

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

– ADDITIONAL QUESTIONS –

09 Financial services

Minister:

Igor Luksic

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

9: Financial services

I. BANKS AND FINANCIAL CONGLOMERATES

Legal framework:

Condition of operation

1. (Ref to Q. 4): Please provide information on the average level of liquidity and solvency ratio.

The following table shows data on solvency ratio of the banking sector in Montenegro in 2009 on quarterly basis:

Capital adequacy ratio (CAR)	I Q 2009	II Q 2009	III Q 2009	IV Q 2009
	12.42	11.89	12.86	15.75

Since January 2009, the banks submit their reports in accordance with the new decision regulating the liquidity ratio calculation, and the liquid assets to short term liabilities ratio. Minimum daily amount of this ratio is 0.9, while ten-day ratio is 1.

The table below shows ten-day average of the liquidity ratio in period July 2009 – February 2010.



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Supervisory authorities

2. (Ref to Q. 14): With reference to the Central Bank of Montenegro as supervisory authority, please clarify the following points:

i. Please provide information on the number, importance and outcome of investigations carried out by the supervisory authority over the last few years. Can information on this be easily found in the public domain?

Since 19 March 2008, i.e. since the current Banking Law entered into force, the Central Bank of Montenegro has taken no action against any bank regarding introduction of interim administration and license revocation. In addition, no bankruptcy proceedings were commenced against any bank in accordance with the Bank Bankruptcy and Liquidation Law (OGRM 47/01 and OGM 62/08).

However, since the founding of the Central Bank of Montenegro at the end of 2000, and in accordance with the Banking Law that has been applying since 19 March 2008 as well as the Bank Bankruptcy and Liquidation Law, the Central Bank introduced interim administration in three banks and three bankruptcy and liquidation proceedings against banks were commenced.

Interim administration was introduced in Montenegrobank AD Podgorica in 2001. During one-year period of interim administration, this bank was rehabilitated and returned to the shareholders for managing, and in 2003 it was acquired by new owner, Nova Ljubljanska Banka d.d. from Slovenia

Interim administration in Jugobanka AD Podgorica was introduced on 7 February 2002 and terminated on 15 March 2002, when the bankruptcy proceedings were commenced. During the bankruptcy proceedings of this bank (Jugobanka AD Podgorica – in bankruptcy) which was conducted by the Central Bank, the conversion into cash of all assets of the bank had been performed and all creditors were paid from the available monetary assets (EUR 3.199.935.15). Creditors were paid as at 29 November 2006, after passing the final court decision under the creditors' claim on 24 November 2006. The bankruptcy proceedings in Jugobanka AD Podgorica – in bankruptcy were completed on 9 March 2007.

The Central Bank commenced the liquidation proceedings against Banka za razvoj Crne Gore AD Podgorica (Development Bank) on 7 February 2002. During the liquidation proceedings of the Banka za razvoj, assets of the bank (cash, receivables of the bank and real estates) that remained after settlement of creditors' claims based on the Agreement on the distribution of assets of Banka za razvoj signed between Bank's founders were distributed to the following founders of the bank: Government of Republic of Montenegro, Development Fund of the Republic of Montenegro and Employment Bureau of Montenegro. Upon the finalisation of liquidation proceedings, the Central Bank finalised the liquidation proceedings in the Banka za razvoj on 9 May 2003.

The Central Bank revoked the license to Ekos Bank AD Podgorica on 28 March 2003, after which the liquidation proceedings started. They are still in progress due to the continuance of court proceedings.

The Central Bank keeps the register of banks in accordance with the current Banking Law. These data are public and they are published on the web site of the Central Bank. Web site also contains the information on liquidation proceedings that are still in progress.

The Central Bank web site has no data on the aforementioned completed bankruptcy and liquidation proceedings, since Jugobanka AD Podgorica – in bankruptcy and Banka za razvoj Crne Gore AD Podgorica – in liquidation has ceased to exist as legal persons through the finalisation of these proceedings in 2003 and 2007 and are deleted from the official registries.

ii. What are your plans for improving the enforcement capacity of the supervisory authority over the next 5 years?

As the basis for its further development, relatively high level of efficiency of the supervision is shown through the assessment of compliance with the Core Principles for Effective Banking Supervision that was performed by FSAP mission (Financial Sector Assessment Program) of the World Bank and International Monetary Fund.

The challenges and the focus of the Central bank, as regulator and supervisor of the banking system, are connected with the intensive development of the banking system and accomplished level of risk management, as well as with the requirements arising from the character of economic cycle and obligations for EU accession.

Challenges the banking supervision in Montenegro is facing may be defined as follows:

- **Strengthening of macro and micro prudential supervision** aimed at further promoting of supervisory risk based approach,
- **Effective procedures for crisis management** – strengthen cooperation and confidence between other supervisors of the financial system of Montenegro; reconcile methods and criteria for the cooperation and exchange of information, resources and experience.

- **Strengthening of cooperation with the supervisors on consolidated basis** (home – host cooperation), particularly with the supervisors of the EU member states.

Response to these challenges requires the strategic activities that are developed in several directions:

1) Banking Law created conditions for full, but phased implementation of the advanced approaches for determining capital for all risks for which CRD requires capital calculation, and giving approval for rating agencies for the implementation of standardised approaches for credit risk management based on the principles defined in CEBS documents. In the following period, the focus will be on the Capital Requirement Directive 2006/48/EC (CRD), as well as on the Financial Conglomerates Directive. The improvement of professional qualifications of the supervision resources for validation of models on which IRB approach and other advanced approaches for management and determining capital for covering unexpected losses for individual risks are based will be provided during 2010 and the first half 2011, *inter alia*, through IPA - Twinning Project "Strengthening regulatory and supervisory capacities of the financial regulators in Montenegro".

Full implementation of IAS & IFRS is expected using prudential framework for reporting capital that provides safety and stability of the banks. National discretionary rights will be used applying the conservative principle which includes approach above the minimum that is given in the Directives regarding the issues where discretionary rights are used. Regulation concerning financial conglomerates will be adopted and the implementation of the financial conglomerates directive will be commenced.

Besides, intensive training programme is provided through the programme of technical cooperation of European Central Bank "Strengthening of macro and micro prudential supervision in EU candidates and potential candidates" with a view to strengthening and improving supervisory actions in accordance with the experience and practice of the EU supervisors.

2) Further development of risk based supervision as modern supervisory approach with a view to strengthening qualitative and quantitative assessment of risk profile of the banks, timely action against the banks in order to correct their risk and procyclical behaviour will be performed. Supervisory approach is aimed at detecting, verifying and analysing materially significant risk areas, products, transactions and business relations based on which the assessment of bank's risk profile would be determined not only currently but in time horizon longer than one year in advance. This approach includes development of the risk assessment practice and knowledge of the possibilities of portfolio approach of risk optimisation both in banks' performances and during supervision. Therefore, it is very important to strengthen constantly supervision introducing new methodologies, gaining experience and monitoring findings and practice formalised by the banking industry.

3) The cooperation with other supervisory agencies becomes more important due to the following expectations:

- implementation of the CRD requirements for close cooperation of home and host supervisors through the implementation of mutual recognition concept,
- systemic impact of individual banks – subsidiaries of foreign banks, becomes more important for both Montenegro and home country,
- exchange of information on banks and systems with individual countries becomes more important,
- supervision on consolidated basis becomes more applicable,
- Montenegrin banks establish their network abroad which requires performance of cross border on-site examinations,
- foreign banks establish branches in Montenegro that are controlled by other supervisory agencies,

- EU accession process requires development of the cooperation with bodies of the EU Commission, and the like.

iii. Could you please present in more detail the present situation and expected developments regarding asset quality of banks (defaults, toxic assets)? What does the Central Bank of Montenegro do (or plan to do) to address the situation?

Asset quality of the banking sector

In 2009, all indicators of the asset quality deteriorated in relation to 2008 when they were relatively low. Non-performing assets (C, D, and E) increased by 62.33%, non-performing loans (C, D, and E) increased by 61.01%, and past due loans increased by 70.43%. Negative loan growth rate at the aggregated level, which was largely contributed by systemic banks that almost completely suspended their lending activities or they were performed at very low level, the sale of portion of loan portfolio to parent banks in the amount of € 180 million in 2009, as well as the measure of prohibiting of granting loans imposed against systemically important bank, contributed that asset quality indicators have not additionally worsened.

The improvement of non-performing assets and non-performing loans occurred in January 2010 since the banks implemented measures the Central Bank of Montenegro passed in December 2009.

Non-performing assets of the banks (C, D, E) amounted to € 289.1 million as of 21 January 2010, representing share in total assets of 9.89%. In 2010, non-performing assets decreased by € 55.6 million or 16.14%. Simultaneously, the share of non-performing assets in total assets declined by 1.5 percentage points.

Due to general worsening of macroeconomic environment in Montenegro in 2009 under the influence of global financial crisis and expansive credit growth that had occurred by 2008, non-performing assets increased by € 132.4 million or 62.33%, which significantly impacted its movement in the following period. In relation to year-end 2009, assets classified in category substandard (C) reported nominal decline of € 40.1 million or 18.15%, assets classified in category doubtful (D) declined by € 1 million or 1.21%, while assets classified in category loss (E) reported nominal decline of € 14.5 million or 36.21%.

Non performing loans (C, D, and E) amounted to € 275.7 million as of 31 January 2010 representing share in total loans of 11.61%. In 2010, they declined by € 48.5 million or 14.95%. In 2009, non-performing loans increased in the amount of € 122.9 million or 61.01%, while their share in total loans increased by 6.32 percentage points.

Total past due loans amounted to € 714.1 million as of 31 January 2010 representing 30.05% of total loans. The largest share in past due loans had loans that were past due 31-90 days (55.70%). Total past due loans increased by € 166 million or 30.30% in the current year.

Asset quality projections in 2010

The Central Bank prepared projections of movement of non-performing loans and past due loans for 2010 within the project of diagnostic assessments and stress testing based on the projection of key macro economic variable movements using two scenarios:

- a) Realistic scenario, if the share of non performing loans to total loans would amount to 9.16%, and share of past due loans to total loans would amount to 21.43%;

- b) Worst case scenario, if the share of non-performing loans to total loans would amount to 22.10%, and the share of past due loans in total loans would amount to 46.18%;

However, depending on further macro economic movements and situation in both real and household sectors, as well as the activities of systemically important banks with respect to asset quality management, our opinion is that all projections, as well as the aforementioned projections, should be taken into consideration and the need to prepare new projections will be considered during the year.

Regulatory measures taken by the Central Bank

The Central Bank passed series of prudential measures of counter-cyclical character with a view to mitigating the situation of the banks and borrowers and providing safety and soundness of the banking system.

The Central Bank passed the Decision on Minimum Standards for Credit Risk Management in Banks at the end of 2008, which cancelled the obligation of the banks to allocate general reserves starting 1 January 2009.

The Central Bank, in cooperation with the Ministry of Finance, proposed the Law on Measures for the Protection of the Banking System to the Government of Montenegro in order to protect the banking sector against the effects of the global financial crisis and to preserve its safety and stability. In accordance with the Law on the Measures for the Protection of the Banking System and with a view to preserving liquidity of banks in period of global financial crisis, the Central Bank passed in October 2008 a Decision on the use of reserve requirements of banks held with the Central Bank for period longer than one day and a Decision on approval of short term borrowings to banks.

Intensive adjustment of legal framework to the activities of banks in crisis period continued also in 2009. During 2009, the Central Bank significantly altered the reserve requirement policy and several key regulations governing operations of the banks. In addition, a decision concerning founding banking ombudsman, and/or better protection of rights of the banks' clients was passed. The objective of passing these decisions was to stop, i.e. mitigate the decline in asset quality, improve credit activity and encourage banks to work more actively on attracting new and regaining earlier withdrawn deposits.

By the end of February 2009 the Central Bank of Montenegro amended regulations governing the implementation of reserve requirement instruments. Banks were enabled, through the amendments to these regulations, to hold a portion of the reserve requirement, up to 20%, in treasury bills issued by the State of Montenegro. Replacement of differentiated reserve requirement rate (19% and 2%) by uniform rate of 11% on all deposits held with banks was new. Moreover, the period of the use of reserve requirement for liquidity longer than one day was expanded from seven to ten business days. Besides the abovementioned changes, interest rate on the use of reserve requirement for liquidity was reduced from of 5% to 4%, as well as the interest rate for default in repayment of used funds from 11% to 9%.

Amendments to the Decision on Minimum Standards for Credit Risk Management in Banks adopted in April 2009 made changes concerning allocation of loan loss provisions based on criteria "default in repayment". Instead of the limit of 60 days past due, after which the claim is moved to the category of non performing assets, the limit of 90 days is used. In addition, the change was also introduced for the final delinquency limit for classifying asset items in category loss that changed from 180 days to 270 days. Decision on Reports that Banks Submit to the Central Bank of Montenegro in accordance with the Banking Law was harmonised with these amendments as well as Capital Adequacy Decision regarding changing of past due days from 60 to 90 days and after the expiry of this deadline (90 days) the debtor becomes delinquent. These amendments enabled better position to banks when calculating risk weighted assets for credit risk.

By the end of June 2009, the Central Bank amended again its reserve requirement policy. The banks were exempted from allocating reserve requirements on deposit growth realised in the first

calculation period from June 2009, which means that the marginal rate of reserve requirement was zero. Reserve requirement rate decreased from 11% to 10%, and the banks were able to keep up to 25% of reserve requirements in the form of treasury bills issued by the State of Montenegro. Interest rate for defaults in the use of reserve requirement was also reduced from 4% to ECB's interest rate, for key refinancing operations, increased by 0.5 percentage points. Interest rate on the reserve requirement funds that the bank did not repay on time was also reduced from 9% to 7% annually (which is approximately equal to penalty interest rate regulated by the law that is harmonised with the EU Directives).

In August 2009, with a view to mitigating global financial crisis effect, the Council of the Central Bank of Montenegro adopted a new set of measures of temporary character which enabled more favourable conditions for loan restructuring, asset classification and lower calculation of loan loss provisions. The objective of the adopted measures was to increase the position of banks and their debtors and to preserve stability and safety of the banking system. Decision on interim measures for credit risk management in banks was also passed, which enabled the banks to classify, under certain conditions, restructured loans in more favourable classification categories, provided that such activity would not influence negatively on the liquidity of the bank, and that the restructuring would provide regular debt servicing in the future. In addition, this Decision significantly facilitated the position of bank's borrowers – both legal and natural persons, which defaulted under the global financial crisis effect. Simultaneously, this Decision enabled the banks, under certain conditions, to classify more favourably loans secured by collateral in the form of residential and business real estates.

The Central Bank amended Decision on temporary measures for credit risk management by the end of December 2009. These amendments included certain relief for the banks in order to start credit activity. New measures decreased allocation of provisions for certain classification categories. In addition, it is anticipated that the banks may exclude financial indicators for 2009 when evaluating credit capacity of the borrowers. Besides, banks are enabled to classify loans granted to investment project by analysing profitability of the project and not by evaluating credit capacity of the debtor. Relief for loan restructuring may be applied also for the loans that are 180 days past due (instead of current 90 days).

Drafting of the Law on amendments to the Banking Law, Law on amendments to the Bank Bankruptcy and Liquidation Law and Deposit Protection Law is in their final stage.

Currently, no new measures are projected, but the Central Bank of Montenegro will carefully monitor the situation, and depending on the situation, passing of new measures cannot be excluded.

3. (Ref to Q. 18): Please provide additional information on the Prva Banka case. Please specify difficulties encountered and how the independence of the supervisor was ensured in the resolution of this "case".

The Central Bank took measures against Prva Bank again in September 2009 based on findings of the examination performed in May 2009. The measures that the Central Bank imposed against Prva Bank still prohibit performance of credit activity, taking over off balance sheet commitments, issue of credit cards and approval of overdrafts. The Bank was also ordered to increase the amount of own funds based on new investments and reduce credit risk concentration, i.e. reduce exposures to individual debtors to a prescribed level.

In the meantime, the Central Bank selected audit firm PwC to perform special purpose audit in accordance with Article 102 of the Banking Law, and perform diagnostic assessment of the Prva Bank using financial information as of 30 June 2009 for the Central Bank requirements.

In September 2009, the Central Bank reached a decision regarding the request of the Bank from July 2009 and gave approval to PwC from Podgorica to perform statutory audit of 2008 financial statements of the Bank.

However, statutory audit of 2008 financial statements of the Bank was not completed since the bank unilaterally breached the contract with PwC on 30 December 2009. Due to non completed statutory audit for 2008, as well as due to non submission of the required data and information to the auditor by Prva Bank, both special purpose audit and diagnostic assessment have not been completed.

On 25 February 2010, the Council of the Central Bank of Montenegro enacted a decision on the request of the Prva Bank for the selection of audit firm Deloitte from Podgorica to perform 2009 statutory audit of the Bank. The decision of the Council of the Central Bank of Montenegro also covers the obligation of the Bank to provide grounds for the performance of audit due to the importance of audit risk in this audit.

The abovementioned grounds are:

- Strengthen audit team during the audit by engaging the auditor from the Deloitte office outside Montenegro and engaging partners from EU;
- Audit firm Deloitte should make intensive communication and it should request all relevant information from PwC that performed, but has not completed the audit of the financial statements for 2008 as well as to use the work of the others, PwC in particular;
- Audit report must contain elements prescribed by Article 96 and with reference to article 93 of the Banking Law which will cover auditor's opinion on the compliance of 2009 annual financial statements with IAS 1 on capital management and compliance with the measures of the Central Bank of Montenegro imposed against the Bank;
- Submit engagement letter to the Central Bank of Montenegro for review and discussion;
- Submit Memorandum on planning audit to the Central Bank of Montenegro with the assessment of audit risk and determined importance, and submit audit programme for review and discussion;
- Auditors should provide to the Central Bank supervision department, if required, all information, documents and working papers regarding review and collection of evidences during audit and enable intensive cooperation of Deloitte with authorised examiners of the Central Bank in accordance with the appropriate principles and Basel Committee for Banking Supervision standards;
- Auditors should perform audit of internal controls system in more detail than usual and additionally find and inform on illegal activities that have significant impact on accuracy and objectivity of the financial statements.

On 8 March 2010, the Central Bank commenced on-site full scope examination of the Prva Bank. The examination is commenced with a view to determining financial condition of the Prva Bank and its compliance with the laws and regulations due to the following two reasons:

- firstly, examine financial condition of the Bank as of 31 December 2009 and 28 February 2010 since the preliminary reports of diagnostic assessment as of 30 June 2009 pointed to adverse financial condition of the Bank, while data from the Bank as of 30 September 2009 and 31 December 2009 point to immediate recovery of the Bank;
- secondly, examine the compliance with the current measures imposed by the Central Bank.

In pursuing its supervisory functions, besides its resources, the Central Bank used resources of independent respectable audit firms, in order to strengthen independence of the Central Bank in this case. With a view to providing full independence of the Central Bank of Montenegro in resolving this and other cases, passing set of new regulation (Central Bank of Montenegro Law, Amendments to the Banking Law, Amendments to the Bank Bankruptcy and Liquidation Law) is important. It will guarantee independence of the Central Bank of Montenegro. The aforementioned laws are prepared by the Central Bank of Montenegro, in cooperation with the Ministry of Finance, together with IMF and the World Bank and they should be adopted in the proposed format since they are based on the best international practices and EU and ECB rules. Upon the adoption of new legal framework, Central Bank of Montenegro will formulate the strategy for resolving problems in the Prva Bank which will be supported by the Government of Montenegro.

4. (Ref to Q. 19): Please specify if there are exceptions to the professional qualifications requirements and on which ground possible exceptions are justified and applied.

Table below shows special conditions that the Banking Supervision Department staff should meet regarding particular job position.

Job position	Organisational part	Special conditions
Director of the Department	Banking Supervision Department	<ul style="list-style-type: none"> - University degree, major - Economics, - Computer literacy, - specialized knowledge for the use of particular application software, - advanced English, - 5 years of working experience
Director of the Directorate	Directorate for specialised supervision	<ul style="list-style-type: none"> - University degree, major – Economics or Law, - Computer literacy, - advanced English, - 5 years of working experience
Chief of the Division – Senior examiner	Division for credit risk supervision	<ul style="list-style-type: none"> - University degree, major-Economics, - computer literacy, - advanced English, - 3 years of working experience
Senior examiner	Division for credit risk supervision	<ul style="list-style-type: none"> - University degree, major-Economics, - computer literacy, - basic English, - 2 years of working experience
Senior examiner	Division for credit risk supervision	<ul style="list-style-type: none"> - University degree, major-Economics, - computer literacy, - basic English, - 2 years of working experience
Examiner	Division for credit risk supervision	<ul style="list-style-type: none"> - University degree, major-Economics, - computer literacy, - basic English, - 1 year of working experience
Independent associate	Division for credit risk supervision	<ul style="list-style-type: none"> - Two-year post secondary school, Economics, - computer literacy, - 1 year of working experience
Associate	Division for credit risk supervision	<ul style="list-style-type: none"> - High school degree, - computer literacy,

- Additional Questions -

		<ul style="list-style-type: none"> - 1 year of working experience
Chief of the Division – Senior examiner	Division for market and liquidity supervision risks	<ul style="list-style-type: none"> - University degree, major-Economics, - computer literacy, - advanced English, - 3 years of working experience
Senior examiner	Division for market and liquidity supervision risks	<ul style="list-style-type: none"> - University degree, major-Economics, - computer literacy, - basic English, - 2 years of working experience
Examiner	Division for market and liquidity supervision risks	<ul style="list-style-type: none"> - University degree, major-Economics, - computer literacy, - basic English, - 1 year of working experience
Independent associate	Division for market and liquidity supervision risks	<ul style="list-style-type: none"> - Two-year post secondary school, Economics, - computer literacy, - 1 year of working experience
Chief of the Division – Senior examiner	Division for the supervision of IT system and management information system (MIS)	<ul style="list-style-type: none"> - University degree, major-Economics or electrical engineer, - computer literacy, - advanced English, - 3 years of working experience
Senior examiner	Division for the supervision of IT system and management information system (MIS)	<ul style="list-style-type: none"> - University degree, major-Economics or electrical engineer, - computer literacy, - advanced English, - 2 years of working experience
Senior examiner	Division for the supervision of IT system and management information system (MIS)	<ul style="list-style-type: none"> - University degree, major-Economics or electrical engineer, - computer literacy, - advanced English, - 2 years of working experience
Chief of the Division – Senior examiner	Division for the compliance supervision	<ul style="list-style-type: none"> - University degree, major-Economics or Law, - computer literacy, - advanced English, - 3 years of working experience
Senior examiner	Division for the compliance supervision	<ul style="list-style-type: none"> - University degree, major-Economics or Law, - computer literacy, - basic English,

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		<ul style="list-style-type: none"> - 2 years of working experience
Examiner	Division for the compliance supervision	<ul style="list-style-type: none"> - University degree, major-Economics or Law, - computer literacy, - basic English, - 1 year of working experience
Director of the Directorate	Directorate for the development and systemic risk based supervision	<ul style="list-style-type: none"> - University degree, major – Economics or Law, - Computer literacy, - advanced English, - 5 years of working experience
Examiner in Charge – Chief of the Service	Service for portfolio management and development of risk based supervision	<ul style="list-style-type: none"> - University degree, major – Economics, - specialized knowledge for software usage: risk assessment, statistical package, portfolio management, - advanced English, - 3 years of working experience
Examiner in Charge – Portfolio Manager	Service for portfolio management and development of risk based supervision	<ul style="list-style-type: none"> - University degree, major – Economics, - specialized knowledge for software usage: risk assessment, statistical package, portfolio management, - advanced English, - 3 years of working experience
Chief of the Division – Senior Advisor	Division for stress testing and monitoring systemic risk	<ul style="list-style-type: none"> - University degree, major – Economics, - specialized knowledge for software usage: risk assessment, statistical package, - advanced English, - 3 years of working experience
Senior Advisor	Division for stress testing and monitoring systemic risk	<ul style="list-style-type: none"> - University degree, major – Economics, - specialized knowledge for software usage: risk assessment, statistical package, - advanced English, - 3 years of working experience
Senior Advisor	Division for stress testing and monitoring systemic risk	<ul style="list-style-type: none"> - University degree, major – Economics, - specialized knowledge for software usage: risk assessment, statistical package, - basic English, - 3 years of working experience
Chief of the Division – Senior Advisor	Legislation Division	<ul style="list-style-type: none"> - University degree, major - Law, - Computer literacy, - 3 years of working experience

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Senior Advisor	Legislation Division	<ul style="list-style-type: none"> - University degree, major - Law, - Bar exam passed, - Computer literacy, - advanced English, - 3 years of working experience
Senior Advisor	Legislation Division	<ul style="list-style-type: none"> - University degree, major - Law, - Computer literacy, - advanced English, - 3 years of working experience
Chief of the Division – Senior Advisor	Division of issuing licenses, granting approvals and permits and imposing measures	<ul style="list-style-type: none"> - University degree, major - Law, - Computer literacy, - basic English, - 3 years of working experience
Advisor	Division of issuing licenses	<ul style="list-style-type: none"> - University degree, major - Law, - Computer literacy, - basic English, - 2 years of working experience
Advisor	Division of issuing licenses	<ul style="list-style-type: none"> - University degree, major - Law, - Computer literacy, - basic English, - 2 years of working experience

II. INSURANCE AND OCCUPATIONAL PENSIONS

Legal framework

Supervisory Authority

5. (Ref to Q. 31): What are your plans with regard to the strengthening of your administrative capacity in this field (including concrete goals, timetable, staffing plan, Etc.), for instance on actuaries.

Since the end of 2009, the Agency has obtained expert and technical assistance under the project “Strengthening of the capacities of the Ministry of Finance for the efficient planning, analysis and management of public finances with a view to providing support to the State to achieve objectives of sustainable development and integration in European Union”, which is realised in cooperation of the Ministry of Finance and Capacity Development Programme (CDP) and which will last during the following two-year period. At the beginning of 2010, the activities to engage actuaries started. They will assist the Agency in developing its actuary capacities which will include specific support in the areas defined by the project, and the preparation of comprehensive development plan for this component in the Agency in the following period. In that respect, these activities will start at the beginning of April 2010.

In addition, with a view to strengthening its actuary capacities, the Agency has taken all necessary steps through already established bilateral cooperation with the regulators from the region to improve institutional cooperation and exchange best practices and experiences in this area. Besides the abovementioned, the Agency carries out continuous education of employees through their professional training, participation at seminars and conferences in the country and abroad and using technical assistance of the international organisations.

6. Do you have plans for the future transposition of the Solvency II Directive (applicable by EU Member States by 1/11/2012)?

At the beginning of 2010, the Agency started the activities, within the IPA Project “Strengthening of regulatory and supervisory capacities of financial regulators”, on further development of its institutional capacities through technical assistance and professional training of employees and establishing modern operational procedures and strengthening the cooperation between financial regulators. Project activities will last by mid 2011, in order to transpose European legislation from the insurance area into Montenegrin legislation and harmonise the supervisory function of the Agency with the best international practices from this area.

The important part of the project represent also activities dedicated to the implementation of EU Solvency II Directive, where the employees in the Agency will be trained by the experts of De Nederlandsche Bank concerning understanding and practical implementation of new concepts introduced by this Directive in order to transpose it into national legislation.

Due to the problems regarding the implementation of Solvency II Directive at EU level from the information provided by the experts of De Nederlandsche Bank, the beginning of these activities may be moved to the second half 2010.

7. With reference to Insurance Supervision Agency of Montenegro, please clarify the following points:**i. Please provide information on the number, importance and outcome of investigations carried out by the supervisory authority over the last few years. Can information on this be easily found in the public domain?**

Insurance Supervision Agency performed inspections of insurance companies working in Montenegro during 2008 and 2009 in order to determine their compliance with the law and secondary legislation and trade rules.

During 2008, five on-site inspections of insurance companies, which were monitored by regular off-site inspections of their financial and other reports, were commenced. In 2009, eight on-site inspections were performed. During 2009, targeted inspections of individual parts of the insurance companies' activities were also performed, while at the beginning of March 2010, on-site inspections of agency activities, brokerage activities and other institutions involved in insurance business at the market were performed.

The Agency set, as a priority in its inspections, the inspection of calculation of technical provisions of insurance companies and the manner of their depositing and investing in order to enable qualitative protection of the insured persons and ensure that the insurance sector adequately reacts on the upcoming challenges of the new environment. The objective of these activities was to focus insurance companies on the management of key risks, in particular, management of market risk, risk of maturity and structural non compliance of assets and liabilities and insurance risk. The completed targeted inspections of the expenses of insurance activities, particularly the inspections of fee expenses for agency and brokerage activities, disclosed violations that resulted in imposing measures for the reduction of these expenses within the prescribed overhead supplement.

These activities were aimed at creating stable insurance sector in Montenegro with the financially sound insurance companies that will protect insured persons, prevent jeopardising of their interests, thus, gaining higher confidence of the public in the insurance sector in the country.

During the quarterly off-site analysis of the insurance companies that were performed based on the information and data that the insurance companies are obliged to submit pursuant to the relevant Rules of Procedure, the Agency primarily concentrated on the inspection of solvency and liquidity of the companies, and changes that referred to their capital, assets, liabilities and claims, technical provisions and their depositing and investing.

All on-site and off-site inspections of the insurance companies resulted in imposing legally prescribed measures for the removal disclosed irregularities and illegalities found in their activities and to ensure that the rules on risk management are observed. The largest portion of recommendations and measures imposed during 2008 and 2009 referred to the compliance of activities, acts and organisation of the insurance companies with the new Insurance Law, submission of and additions to the data needed for full review of their activities, and other measures prescribed by the law were also taken.

Web site of the Insurance Supervision Agency (www.ano.me) gives general information on the completed inspections and other activities under its authority, while the findings of the completed inspections of individual companies and imposed measures are not made available to the public.

ii. What are your plans for improving the enforcement capacity of the supervisory authority over the next 5 years?

The Agency will continue its work to increase the quality of supervision of all entities operating at the insurance market in order to more precisely identify and monitor operating risks at insurance

market, their assessment and manner of risk management, as well as assessment of the internal controls system of the insurance companies.

The abovementioned objectives will be achieved through the following:

- Off-site monitoring of the insurance companies' activities through the analysis of the regular monthly and quarterly reports which content is prescribed by the secondary legislation of the Agency. In addition, based on annual financial reports of the insurance companies and activity reports with the opinions of certified actuaries and external auditors, the capital adequacy and assets will be reviewed off-site, as well as accuracy of actuary calculation, structure of premium income, liquidity and solvency, productivity, cost-efficiency and profitability of insurance companies;
- On-site inspection of the insurance companies through direct insight in accounting and other documents of the companies in order to verify their financial operations and operational methods, the manner used to protect their owners and insurance beneficiaries and determine level of compliance of their activities with the current laws and regulations.
- On-site inspection of the companies involved in agency activities, brokerage activities and insurance ancillary service providers;
- Monitoring implementation and execution of recommendations and legally prescribed measures imposed based on the previously performed inspections of the entities involved in the insurance at the insurance market;
- Implementation of new supervisory approaches that will be based on the assessment of risks the insurance entities are exposed to in their activities at the market, and the assessment of efficiency of the manner of managing those risks.

Since the accomplishment of the abovementioned objectives of the Agency depends on its infrastructure and qualifications of the employees, the following activities will be taken in the following period:

- Improvement of the quality of the information system of the Agency;
- Improvement of the registry of the information on insurance companies, insurance agent companies and insurance agents, insurance broker companies and insurance brokers, insurance ancillary service providers, authorised actuaries and other appropriate registries;
- Improvement of the quality of information at the web site of the Agency in order to present the latest data and information to the public from the insurance market and information on the regulatory authority activities;
- Long-term resolution of the issue of the business space for the Agency, taking into account projected increase in activities and number of employees.

IV. SECURITIES MARKETS AND INVESTMENT SERVICES

Legal framework

8. (Ref to Q. 67): Please clarify the following:

i. Please explain the requirements which apply to issuers of financial instruments who wish to have their instruments traded. Specifically what are the requirements for an instrument to be listed/admitted to trading, what are the requirements for a prospectus, disclosure of periodic information and disclosure of price sensitive information? Please explain how these requirements are supervised and enforced and by whom. Regarding supervision and enforcement please specify the number of persons dedicated to this function.

a) Requirements relating to prospectus

The regulatory framework for the prospectus which is published in a public offering of securities and including securities in the trade, consists mainly of the Securities Law (OGRM, 59/00 and 28/06) and Rules on the content of prospectus for public offering of securities (OGRM, 34/07). These two acts are in accordance with most of the principles contained in the Directive 2003/71/EC - (hereinafter: the Prospectus Directive).

The Securities Law (hereinafter: the Law) prescribes the following principles in accordance with the Prospectus Directive:

- **Obligation to publish the prospectus** – Article 36 of the Law prescribes publishing of the prospectus before or at least simultaneously with the publication of the public invitation for the subscription and payment of the securities to which it pertains. Article 44a of the Law specifies the cases in which obligation of publishing the prospectus is not applied.
- **Contents of the prospectus** – Requirements regarding the contents of the prospectus contained in the Law (Article 34) are fully compliant with Article 5 (1) of the Directive. The Law allows only the issuance of the prospectus as a single document to which additional information can be attached (Articles 34 and 35 of the Law);
- **Responsibility for the prospectus information** – In accordance with Article 37 of the Law, liability for damage related to accuracy and completeness of the information in the prospectus refers to every issuer, bidder, responsible person of issuer or bidder and every person who is responsible for drawing up a prospectus, and it is fully compliant with the provisions of the Prospectus Directive. In addition, Article 8 of the Rules on the contents of the prospectus for public offering of equity and long-term debt securities (hereinafter: the Rules) prescribes that responsible persons are clearly stated while their statements that guarantee the completeness and accuracy of data from the prospectus must be an integral part of the prospectus. These provisions are fully consistent with Article 6 of the Prospectus Directive.
- **Minimum information** – rules related to specific information that must be included in the prospectus are now contained in the Rules on the contents of the prospectus for public offering of equity and long-term debt securities, which was adopted by the Securities and Exchange Commission, in accordance with the provisions of the Directive.
- **Omission of information** – Montenegrin regulations comply with the provisions of the Prospectus Directive regarding regulation of cases in which the supervisory body is empowered to allow omission of certain data from the prospectus (Article 10 of the Rules). In cases where information about the final offered price and the amount of securities can not be entered in the prospectus, the Rules are in accordance with the principle that the method of calculation of the price must be determined and indicated in the prospectus.

- **Approval of the prospectus** – The principle that the prospectus may not be published before prior approval of the supervisory body is clearly defined by the Law (Article 36). In addition, it allows possibility that the supervisory body requires additional information that should be included in the prospectus in case this body discloses some shortcomings (Article 11 paragraph 1 of the Rules);
- **Publishing of the prospectus** – Article 36 paragraph 4 of the Law prescribes that during the procedure of a public offering of securities, the issuer shall provide that the prospectus is made available to the public, free of charge, at a specified address. In addition, Article 13 paragraph 2 of Rules requires that the public invitation for registration and payment of securities needs to be published in, at least, one public journal that is distributed throughout the territory of Montenegro; at the same time, in accordance with Article 36 paragraph 7 of the Rules, the public invitation must not be published before it specifies the place where stakeholders can access the prospectus for public offering of securities;
- **Supplement to the prospectus** – The Law contains the term supplement to the prospectus (Article 35) and is fully compliant with Article 16 of the Prospectus Directive.
- **Mutual recognition of the prospectus** - Mutual recognition of prospectuses is regulated by Article 112d of the Law. This Article explicitly prescribes the following: “The Commission shall recognize prospectuses for public offering of securities approved by competent bodies of member states of the Organization for Economic Cooperation and Development – OECD and countries having bodies competent for supervision over transactions with securities the Commission has concluded contracts of cooperation. The Commission may request from the issuer to add special data of importance for the market of the Republic in the prospectus referred to in paragraph 1 of this Article.” Thus, the principle of the Prospectus Directive is implemented bearing in mind that the Securities and Exchange Commission does not implement a separate administrative process of licensing, approval or other administrative actions or sanctions in connection with the prospectus approved by the supervisory body of a foreign Member State. Upon receipt of Montenegro in the EU, the extent to which the state will be achieved by harmonizing the text with the provisions of the Directive will include all Member States.
- **Supervisory authority** – The Law authorises the Securities and Exchange Commission as the sole supervisory authority for the supervision of the process of public offering of securities (Article 42).
- **Powers** – in principle, the powers of the Securities and Exchange Commission meet the requirements of the Prospectus Directive. However, in some cases the Commission has the right to apply measures only towards the issuer, and not to other participants of the public offering of securities who may be involved in the process.
- **Data confidentiality** – the Securities and Exchange Commission signed a list A IOSCO MMoU.

Further adjustment requirements:

- **Definitions** – many definitions in the Law are corresponding to definitions contained in the Prospectus Directive. However, it should expand the term "qualified investors" and define the term "bidder", *home-host* concept and the like.
- **Exceptions to the obligation to publish prospectus** – The Law prescribes to whom this obligation refers, assuming that the same applies to issuers of equity and long-term debt securities, which are defined in accordance with Article 4 (18) of the MiFID Directive. In addition, the Law prescribes the list of exceptions to this obligation in Article 44a and 44b, but this list should be expanded in order to comply with the provisions of the Directive.
- **Summary of prospectus** – There are no legal requirements to publish a summary of the prospectus
- **Validity of prospectus** – the Law does not recognize the so-called permanent or continuous issues of securities. Article 38 of the Law prescribes that the issue should last longer than the maximum deadline of three months, only if the Commission approves extension of this deadline in exceptional cases.

- **Information** – there are no requests that issuers, whose securities are admitted to trading on a regulated market, create, at least annually, a document that contains or refers to information that was published during the previous 13 months according to legal obligations.
- **Time for approval** – the Commission has 30 days to decide on the approval of the prospectus (Article 12 of the Rules) which is not in accordance with Article 13 (2) and 13 (3) of the Prospectus Directive. In Montenegro, there is a tacit approval concept which is not in accordance with the provisions of the Prospectus Directive.

In accordance with the National program for integration into EU, the Law will be amended by the end of 2010.

b) Requirements for periodic publication of information

Requirements for periodic publication of information are harmonized with the Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, thus amending the Directive 2001/34/EC, 2001/34/EC, the Directive 2007/14/EC and the Regulation 1287/2006 (the Transparency Directive).

Rules on contents, terms and manner of publication of financial statements of issuers of securities (OGM, 20/09) in accordance with the Transparency Directive, establish obligations of preparing the annual and periodic reports on operations, in order to enable adoption of informed decisions about investing. The provisions of these rules are consistent with the provisions of the Transparency Directive and they prescribe: the contents of annual and periodic reports on operations; obligation of issuers to submit annual and periodic reports for the period: January-March, January-June January-September and January – December; the annual report with the auditor's report in the period of 30 days following the date of expiry of the deadline of the report, and the annual report within 120 days following the end of the financial year;

For the purpose of publishing the aforementioned information, the Commission has published on its website so called "Public Information Book" which contains all necessary information on the financial condition of market participants.

Content of periodic and annual reports on operations is prescribed by Article 6 of these Rules. In accordance with this Article, the reports include: a) basic data, b) balance sheet, c) income statement; d) statement of cash flows, e) statement of changes in equity, f) clarifications and comments of the Board of directors or of the Executive director for the limited liability companies, if the Board of directors does not exist g) report on significant events, h) notes to the financial statements.

In addition to the financial statements, the issuer is obligated to publish also other information. Issuer of securities is required to inform the public about changes in rights contained in the securities or rights to acquire such securities. If securities which are not shares are admitted to trading, any information or change of rights in connection with these securities must be published. This obligation is determined by Article 27 of the Law, which reads:

"Every issuer of securities that are offered publicly shall keep the Commission, members of the issuer, other holders of its securities and the general public informed of any information, that:

- 1) is necessary to enable them to appraise the financial position of the issuer and of its subsidiaries;
- 2) may lead to establishing of false disloyal trading in its securities; or
- 3) might reasonably affect market activity in the price of its securities.

In addition to the requirements of paragraph 1, the issuer shall also furnish such other information as may be prescribed by the Commission."

Obligation to publish cost-sensitive information is contained in the quoted Article 27 of the Law and the regulations establish the obligation of the Commission to publish this information within five days following the day of delivery of this information to the Securities and Exchange Commission (Article 5 of the Rules on the contents, terms and manner of publication of the financial statements of securities' issuers).

c) Requirements for the inclusion of listing of securities in stock exchange quotation

In Montenegro, the legal basis for listing of securities is contained in the Securities Law (OGRM, 59/00, 10/01, 43/05, 28/06). The Securities Law prescribes general requirements regarding the securities markets, which provide that the securities trade is performed on the securities markets established in order to create conditions for the connection of supply and demand of securities. In accordance with this Law, stock exchanges are authorized to issue rules governing the listing of securities, and the Securities and Exchange Commission approves the rules which become part of Montenegrin legal system.

The Securities Law in principle and the Rulebooks on quotation adopted by both stock exchanges in Montenegro provide the following legal framework for the compliance with the Directive 2001/34/EC.

Volume – Rulebooks on quotation stipulate conditions for the quotation of securities and the inclusion of securities on stock exchanges, which apply to all issuers;

Decision to admit an authorized authority (Article 11 (1) of the Directive) - A decision on incorporating the securities in official quotation is adopted by the Quotation Commission, which is separate specialized body of the stock exchange, which makes decision on the basis of stock exchange Rulebook on quotation (Articles 3 - 9 of the Rulebook on quotation of the Montenegro Stock Exchange and Articles 3-9 of the Rulebook on quotation of the Nex Stock Exchange)

Powers of authorized body to reject the request for admission of securities to stock exchange quotation, if the issuer's financial condition is such that may jeopardize the interests (Article 11(2) of the Directive) – According to Article 12(2) of the Rulebook on quotation of the Nex stock exchange and Article 23 paragraph 1 point 2 of the Rulebook on quotation of the Montenegro stock exchange, the Quotation Commission may refuse the request for admission of securities to quotation on the basis of its discretionary decision if it considers that circumstances are such that they could endanger the interests of investors.

The obligation of the issuer to present information to the authorized body if it considers it necessary for the protection of investors and the public disclosure of such information (Article 16 of the Directive) – Article 27 of the Securities Law prescribes that issuers must inform the Commission, shareholders and the public in general on all the relevant information which: provide assessment of the financial position of the issuer or its part; can cause unfair trading with those securities; may potentially affect the market price of those securities. In addition, the issuer is obliged to provide information that may be requested by the Securities and Exchange Commission. In accordance with Article 16(2) of the Directive, the Commission is obliged to publish information about the issuers on its website in the so-called "Public Information Book." Rulebooks on quotation also stipulate the obligation of issuers to report to the stock exchanges and general public on cases and activities that could have an impact on the assessment of financial and business position of the issuer or the price of its shares (Article 25 of the Rulebook on quotation of the Nex Stock Exchange and Article 32 of the Rulebook on quotation of the Montenegro stock exchange)

Suspension of quotation by authorized body – Powers of the Commission to suspend trading and/or quotation of securities are set out in Article 22 of the Rules on control of operations with securities OGRM, 28/07) in accordance with Article 18 of the Directive. Rules on control of operations with securities clearly stipulate that when controlled party does not eliminate the irregularities found in off-site examination or fails to comply with the order of the Commission to remove the irregularities established by on-site examination, and when the Commission finds that the irregularities by their nature cannot be removed, the Commission makes the following decisions on taking the measures: a decision to exclude certain securities from the trade on the stock exchange; decisions to prohibit the quotation of certain securities on the stock exchange, the decision on removal of certain securities from quotation on the stock exchange;

In addition, stock exchanges are authorized (Article 35 of the Rulebook on quotation of the Nex Stock Exchange and Article 44 of the Rulebook on quotation of the Montenegro Stock Exchange) to remove from quotation the securities in a series of cases prescribed by the Rulebook on quotation, including the failure of issuer to inform in accordance with the obligations, publication of false or misleading information, the liquidity problems, a violation of Rulebook on quotation and any other circumstances which the Quotation Commission considers as threatening to the interests of investors.

Right of appeal - all decisions of the Securities and Exchange Commission may be challenged before the Administrative Court of Montenegro. However, when the decision on removal from quotation and cessation of quoting are adopted by stock exchanges, these decisions are subject to review by the Board of Directors of the Stock Exchange (Article 6 of the Rulebook on quotation of the Montenegro Stock Exchange and Article 33 of the Rulebook on quotation of the Nex Stock Exchange).

Period for inclusion in quotation by the authorized body - this period is stipulated in Article 22 of the Rulebook on quotation of the Montenegro Stock Exchange and Article 11 of the Rulebook on quotation of the Nex Stock Exchange which provides that the decision is made within eight days following the day of submission of the complete application.

Notification about the decision on incorporating or rejecting of the request for admission – In accordance with provisions of the Rulebook on quotation, stock exchanges are obliged to notify the issuer within two days following the day of passing the decision (Article 13 of the Rulebook on quotation of the Montenegro Stock Exchange and Article 24 of the Rulebook on quotation of the Nex Stock Exchange). If the request is approved, it shall be publicly announced through the daily press, by the means of electronic communication and through the stock exchange trading system.

Special conditions for admission of securities to stock exchange quotation: in accordance with Article 57 (5) of the Securities Law, stock exchanges have the authority to prescribe independently the conditions for quotation. Rulebooks on quotation prescribe the following conditions regarding the inclusion of securities in a stock exchange quotation: the stock exchanges autonomously prescribe the conditions for admission of shares:

- **Minimum market capitalization of shares listed on the stock exchange quotation**
- **Exception from the requirement for minimum capital** - the stock exchanges are authorized to prescribe exceptions in this part, but these exceptions are not prescribed by Rulebook on quotation of the Montenegro Stock Exchange. Rulebook on quotation of the Nex Stock Exchange prescribes that, in exceptional cases, "A" list may include securities which average daily turnover exceeds EUR 100,000;
- **Published annual financial statements for the last three financial years prior to submitting the application;**
- **Free transferability of shares** - the legal system of Montenegro prescribes that securities that are listed on stock exchange quotation must be freely transferable (Article 17 (1) of the Rulebook on quotation of the Montenegro Stock Exchange and Article 2 (1) point 4) of the Rulebook on quotation of the Nex Stock Exchange;

- ***In case of a public offering of securities prior to their listing on quotation, the first quotation must be made after the expiry of the registration*** (Article 19 (2) of the Rulebook on quotation of the Montenegro Stock Exchange and Article 8 (3) of the Rulebook on quotation of the Nex Stock Exchange;
- ***Request for quotation refers to securities of the same class*** (Article 19 (3) Rulebook Montenegro Stock Exchange and Article 8 of the Rulebook on listing at the Nex Stock Exchange.

Special conditions relating to the listing of debt securities which are freely transferable:

- ***Free transferability of debt securities*** - legal system of Montenegro prescribes that the securities that are listed in stock exchange quotation must be freely transferable (Article 17 (1) of the Rulebook on quotation of the Montenegro Stock Exchange and Article 2 (1) point 4) of the of the Rulebook on quotation of the Nex Stock Exchange;
- ***In case of a public offering of securities prior to their listing on quotation, the first quotation must be made after the expiry of the registration*** (Article 19 (2) of the Rulebook on quotation of the Montenegro Stock Exchange and Article 8 (3) of the Rulebook on quotation of the Nex Stock Exchange;
- ***Request for quotation refers to all securities of the same class*** (Article 19 (3) of the Rulebook on quotation of the Montenegro Stock Exchange and Article 8 of the Rulebook on quotation of the Nex Stock Exchange;
- ***The exception to the rule of the minimum amount of issued debt securities*** - authorized bodies (stock exchanges) are empowered to provide exceptions to the rules of the minimum volume of the issue prescribed in Article 58 (2) of the Directive. However, the Rulebooks on quotation do not prescribe exceptions.

Special conditions are prescribed in relation to listing on quotation of debt securities issued by government or local governments (Article 18 (5) of the Rulebook on quotation of the Montenegro Stock Exchange and Article 7 of the of the Rulebook on quotation of the Nex Stock Exchange);

Quotation of newly issued shares of the same class - Rulebook on quotation of the Nex Stock Exchange (Article 16) and Article 27 of the Rulebook on quotation of the Montenegro Stock Exchange require that issuers who issued the securities of the same class as securities listed in stock exchange quotation immediately after the issue of new securities and their registration, apply for the extension of stock exchange quotations.

d) Supervision

The Securities and Exchange Commission is responsible for the supervision of implementation of these regulations. The Securities and Exchange Commission conducts a preliminary supervision - market entry supervision as well as on-going supervision. The Securities and Exchange Commission issued approval for public offering of equity and long-term debt securities and registration of all other issues that are not implemented on the basis of public bidding.

The managers of the Department for Securities Market, the Department for Corporate Activities and the Department for International Development and Cooperation are engaged in this part of supervision. The number of engaged employees is three for the preliminary supervision and six for the on-going supervision.

Supervision is performed based on the approval of the prospectus (preliminary supervision) and after the commencement of trading.

ii. Please explain the obligation to publish a prospectus (public offer and admission to trading on a regulated market). Who is obliged to publish a prospectus and who is liable for the content? Is there an obligation to publish a supplement? Is there a regulation regarding the minimum content for short term debt securities, derivatives, etc.? Is there a base prospectus valid for more than one issuance? How long is the period of approval? What are the examination criteria? What are the language requirements (especially while having mutual recognition of prospectuses approved by the competent authority of OECD member states)? What kind of sanctions could be released by the supervisory authority? Regarding supervision and enforcement please specify the number of persons dedicated to this function.

Securities Law (hereinafter: the Law) implements the following principles in accordance with the prospectus:

- **Obligation to publish a prospectus** – Article 36 of the Law prescribes the publication of a prospectus prior to or at least simultaneously with the call for registration and payment of securities to which it relates. Article 44a of the Law specifies the cases to which this obligation does not apply.
- **The contents of the prospectus** - Requests regarding the contents of the prospectus contained in the Law (Article 34) are fully compliant with Article 5 (1) of the Directive. The Law allows only the issuance of the prospectus as a single document to which additional information can be attached (Articles 34 and 35 of the Law);
- **Responsibility for information from the prospectus** - In accordance with Article 37 of the Law, liability for damage to accuracy and completeness of the information in the prospectus refers to every issuer, bidder, responsible person of issuer or bidder and every other person is responsible for drawing up a prospectus and is fully compatible with the provisions of the Prospectus Directive. In addition, Article 8 of the Rules on the contents of the prospectus for public offer of equity and long-term debt securities (hereinafter: the Rules) prescribes that the responsible persons are clearly stated and their statements that guarantee the completeness and accuracy of data from the prospectus to be an integral part of the prospectus. These provisions are fully compliant with Article 6 of the Prospectus Directive.
- **Minimum information** – rules related to specific information that must be included in the prospectus are now contained in the Rules on the contents of the prospectus for public offering of equity and long-term debt securities, adopted by the Securities and Exchange Commission, in accordance with the provisions of the Directive.
- **Omission of information** - Montenegrin regulations are harmonised with the provisions of the Prospectus Directive regarding the situations in which the supervisory authority is authorized to allow omission of certain data from the prospectus (Article 10 of the Rules). In cases where information about the final offered price and the amount of securities cannot be entered in the prospectus, the Rules are in accordance with the principle that the method of calculation of the price must be determined and indicated in the prospectus.
- **Approval of prospectus** - The principle that prospectus may not be published before prior approval by the supervisory authority is clearly defined by the Law (Article 36). It also enables the possibility that the supervisory authority requires additional information that should be included in the prospectus if it determines certain shortcomings (Article 11 paragraph 1 of the Rules).
- **Announcement of prospectus** - Article 36 paragraph 4 of the Law prescribes that during the procedure of a public offering of securities, the issuer shall provide that the prospectus is made available to the public, free of charge, at a specified address. Furthermore, Article 13 paragraph 2 of the Rules prescribes that the public invitation for registration and payment of securities needs to be published at least in one media distributed throughout the territory of Montenegro; at the same time, in accordance with Article 36 paragraph 7 of the Rules, the public invitation cannot be published before it specify the place where stakeholders can access the prospectus for public offering of securities;

- **Supplement to the prospectus** - Law recognizes the concept of the supplement to the prospectus (Article 35) and is fully compliant with Article 16 of the Prospectus Directive.
- **Mutual recognition of the prospectus** - Mutual recognition of prospectuses is regulated by Article 112d of the Law. This Article explicitly prescribes: "The Commission shall recognize prospectuses for public offering of securities approved by competent bodies of member states of the Organization for Economic Cooperation and Development – OECD and countries having bodies competent for supervision over transactions with securities the Commission has concluded contracts of cooperation with. The Commission may request from the issuer to add special data of importance for the market of the Republic in the prospectus referred to in paragraph 1 of this Article." Thus, the principle of the Prospectus Directive is implemented with respect that the Securities and Exchange Commission does not implement a separate administrative process of licensing, approval or take other administrative actions or sanctions in connection with the prospectus approved by the supervisory authority of a foreign Member State. Upon receipt of Montenegro in the EU, the extent to which the state will be achieved by harmonizing the text with the provisions of the Directive will include all Member States. There are no specific requirements in terms of language, i.e. it does not require the translation into Montenegrin language.
- **Basic prospectus** - in Montenegrin legislation there are no so-called "tap issues", i.e. continuous issue of securities. Therefore, the prospectus of securities issue is valid for the time of registration and payment of the securities, but not after registration and payment of securities.
- **Supervisory authority** – The Law authorizes the Securities and Exchange Commission as the sole supervisory authority for the supervision of the public offers of securities (Article 42). The Securities and Exchange Commission check completeness of the information from the prospectus and accuracy of data in the prospectus, based on comparing them with data contained in documents submitted by the issuer with a request for approval of a prospectus.
- **Powers** – in principle, the powers of the Securities and Exchange Commission meets the requirements of the Prospectus Directive. However, in some cases the Commission has the right to take measures only against the issuer, and not against other members of the public offering of securities who may be included in the process. Powers of the Commission prescribed by Article 42 are the following: "If the Commission establishes any kind of irregularities in the process of public offering during the supervision, it will instruct the issuer to provide remedies. The issuer has an obligation to correct the found irregularities and inform the Commission in writing on the actions taken. The issuer's response shall be accompanied with the documents and other evidence showing that the found irregularities have been corrected." Article 22 of the Rules on control of operations with securities prescribes measures which the Securities and Exchange Commission may take in supervision of the public offering of securities as follows: the decision to exclude from the trade of certain securities from stock exchange; the decision to prohibit the quotation of certain securities on stock exchange; the decision on removal of certain securities from quotation on stock exchange; the decision on annulment of the decision on the approval of the prospectus for public offering of securities issue; the decision on annulment of certain transactions with securities; the decision on temporary suspension of securities registered in the Central registry of the Central Depository Agency; the decision on the temporary postponement of the settlement of certain transactions with securities; the decision to take any other measures that the Commission considers to be the best way to ensure removal of illegality or irregularity in dealing with securities.
- **Data confidentiality** - the Securities and Exchange Commission is a signatory of the "A" IOSCO MMoU list.

The managers from the Department for Securities Market Commission, the Department for corporate activities and the Department for International Development and Cooperation are included in this part of supervision. The number of engaged employees is three for the preliminary supervision and six for the on-going supervision.

Supervision is performed based on the approval of the prospectus (preliminary supervision) and after the commencement of trading.

iii. Please explain the requirements which prohibit market abuse in your jurisdiction. Specifically what market abuse is prohibited (e.g. insider dealing, market manipulation, false or misleading information). What are the definition of and the use of insider information? Is there an obligation to keep insider lists? Is there an obligation to publish ad hoc information? What is the definition of market manipulation? Is there a duty to report manager's transactions and suspicious transactions? Are there exemptions for buy-back programmes and stabilisation of financial instruments (e.g. accepted market practises)? Please explain how these requirements are supervised and enforced and by whom. Regarding supervision and enforcement please specify the number of persons dedicated to this function.

The regulatory framework for insider trading and market manipulations is generally defined by the Law on Securities (OGRM, 59/00, 10/01, 43/05, 28/06), the Rules on control of operations with securities (OGRM, 28/07) and Rules on issuing working licenses for stock exchanges (OGRM, 16/01, 45/01 and 68/03). These acts are largely consistent with the Directive 2003/6/EC – the Directive on insider dealing and market manipulation.

The Securities Law contains the following definitions and principles that are consistent with the definitions and principles contained in the Directive on insider dealing and market manipulation.

- **Inside information** - Article 102 of the Law prohibits the trading of securities in all circumstances when a person engaged in trading has any knowledge of unpublished information that would, if it were published, materially affect the price of the securities. This article explicitly prescribes: " No person shall deal in the securities, either on his own behalf or on behalf of any other person, or counsel another person to deal, if he has any knowledge of: 1) unpublished information that might lead to preference related to other participants in securities trade, 2) information that would, if it were published, materially affect the price of the securities (insider dealing)."
- **Market manipulation** - Article 103 of the Law prescribes that no person shall create, cause or do anything with the intention of creating a false or misleading appearance of the volume of trading with certain securities on certain market or of the existence of the market, i.e., the price of such securities. In addition, Article 105 of the Law prescribes that no person shall induce or attempt to induce another person to invest in securities by making or publishing any statement, promise or forecast that he knows to be misleading, false or deceptive or by publishing any false material facts.

In accordance with the provisions of the Directive on insider dealing and market manipulation, insider trading and manipulation at the market are prohibited by the Law.

- **Disclosure of inside information** – Article 27 of the Law prescribes that every issuer of securities is obliged to keep the general public informed of any information that enables them to appraise the financial position of the issuer and of its subsidiaries; that may lead to establishing of false disloyal trading in its securities; might potentially affect market activity in the price of its securities. Therefore, there is an explicitly prescribed obligation to publish *ad hoc* information.
- **The obligation of the market operator to pass structural provisions aimed at prevention and perception of the practice of markets abuse** - in accordance with Article 52, stock exchange rules shall regulate the procedures to ensure the performance of business in a regular manner and with the necessary protection of investors; in accordance with Article 7 of the Rules on issuing working licenses for stock exchanges (OGRM 16/01, 45/01 and 68/03), the stock exchange rules should provide safe and sound regulation and control of trading with securities.

- **Supervisory and investigation powers of the Securities and Exchange Commission as a supervisory authority** - the Securities and Exchange Commission shall have all powers for the safe and sound supervision of the Montenegrin capital market, in accordance with the provision of the Directive on insider dealing and market manipulation. All powers enumerated in Article 12, paragraph 2 of the Directive on insider dealing and market manipulation are available to the Securities and Exchange Commission, in accordance with Article 16 and Article 22 of the Rules on control of operations with securities (OGRM, 28/07).
- **International cooperation** - as noted above, the Commission is full signatory of the IOSCO MMoU and as such, it meets the highest standards in relation to international cooperation in this area.

Montenegrin legislation should be harmonised in the following part:

- **Prohibition of disclosure of inside information to any person, unless that disclosure is not made in the course of regular employment and performing of work assignments** - This prohibition is not explicitly prescribed by the Law, but the provision of Article 102 paragraph 1 of the Law which prescribes the obligation of using inside information is broad enough to include not only a prohibition to use this information, but also allows others to use this information.
- **Exceptions to the requirements prescribed by the Directive** - Persons in Montenegro are not authorized to violate the requirements prescribed by the Law in cases of trading with their own shares or in cases of so-called 'buy-back' programs or stabilization of operations by the financial instruments.
- **In addition to insider information and market manipulations, the notion of market manipulation defined by the Law shall also include: price rigging** (Article 104 of the Law prescribes that: it is forbidden to keep, increase, reduce or cause changes in the market price of securities through the purchase or sale of the securities that does not involve the change of the beneficial owner or through fictitious transaction); **use of false and misleading information** (Article 105 of the Law prescribes that no other person is encouraged to invest in securities: drafting or publication of any information, promise or forecast that is incorrect or misleading, presenting false material facts); **the communication of false or misleading statements that affect the transactions with securities** (Article 106 of the Law prescribes that no person shall, directly or indirectly, for the purpose of inducing the sale or purchase of the securities of any issuer, with respect to those securities, or with respect to the operations or the past or future performance of the issuer make any statement which is, at the time and in light of the circumstances in which it is made, false or misleading with respect to any material fact and which he knows or has reasonable grounds to believe to be false or misleading or any statement which is, by reason of the omission of a material act, rendered false or misleading and which he knows or has reasonable grounds to believe is rendered false or misleading by reason of omission of that fact.

The managers from the Department for Securities Market Commission, the Department for corporate activities and the Department for International Development and Cooperation are included in this part of supervision. The number of engaged employees is six for the on-going supervision in the Department for Securities Market and supervisors from all other Commission Departments, according to the subject matter of the supervision.

iv. Please explain more in detail the requirements that apply to markets (e.g. exchanges) in your jurisdiction. Specifically what are the requirements for making public quotes and executed transactions, ensuring trading is fair and orderly, dealing with the default of a market user, monitoring the market for market abuse, ensuring the IT and other systems are robust etc. Please explain how these requirements are supervised and enforced and by whom. Regarding supervision and enforcement please specify the number of persons dedicated to this function.

Requirements for the securities market (stock exchanges) are contained mainly in the Securities Law (OGRM 59/00, 10/01, 43/05, 28/06), Rules on the manner of conducting operations of authorized participants at the securities market (OGRM, 78/09 and 87/09), Rules on issuing working licences for the stock exchanges (OGRM, 16/01, 45/01 and 68/03). These acts are largely harmonized with the principles prescribed by the Directive 2004/39/EC on markets in financial instruments (hereinafter: the MiFID Directive).

The Securities Law in connection with the requirements relating to the market include the following requirements which are in line with the MiFID Directive:

- **Licensing** - in accordance with Article 52 of the Law, Commission issues the market license on the basis of submitted request;
- **Organizational requirements** - in order to meet the requirements for licensing, in accordance with Article 52 of the Law, an applicant must meet the following requirements:
 - provide minimum prescribed initial capital;
 - determine by the statute, securities market operations as the only activity;
 - provide technical and technological equipment for the securities market operations;
 - provide technical and technological equipment for the performance of securities markets;
 - propose rules and procedures that ensure the performance of business in the regular way and with the necessary protection of investors;
 - propose actions in relation to:
 - settlement and payment of the securities operations in order to implement the transaction in the market of securities, their registration and publication;
 - market research;
 - efficient supervision and control of methods of implementation of its rules, the laws and rules adopted under this Law;
 - consideration of objections and appeals to the transactions of any of its members;
 - propose rules that will enable resolution in case when the stock exchange member is unable to perform his obligation under one or more contracts.
- **Inclusion of financial instruments in trading** – in accordance with regulations, rules on stock exchanges establish a method of creation of the securities trading list and terms and conditions that securities should meet in order to be traded on the respective lists;
- **Suspension and exclusion of financial instruments from trading** – stock exchange rules prescribe conditions for the exclusion of securities from trading. Stock exchange rules enable the Board of directors to suspend temporarily the trading of specific securities for the maximum period of 10 working days in case there is a reason that requires the protection of investors. The Board of Directors informs the Securities and Exchange Commission on this, as well as the public, market intermediaries, and members of the stock exchange. In the process of the control of trading, the Securities and Exchange Commission also has the power to exclude securities from trading or suspend trading of certain securities.
- **Supervision performed by the stock exchange in accordance with the rules of regulated markets and other legal obligations** – stock exchanges exercise the control of securities trading on the regulated market and in the case of establishing a breach of

regulations or other irregularities, they act in accordance with their competences to ensure organised, smooth, efficient and fair securities trading. In addition, stock exchanges monitor and supervise operations of its members through the special work stations in the premises of stock exchange members. Stock exchange can control and inspect all documents relating to operations with securities.

- **So called "Post-trade transparency"** - Article 31 of the Rules on the operation of authorised participants at the securities market (OGRM, 78/09 and 87/09) prescribes that stock exchange prepares a summary report, at the end of each trading day, of all transactions concluded on that trading day. Stock Exchange and participants sign and certify, no later than the beginning of the next trading day, the report if they agree with it or give potential remarks. If an authorized participant fails to sign and certify the report or to give remarks, it is considered that he agrees with the report. The stock exchange shall submit the report to the Commission no later than twelve o'clock on the next day following the trading day.

Supervisory and investigative powers of the Securities and Exchange Commission as a supervisory authority - the Securities and Exchange Commission shall have all powers necessary for the safe and sound supervision of the Montenegrin capital market according to the Directive on insider dealing and market manipulation. All powers prescribed in Article 12, paragraph 2 of the Directive on insider dealing and market manipulation are available to the Securities and Exchange Commission in accordance with Article 16 and Article 22 of the Rules on control of operations with securities (OGRM 28/07). As noted above, the Commission is full signatory to IOSCO MMOU and as such, it meets the highest standards in relation to international cooperation in this area.

With regard to the market requirements, Montenegrin legislation does not recognize so called **systematic internaliser, market maker, market operator, multilateral trading facility, UCITS management companies, tied-agents**, and they are not defined in the legislation;

Head of the Department for Securities Market and six staff members are engaged in this part of supervision.

v. Please explain the requirements that apply to clearing houses and settlement systems in your jurisdiction. Please explain how these requirements are supervised and enforced and by whom. Regarding supervision and enforcement please specify the number of persons dedicated to this function.

Mandatory registration and dematerialization of securities – Securities issued in line with the Securities Law must be registered at the Central Depository Agency that is established and operates in accordance with this Law. Rights and obligations related to securities start upon their registration at the Central Depository Agency.

Licensing and revocation of licence: In accordance with Article 8 paragraph 1 point 5) the Securities and Exchange Commission (SEC) is authorized to license and approve relevant acts of securities markets, authorised market participants and the Central Depository Agency; Article 90 of the Law prescribes that the SEC may license the Central Depository Agency based on the application submitted, where it is satisfied that the applicant has met the following requirements: 1) registration of dematerialized securities, clearing and settlement of security transactions and other related operations are the applicant's sole activity; 2) the applicant has a minimum financial portion of initial capital of EUR 250.000; 3) the applicant has adequate resources for the effective monitoring and enforcement of its rules; and 4) the applicant is able to provide necessary technical facilities for the clearing, settlement and registration of dematerialized securities. In accordance with Article 99 of the Law, the SEC may at any time revoke or suspend the Central Depository Agency's license if the Agency has ceased to operate the business for which it is licensed; has

failed to comply with any of the licensing requirements; or is operating in contravention to the provisions of this law. The SEC may suspend the licence for a certain period or until the circumstances that led to the suspension have changed. The SEC's revocation order indicates the date as of which the Central Depository Agency shall cease operating. The SEC files the revocation order with a competent court.

Clearing, settlement and registration of securities – regulated under Title VIII of the Law. Here it is prescribed that dematerialized securities exist in electronic form in the computer system of the Central Depository Agency.

Registration of dematerialized securities – Pursuant to the Law the Central Depository Agency is designated to register dematerialized securities, execute clearing and settlement of transactions involving those securities, and other activities associated with dematerialized securities. The Central Depository Agency is a joint stock company established by or whose shareholders may only be: the Republic of Montenegro, licensees, stock exchanges, banks and other legal persons. Individual shareholders of the Agency are entitled to hold voting shares representing up to 35% of total votes of shareholders.

Power of the SEC to issue instructions - The SEC may, for the purpose of protecting the investors, issue instructions with respect to the manner of operation of the Central Depository Agency. The Central Depository Agency has the Statute that shall regulate the organisation and management of the Agency. The manner of operation and rights and obligations of members of the Central Depository Agency are determined in the Rules of the Agency. The Founding Agreement, Statute and Rules of Central Depository Agency, as well as the appointment of the executive director, are subject to approval of the SEC.

Property of the Central Depository Agency members - Securities and monetary assets of members of the Central Depository Agency are neither a part of its assets nor bankruptcy or liquidation pool of assets and may not be the subject of a court order against the Central Depository Agency. The Central Depository Agency is remunerated for the services offered through the payment of fees and other charges determined by the Agency, with the prior approval of the SEC. Annual operating reports of the Central Depository Agency are delivered to the SEC and all shareholders of the Agency. The Central Depository Agency may not trade in securities, may not communicate advice on trade and investment in securities, nor furnish favourable or unfavourable opinions regarding acquiring or selling any securities.

The settlement of securities is regulated under the Central Depository Agency's Instruction on the manner and procedure of clearing and settlement of securities transactions.

The Rules of the Central Depository Agency define the forms of membership in the Central Depository Agency Jsc Podgorica: terms and conditions for membership; the membership procedure; the member's rights, obligations and responsibilities; termination of membership; types of services and manner of providing those service by the Agency; and rights and obligations of the Agency and its members with regard to those services. Services offered by the Agency are divided in two groups: 1) Registering and 2) Clearing and Settlement. The Rules are binding for all members of the Agency.

The supervision of the aforesaid is delegated to the manager of the Securities Market Department in the SEC and six (6) officers.

The SEC measures regarding the settlement procedure – The settlement procedure is supervised by the SEC in line with the Rules of supervision of securities operations (OGRM 28/07). These rules prescribe that if the Central Depository Agency has not removed irregularities identified during the on-site examination or has not acted upon the SEC order to remove the irregularities identified during the on-site examination, or when the SEC establishes that the identified irregularities, by their nature, are such that they cannot be removed, the SEC issues the following decision on taking measures against the Central Depository Agency: decision on temporary prohibition of performing certain activities laid down in the licence; decision on prescribing the measure of warning the stock exchange, the licensee or the Central Depository

Agency on the account of established irregularities in operation; a decision on public announcement that the licensee has violated regulations governing securities; decision on temporary postponement of the securities settlement; decision on temporary prohibition of availability of monetary assets paid to the Central Depository Agency securities settlement account.

The supervision of the aforesaid is delegated to the manager of the Securities Market Department and six officers.

vi. Please explain the main requirements that apply to market intermediaries in your jurisdiction e.g. intermediaries providing the services of investment advice, execution of orders on behalf of clients, individual portfolio management, underwriting, placing, reception and transmission of orders. Please provide information about both organisational requirements (e.g. internal controls, safeguarding of clients' assets, conflicts of interest, etc.) and conduct of business rules aimed at protecting investors (information requirements, suitability test, reporting to clients, ...). Regarding supervision and enforcement please specify the number of persons dedicated to this function.

Most of the requirements regarding market intermediaries are laid down in the Securities Law (OGRM 59/00, 59/00, 10/01, 43/05, 28/06), the Rules on the manner of performing business operations by the securities market licensees (OGM 78/09, 87/09), the Rules on the supervision of securities operations (OGM 28/07). These acts are to a substantial extent in line with the principles laid down in the Directive 2004/39/EC on markets in financial instruments (hereinafter: the MiFID Directive).

The Securities Law contains the following requirements regarding market intermediaries which are in line with the MiFID Directive:

- **Market intermediary** – Article 63 of the Law prescribes that securities business can be carried out only by legal persons (joint stock companies) licensed participants on the securities market as their only business under their licenses.
- **Investment services and activities** - Article 62 of the Law specifies that “securities business” is considered the following:
 - brokerage in purchase and sale of securities upon the order of the client (on its own behalf and for the client’s account) in exchange for the commission ("broker");
 - securities trade on its own behalf and for its own account in order to make a profit ("dealer");
 - managing the portfolio of securities belonging to another person ("investment manager")
 - undertaking of newly issued securities for the purpose of public resale on behalf of the issuer, or the guaranteeing to an issuer that the unsold residue of the issuer's public issue or sale will be taken up ("underwriting");
 - giving, to investors or potential investors advice on the merits of the purchasing, selling, subscribing for or underwriting securities ("investment adviser"); and
 - any other activity that the Commission deems to constitute securities business
- **Licensing requirement** – pursuant to Article 63 of the Law, securities business may only perform licensed participants in the securities market, as their only business under the license.
- **Requirement regarding the registry of all investment companies** – under Article 75 of the Law, every licensed market intermediary must be entered into the SEC registry. The registry is publicly available and contains the following:
 - the company, name and address of the licensee;
 - the licence date;

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- the type of securities business permitted by the license;
 - any conditions attached to the licence;
 - the name and address of the executive director and authorized employees;
 - the location of the premises at which the records or other documents of the licensed business are kept;
 - information on licence revocation or suspension;
 - the names of substantial shareholders; and
 - such other particulars as may be prescribed by the SEC.
- **Licence coverage** – Article 65 paragraph 2 of the Law prescribes that a license granted under this Law shall specify the securities business activities that the licensee is permitted to carry out.
 - **Procedures of licensing and denying a licence** – In line with Article 69 f the Law, the SEC may issue a licence to a market intermediary that meets the legal requirements. In order to meet these requirements, a market intermediary submits to the SEC the following:
 - the Articles of Incorporation;
 - the Statute;
 - a description of business activities and the business plan for the following two years;
 - information on persons with special powers and responsibilities;
 - information and evidence of the initial contribution and the fulfilment of other conditions depending on the type of business, personnel, technical, financial and organisational capacities to perform the business activities subject to the licence;
 - information on services to be offered by the applicant;
 - information on business activities that the applicant intends to pursue, the persons to be hired, and persons with whom the applicant intends to establish business cooperation;
 - designation of the location(s) subject to verification of the technical-technological equipping for performing the business subject to the licence.
 - **Denial of the licence** - Article 74 of the Securities Law authorizes the SEC to revoke the licence to a market intermediary if :
 - it permanently ceases to carry on the business for which it has been licensed;
 - a decision on bankruptcy or liquidation has been passed;
 - it fails to comply with conditions of the licence;
 - it acts contrary to the provisions of this law.
 - **Organisational requirements** – Article 78 of the Law prescribes that in the conduct of securities business, a licensee shall at all times act in line with the principles of best practice and, in particular:
 - observe high standards in integrity and fair dealing;
 - act professionally and with due care and diligence;
 - apply high standards in market conduct;
 - seek from customers information about their investment requirements and objectives which are reasonably expected to be relevant and enable the licensee to fulfil his responsibilities to the customer;
 - provide every customer with information needed to enable the customer to make an investment decision;
 - avoid any conflict of interest with customers and, where such a conflict unavoidably arises, ensure fair treatment to the customer by revealing all facts or by refraining from acting;
 - ensure that his interests are not placed before those of the customer;
 - ensure the segregation and identification of a customer's assets for which the licensee is responsible;
 - maintain adequate financial resources to for regular operations and refrain from unneeded risks;
 - organise and control internal operations in a responsible manner;
 - keep proper records;

- **Ongoing reassessment and control of the licensing requirements** – In accordance with Article 74 paragraph 2 point 3 of the Law, the SEC may revoke the licence to a licensee if the latter fails to meet the requirements prescribed under the licence;
- **General information on ongoing supervision** – pursuant to Article 7 of the Law, the Securities and Exchange Commission is authorized to regulate and supervise the issue of and trade in securities.
- **Conflict of interest** – under Article 78 paragraph 1 point 6) of the Law, market intermediaries are obliged to avoid any conflict of interest with customers and, where such a conflict unavoidably arises, ensure fair treatment to the customer by complete disclosure or by declining to act;
- **“Know your customer” principle** - Article 78 paragraph 1 point 4) of the Law, the licensee, i.e. market intermediary, is obliged to seek from customers information about their circumstances and investment objectives which might reasonably be expected to be relevant in enabling the licensee to fulfil his responsibilities to the customer;
- **Informing a client** – Article 81 of the Law prescribes the obligation on the licensee to immediately inform the client about every transaction conducted upon the client's order. The client cannot give up the reporting right.
- **“Best execution” principle** – Article 21 of the Rules on the manner of performing business operations by the securities market licensees OGM 78/09, 87/09) prescribes that in executing a client's order the licensee shall act in the manner to ensure the maximum benefit for the client, i.e. immediately upon receiving the order and as soon as possible considering the existing circumstances, i.e. immediately upon receiving the order and its entering into the book of orders. This Article also prescribes that the licensee is obliged to execute the order on a stock exchange offering the best price, and if the same security is equally priced on stock exchanges, the advantage shall have the order given at the earlier date.
- **Treatment of clients' orders** – Article 27 of the Rules on the manner of performing business operations by the securities market licensees OGM 78/09, 87/09) prescribes that the licensee must execute a client's exact order and as per the order in the book of orders. When the licensee matches the client's order with his own order or another client's order, he may not give himself or any other of his clients unfair advantage, and if all orders cannot be executed, the priority shall be given to the execution of the client's order.

The supervision of the aforesaid is delegated to the manager of the Securities Market Department and six officers.

vii. Please explain the main corporate governance requirements that apply to companies in your jurisdiction (including issuers and market intermediaries). Please explain how these requirements are supervised and enforced and by whom. Regarding supervision and enforcement please specify the number of persons dedicated to this function.

The Securities Law and regulations passed on the basis of this law do not impose any particular requirements regarding corporate governance on the issuers of securities or market intermediaries. The Securities Law requires that market intermediaries are established as joint stock companies. The structure of governance of joint stock companies is regulated under the Law on Business Organisations which specifies the mandatory bodies of a joint stock companies, the manner of their appointment, the mandate, decision-making, etc. Mandatory regulations governing securities business do not specify any particular rules or principles of corporate governance that would only relate to the licensed participant on the securities market.

Montenegro Stock Exchange Jsc (Montenegroberza a.d.) passed the Corporate Governance Code which is applied to issuers and licensed participants whose shares are traded on this stock exchange. As for its content, this Code represents a group of rules and principles for the improvement of the corporate governance practice given as: recommendations which

implementation is attached to the exercising of the rule “observe or explain”, which implies the mandatory implementation of the recommendations or an explanation of failing to act upon the recommendations; it also contains provisions which intention is to point to the advisable corporate governance practice and the manners for more efficient attaining of objectives set under the recommendations.

The Code is primarily designed for joint stock companies which shares are listed on the stock exchange. The purpose of the Code is to define in more detail the principles of a joint stock company governance and management. The recommended practice may also be applied by other companies, accepting the transparent and clear governance system, which will boost the confidence of domestic and foreign investors, employees, and the public in the Montenegrin system of corporate governance.

Corporate activities and corporate governance are performed by the Corporate Affairs Department in the Securities and Exchange Commission, these being: the manager of the Corporate Affairs departments and two officers in the department, as well as the manager of the Market Development and International Cooperation Department and two officers in the department.

viii. Please explain whether there is an investor compensation scheme, and how it works, in your jurisdiction to compensate investors in case an investment firm is not able to return back the assets (financial instruments) or moneys of the client due to fraud or other administrative malpractice within the firm. Please explain the main requirements of insolvency law that apply in your jurisdiction regarding investor compensation.

The Securities Law prescribes the following: “A licensee is obliged to keep the monetary assets, provided by the client for the payment of securities, on the separate account(s) (the client’s account), particularly opened with the authorized institutions for that purpose. The assets from the client’s account may be used only for payments under the client’s orders. The assets on the client’s account are property of the client and not property of the licensee. These assets are neither a part of licensee’s property nor a part of liquidation or bankruptcy estate, and they cannot be used for the settlement of client’s liabilities. The licensee holding or controlling the securities on behalf and for account of the Client, may not assign, pledge, lend or place those securities as deposit for obtaining a loan or advance payment, except under the written consent of the client. The licensee must open a separate securities account for the customer in the Central Depository Agency in which it shall keep his securities for the purpose of conducting transactions.”

This provision could contribute to the protection of investors’ interests. With regard to compensation of damages to investors in Montenegro, investor’s title on securities is protected with respect to securities registered with the Central Depository Agency (CDA), particularly in case of liquidation or bankruptcy proceedings against a market intermediary. In line with the right to damages in Montenegro and the specific provision in the Securities Law, the statement from the CDA registry is the only legal proof of ownership of securities. Ownership is guaranteed by the law and in practice as securities are not held in accounts of market intermediaries but in the CDA depository that in case of liquidation or bankruptcy of a market intermediary performs “from street” transfer of a client’s securities from the CDA depository to the CDA central registry. In addition, the CDA is obliged to perform such a transfer if ordered by the SEC, thus ensuring full ownership warranty in case of insolvency of a market intermediary since the above quoted Article 82 of the Law stipulates that securities are property of the client and not of the licensee, thus not subject to liquidation or bankruptcy pool of assets of the licensee.

For the time being, there are no compensation schemes in Montenegro as prescribed in the Directive 1997/9/EC. The existing market intermediaries are not members of any investment scheme that would guarantee the compensation of securities or money in case of theft or counterfeits, and/or the lack of proper internal procedures of the licensees.

x. Please explain whether credit rating agencies are regulated in your jurisdiction. If yes, please explain what types of requirements do they have to comply with and whether they are supervised by the regulator.

Credit rating agencies are not regulated under the Montenegro legislation governing securities and the Securities and Exchange Commission is not authorized for the supervision of legal persons offering securities services.

Investment firms

9. (Ref. to Q. 68): With reference to Investment Funds Montenegro states: "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 acquis." Please specify the following points:

i. The Commission would like to have an update and receive the translation into English of the amendments adopted.

Their drafting is under way. The Securities and Exchange Commission has engaged a professional team of international experts to assist in drafting regulations on investment funds in Montenegro, in accordance with best international practice.

ii. If adopted, have the amendments fully aligned the legislation with UCITS Directive 85/611/EEC? If not yet adopted, for when is this foreseen?

Their drafting is under way and the Securities and Exchange Commission envisages that the joint draft being prepared with the international team of experts will be prepared by July 2010 and afterwards put forward for adoption by the Parliament.

Supervisory authorities

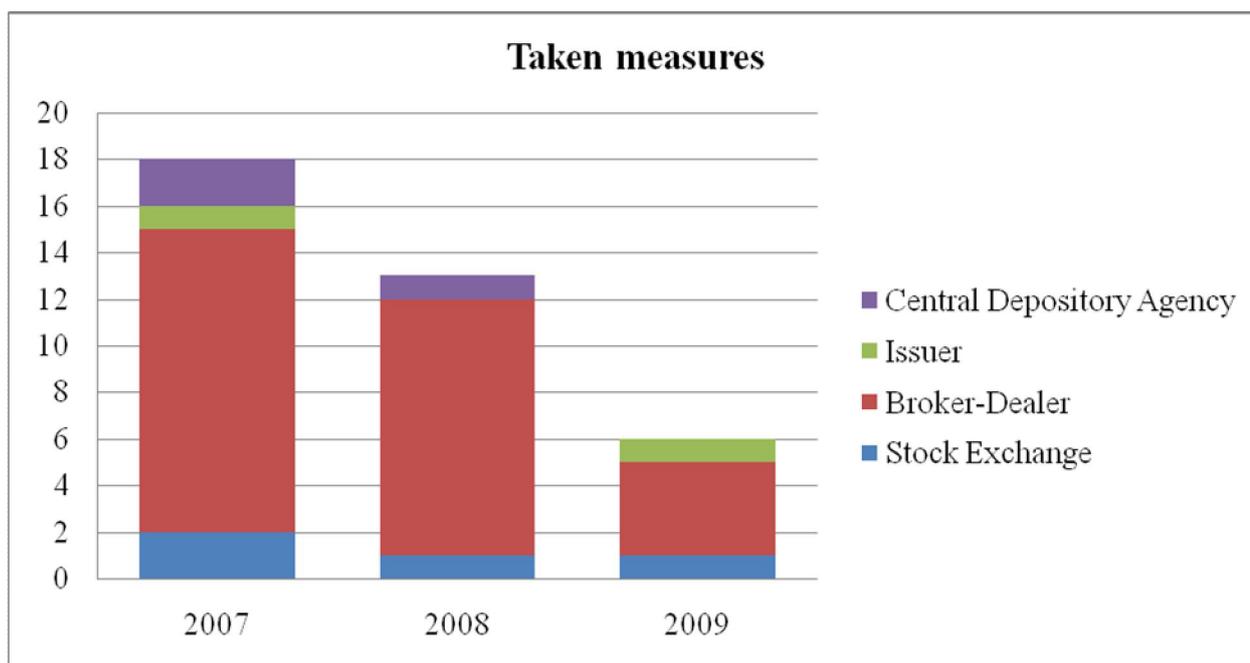
10. With reference to Securities Commission, please specify the following points:

i. Please provide information on the number, importance and outcome of investigations carried out by the supervisory authority over the last few years. Can information on this be easily found in the public domain?

In the period 2007 – 2009 the SEC imposed 37 measures. Most of them referred to the market intermediaries and their employees. The measures involved warnings, licence suspension for several months, and so on. Information on investigations and measures taken by the SEC are presented in the SEC annual reports available at the SEC website www.scmn.me.

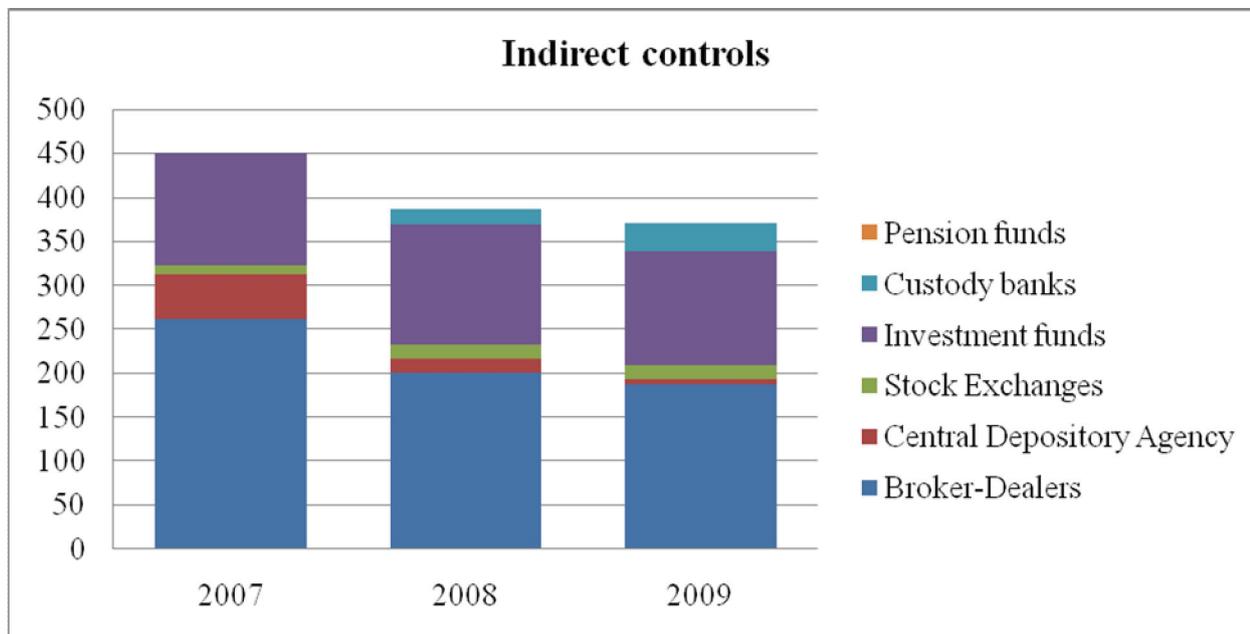
- Additional Questions -

Imposed measures	2007	2008	2009	Total
Stock exchanges	2	1	1	4
Market intermediaries	13	11	4	28
Issuers	1		1	2
Central Depository Agency	2	1		3
Total	18	13	6	37



The SEC performs direct (on-site) and indirect (off-site) examinations of the licensed market participants. In the period 2007 – 2009, the SEC carried out 1,207 on-site examinations, most of which involved the examination of periodical and annual reports on activities of the market intermediaries, and some of the examination were performed at the request of clients and/or at the SEC’s initiative.

Indirect (off-site) examinations	2007	2008	2009	Total
Market intermediaries	452	287	370	1109
Central Depository Agency	51	17	7	75
Stock exchanges	10	16	16	42
Investment funds	127	136	128	391

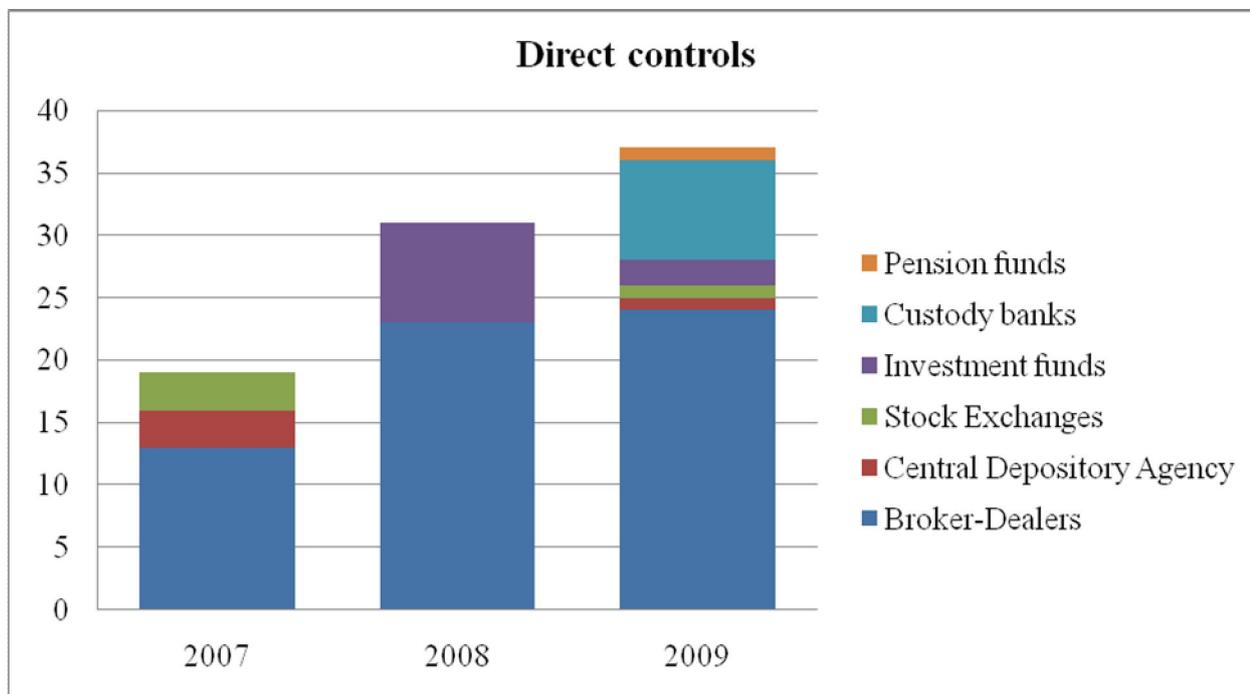


In the period 2007 – 2009, the SEC conducted 87 direct (on-site) examinations. These examinations were carried out at the SEC's initiative or at clients' requests. These examinations mostly covered licensed participants in the securities market and their acting on clients' orders for purchase/sale of securities and handling clients' monetary assets. During the aforesaid period, at least one annual on-site examination of every licensed participant was performed.

On-site (direct) examinations	2007	2008	2009	Total
Market intermediaries	13	23	24	60
Central Depository Agency	3	0	1	4
Stock exchanges	3	0	1	4
Investment funds	0	8	2	10
Custody banks	0	0	8	8
Pension funds	0	0	1	1
Total	19	31	37	87

Pension funds started operating in 2009.

In this period, the SEC filed one misdemeanour referral and one criminal referral against a market participant and the person responsible in the licensed participant (litigations are underway). In one case the SEC announced in daily print media that the specified licensed participant had violated regulations governing securities.



ii. What are your plans for improving the enforcement capacity of the supervisory authority over the next 5 years?

The SEC financial plan for 2010 envisages the implementation of tasks with the engagement of another five employees in addition to those already engaged.

In its Report from April 2008, with regard to the SEC administrative capacity, the IMF pointed the following:

"The SEC has an excellent and trained staff and carries out an active program of regulation and supervision. The SEC staff demonstrates in-depth knowledge of regulatory issues and concepts and is well-informed about best international practices."

The SEC shall endeavour to maintain the existing level of expertise, and the current capacity is a good foundation for the capacity building capable of facing any future challenges.