Corporate Department; Development and Cooperation Department; Securities Market Department; Pension and Investment Funds Department and Secretariat.**

Employees of the Commission have different titles. Employees of the Commission acquire the title by entering into employment or by assignment. Titles of employees of the Commission are divided into three grades in the following manner:

- senior adviser: university degree and minimum three years of working experience, passed professional examination and knowledge of a foreign language - advanced conversation level;

- adviser: university degree and minimum one year of working experience, passed professional examination and knowledge of foreign language - middle conversation level;

-adviser to president: university degree and minimum one year of working experience, passed professional examination and knowledge of a foreign language - advanced conversation level.

**84. Which annual accounting prudential and statistical information are investment firms and listed companies required to give to the supervisory authority in respect of their businesses? Which information are collective investment undertakings and/or their management companies required to submit? What powers does the supervisory authority have to require supplementary information?**

Issuers that issue securities through public offering are registered with the Commission and are obliged to submit the reports to the Commission in the form and within the deadline determined by the Commission.

A registered issuer shall be obliged to:
1) submit a copy of its year-end account to the Commission, upon its adoption at the general meeting of shareholders and a copy of the auditor's report in accordance with law; and

2) submit appropriate financial report to every owner of securities, if determined so by the Commission. (Article 28 of the Law on Securities).

A registered issuer shall also be obliged to file with the Commission other data and reports determined by the Commission.

Issuer of securities is obliged to inform the Commission, founders of the issuer, other owners of the same securities and the general public, on the information that:
1) enables the evaluation of financial position of the issuer or its subsidiaries;
2) may cause unfair trade in these securities;
3) might have impact on the market price of these securities.

In addition to the aforementioned obligations, the issuer is also obliged to submit other information prescribed by the Commission (Article 27 of the Law on Securities).

On the basis of Article 6b, paragraph 3 of the Law on Accounting and Auditing (Official Gazette of Montenegro 69/05 and 80/08), the Securities Commission has adopted the Rules on the contents, deadlines and manner of publishing financial reports of issuers of securities (Official Gazette of Montenegro 20/09). In accordance with these Rules, banks, insurance companies and other legal persons that issue securities and other financial instruments in Montenegro (hereinafter: other legal persons) are obliged to submit the reports, in the following manner: quarterly (for the period from 1 January to 31 March of the current year), semi-annually (for the period from 1 January to 30 June of the current year), nine-month reports (for the period from 1 January to 30 September of the current year), and annual report and auditor's opinion (for the period from 1 January to 31 December).

Quarterly, semi-annual and nine-month reports are submitted to the Commission and Stock Exchanges within 30 days from the expiration of the period that the report refers to. The annual reports are submitted to the Commission and Stock Exchanges within 120 days from the expiration of the period the report refers to, and the auditor's opinion at the latest by 30 June of the current year for the previous year.

The reports are published on the websites of the Commission within 5 (five) days from the day of submission of the reports to the Commission. The reports include:
a) basic data;
b) balance sheet;
c) income statement;
d) cash flow statement;
e) statement of equity;
f) Explanations and comments of the Board of Directors or Executive Director in case of limited liability company, if the Board of Directors is not formed;
g) Report on significant events;
h) Notes to financial reports.

Authorised participants (brokers, dealers, etc.) are obliged to submit to the Commission:
1) periodical reports on operations in accordance with the Rules of the Commission;
2) annual reports on operations, financial reports prepared in accordance with the law regulating accounting and auditing and report of the independent auditor, within four months upon the expiration of the financial year;
3) other data, information and reports determined by the Commission (Article 72 of the Law on Securities). Periodical reports on operations of authorised participants and Stock Exchanges are prepared for the periods January-March, January-June, January-September, and January-December of the current year and they are submitted to the Commission at the latest within 30 days from the day of expiration of the period that the report refers to. Stock Exchanges and authorised participants are obliged to submit the annual report on operations to the Commission, with the year-end account accompanied with the report of authorised auditor, by 30 April of the current year for the previous year (Article 10, paragraphs 3, 4 and 5 of the Rules on the control of transactions with securities, Official Gazette of the Republic of Montenegro 28/07).

Investment fund management company is obliged to prepare and publish the annual and periodical report on operations of the investment fund management company and investment fund it

manages. The annual and periodical report on operations of the management company and investment fund is prepared and published by the management company, for the periods January-March, January-June, January-September, and January-December of the current year. Investment fund management company is obliged to submit to the Securities Commission the annual report of the management company and investment fund it manages at the latest four months upon the completion of the business year, whereas it is obliged to submit the periodical report of the management company and investment fund it manages at the latest within 30 days from the expiration of the period that the report refers to (Rules on the contents and publication of reports on operations of investment fund management companies and investment funds, Official Gazette of the Republic of Montenegro 68/04, Official Gazette of Montenegro 26/09).

Pension fund management company is obliged to prepare and publish the annual and periodical report on operations of the pension fund management company and pension fund it manages. Management company prepares and publishes annual and periodical reports on operations of the management company and pension fund for the periods January-March, January-June, January-September, and January-December of the current year. Pension fund management company is obliged to submit the annual report of the management company and pension fund it manages to the Securities Commission at the latest four months upon the termination of the business year, and it is obliged to submit the periodical report of the management company and pension fund it manages at the latest 30 days from the expiration of the period the report refers to (Rules on the contents and publication of the reports on operations of voluntary pension fund management companies and voluntary pension funds, Official Gazette of the Republic of Montenegro 68/04, Official Gazette of Montenegro 26/09).

Custody bank is obliged to submit the following to the Commission:
1) annual report on operations in the previous year;
2) periodical reports on operations for the period January-March, January-June, January-September, and January-December of the current year;
3) notification of changes of the prescribed requirements for performing custody activities that the license is issued for, within three days from the day of the change; and
4) other reports requested by the Commission. Custody bank submits the annual report on operations in the previous year at the latest by 30 April of the current year and periodical reports at the latest within 30 days from the day of expiration of the period that the reports are submitted for (Article 38 of the Rules on performing custody operations, Official Gazette of the Republic of Montenegro 57/07).

The Commission may request from the participants to submit relevant reports on operations within shorter deadlines, when it finds appropriate to do so.

The supervisory body, i.e. the Securities Commission has the authorisations to request the submission of all additional information from all entities licensed by the Securities Commission.

**85. What are the powers of intervention of the supervisory authority in cases of investment firms in difficulties?**

In performing the supervision the Commission may request:

1) reports and information on operations of the management company or the investment fund;
2) reports and additional information on performed audit of the management company or investment fund;
3) extraordinary audit of operations of the management company or the investment fund;
4) changes or amendments to the contract of management of the investment fund;
5) other data and information determined by its act.

If the Commission, during the course of supervision, determines illegalities or irregularities in operations of management companies and investment funds, it will order, in the form of a decision, that the established illegalities or irregularities are removed within the determined deadline. The management company is obliged to remove the established illegalities or irregularities within the

given deadline and inform the Commission on undertaken measures. If the management company fails to remove the established illegalities or irregularities within the given deadline and inform the Commission thereof, with the submission of adequate proofs, the Commission may undertake the following measures:

1) give order for revoking the members of the Supervisory Board of the investment fund;
2) give order for change of the management company;
3) warn in writing, suspend on temporary basis or revoke the license of the investment manager;
4) temporarily prohibit disposition of the assets of the management company and the investment fund;
5) revoke the licence of the management company;
6) other measures necessary for removing illegalities and irregularities in operations of the management company and the investment fund.

The Commission may impose one or more measures depending on the nature and severity of the established irregularities.

The Commission may revoke the licence of the management company, if:

1) the licence is obtained by stating the false data;
2) it invests assets of the investment fund or in other manner acts contrary to this Law;
3) it fails to submit the required documentation to the Commission during the supervision procedure or in another manner disrupts supervision over its operations;
4) the management company adopts the decision on liquidation;
5) it fails to reach the prescribed level of capital within the prescribed deadline;
6) it ceases to meet the requirements prescribed for obtaining the licence;
7) in other cases when it estimates that the management company jeopardizes the interests of owners of the investment fund by illegal management of the investment fund.

The Commission shall order the following by the decision on revocation of the licence of the management company:

1) to the organisation performing payment system operations to terminate the execution of the orders of the authorised persons of the management company for transfer of monetary funds from the account of the investment fund managed by the management company, as well as from the accounts of the management company;
2) to the Central Depository Agency to terminate the execution of orders of authorised persons of the management company for transfer of securities from the investment fund portfolio managed by the management company to other persons.

The contract of management of the investment fund is cancelled, by the force of law, if the licence of the management company is revoked. In such a case, the Commission, in the form of the decision on revocation of the licence of the management company, orders the Supervisory Board of the investment fund to perform urgent activities regarding investment fund management, until the conclusion of the contract with the new management company. The urgent activities include the activities to be performed in order to prevent the damage to the investment fund.

The management company whose licence is revoked is obliged to transfer all activities regarding management of assets of the investment fund to the Supervisory Board of that fund, within eight days from the day of receiving the decision of the Commission.

The investment fund must, at the latest within three months from the day of receiving the decision of the Commission on revocation of the licence of the management company, submit to the Commission the request for obtaining the consent to conclude the contract with another management company. If the investment fund, within the aforementioned deadline, fails to submit the request for obtaining the consent to conclude the contract with another management company, the Commission initiates a court liquidation procedure of the investment fund.

**86. Is there a right of appeal to the Courts against any decisions taken by the supervisory authority?**

Provisions of the law regulating general administrative procedure are applied to the procedures before the Commission. At the request of the party, the Commission is obliged to make a decision within 30 days from the day of properly submitted request, i.e. from the day when the Commission considers the submitted documentation is complete. The decision of the Commission is final, which means that appeal cannot be lodged against it, but the party may initiate administrative dispute before the competent court against the decision of the Commission.

**87. How is the supervisory authority's operational independence ensured?**

The Securities Commission of the Republic of Montenegro was established in November 2000. The Commission is an independent organisation of the Republic of Montenegro, having the status of a legal person, formed to regulate and supervise the issuance of securities and trade in securities, in accordance with the IOSCO goals and mission. Its mission is to implement the Law on Securities in order to protect investors and maintain a fair, honest and efficient market.

The Commission does not have the status of an administration body, because administration bodies are formed by the decision of the Government. The Commission differs from the administration body also because the Law on Securities gives the Commission the status of a legal person and it prescribes that "the Commission shall be an organisation of the Republic of Montenegro, with the status of a legal person, established for the purpose of regulating and supervising the issuance and trade in securities" (see Article 7, paragraph 1 of the Law on Securities), and independence and autonomy are guaranteed to the Commission (see Article 7, paragraph 3 of the Law on Securities).

Autonomy and independence of the Commission as the regulatory body are not guaranteed only by this provision of the Law on Securities, but it is implemented by other provisions of the law, as follows:

Independence from political influences is provided by the following:

- the Commission is appointed by the Parliament and the Commission is accountable for its work to the Parliament of the Republic of Montenegro (Article 11, paragraph 2 of the Law on Securities);

- member of the Commission cannot be dismissed due to political reasons, because the reasons for dismissal are prescribed by Article 12, paragraph 2 of the Law on Securities that enumerates in details the reasons for revocation of a Commission member. In accordance with the provision of this Law, a Commission member may be dismissed if he/she:
1) is performing the function of a member of the Commission in an unconscientious and inefficient manner;
2) permanently loses the capacity to perform the function of a member of the Commission;
3) is convicted to an unconditional imprisonment sentence or is convicted of an act that makes him/her unworthy to perform the function of a member of the Commission;
4) is absent from three consecutive meetings of the Commission without its approval.

- By providing financial independence, because the Commission is not financed as administration bodies from the Budget of the Republic of Montenegro, but the funds for the work of the Commission are provided from:
1) fees paid along with submission of applications to the Commission;
2) fees paid for registration and transfer of securities with the entity authorised for registration of securities. (Article 19, paragraph 1 of the Law on Securities);

Independence from the influence of the participants in the securities market is prescribed in the following manner:

- The following persons cannot be members of the Commission:
1) persons elected, appointed or employed in state bodies;
2) members of governing and managing bodies, executive bodies and secretaries of the securities issuers;

3) shareholders and employees of the Securities Exchange, authorised participant on the securities market, and the Central Depository Agency;
4) persons in matrimony or kinship either in an ascendant or collateral line, up to the third degree (see Article 11, paragraph 4 of the Law on Securities).

- The Commission has five members; president, deputy president, and at least one member of the Commission are full-time paid members, and cannot be engaged in another business, except for the activities in the area of science, research and lecturing (see Article 11, paragraph 5 of the Law on Securities).

The basic characteristic of the established supervisory system on the securities market is that the status of the Commission is established by the Law, so that the Commission is not dependent on the Government.

**Market structure information**

**88. What is the number of (broken down by type of product/market):**

**a) broker-dealers on regulated markets;**

On 30 June 2009, there were the total of 24 authorised participants on the securities market, out of which 10 have broker licence and 14 have broker and dealer licence.

**b) credit institutions providing investment services;**

On 30 June 2009, two banks have the licence to perform transactions with securities: INVEST BANKA MONTENEGRO a.d and HYPO ALPE ADRIA BANK a.d.

On 30 June 2009, six banks have the licence to perform custody activities.

**c) portfolio managers;**

On 30 June 2009, there are 7 investment fund management companies and 3 voluntary pension fund management companies

On 30 June 2009, INVEST BANKA MONTENEGRO a.d has the licence to perform investment manager activities.

All authorised participants (the total of 24) have the licence to perform investment adviser activities.

**d) collective investment undertakings (number of undertakings as well as total amount of assets under management)**

On 30 June 2009, in Montenegro, there are 7 investment funds organised as mutual investment funds.

All investment funds are closed-end investment funds. In Montenegro, it is not allowed to form open-end investment funds. All investment funds are joint stock companies with the registered office in Montenegro.

Assets of the investment funds are shown in the table below:

| NAME | IN THE COUNTRY | | EU RESIDENTS | | EU NON-RESIDENTS | |
|---|---|---|---|---|---|---|
| | Absolute amount | Percentage amount | Absolute amount | Percentage amount | Absolute amount | Percentage amount |
| FZU ATLAS MONT | EUR 21 003 979.46 | 100.00% | 0.00€ | 0.00% | EUR 0.00 | 0.00% |
| FZU EUROFOND | EUR 89 802 605.48 | 88.99% | 0.00€ | 0.00% | EUR 11 107 984.96 | 11.01% |
| FZU HLT | EUR 39 048 666.32 | 93.48% | 0.00€ | 0.00% | EUR 2 721 898.07 | 6 52% |
| FZU MIG | EUR 22 897 224.82 | 96.33% | 0.00€ | 0.00% | EUR 872 555.18 | 3.67% |
| FZU MONETA | EUR 34 631 212.93 | 97.62% | 0.00€ | 0.00% | EUR 844 723.03 | 2.38% |
| FZU TREND | EUR 55 094 631.21 | 100.00% | 0.00€ | 0.00% | EUR 0.00 | 0.00% |
| FZU WESTERN BALKAN | EUR 393 826.60 | 14.50% | 0.00€ | 0.00% | EUR 2 321 430.21 | 85.50% |

Source: The Securities Commission

**i) total, of which:**

Answer is given below.

**ii) domestic;**

| Fund name | Absolute amount | Percentage amount |
|---|---|---|
| FZU Atlas Mont | EUR 21 003 979.46 | 100.00% |
| FZU Eurofond | EUR 89 802 605.48 | 88.99% |
| FZU HLT | EUR 39 048 666.32 | 93.48% |
| FZU Mig | EUR 22 897 224.82 | 96.33% |
| FZU Moneta | EUR 34 631 212.93 | 97.62% |
| FZU Trend | EUR 55 094 631.21 | 100.00% |
| FZU Western Balkan | EUR 393 826.60 | 14.50% |

**iii) non-domestic EU;**

| Fund name | Absolute amount | Percentage amount |
|---|---|---|
| FZU Atlas Mont | EUR 0.00 | 0.00% |
| FZU Eurofond | EUR 0.00 | 0.00% |
| FZU HLT | EUR 0.00 | 0.00% |
| FZU Mig | EUR 0.00 | 0.00% |

| | | |
|---|---|---|
| FZU Moneta | EUR 0.00 | 0.00% |
| FZU Trend | EUR 0.00 | 0.00% |
| FZU Western Balkan | EUR 0.00 | 0.00% |

### iv) non-domestic non-EU.

| Fund name | Absolute amount | Percentage amount |
|---|---|---|
| FZU Atlas Mont | EUR 0.00 | 0.00% |
| FZU Eurofond | EUR 11 107 984.96 | 11.01% |
| FZU HLT | EUR 2 721 898.07 | 6.52% |
| FZU Mig | EUR 872 555.18 | 3.67% |
| FZU Moneta | EUR 844 723.03 | 2.38% |
| FZU Trend | EUR 0.00 | 0.00% |
| FZU Western Balkan | EUR 2 321 430.21 | 85.50% |

**List of Annexes:**