

## **PROPOSAL**

### **LAW ON MODIFICATIONS AND AMENDMENTS OF THE LAW ON BUSINESS COMPANIES**

#### **Article 1**

In the Law on business companies ("Official Gazette of the Republic of Montenegro, no. 6/02) in article 1, paragraph 3, the first sentence is modified and it reads as follows: "Forms of carrying out economic activities registered in accordance with this law are bound to obtain, prior to starting with the activities, the approval for carrying out the activities, if the approval for carrying out the activities is prescribed by a specific regulation."

#### **Article 2**

In article 2, paragraph 1, item 6 is modified and it reads as follows:  
"6) Part of foreign company."

After paragraph 2, a new paragraph is added and it reads as follows:  
"(3) Paragraph 2 of this article is not applied in case of failing to extend the registration of joint-stock company."

Previous paragraph 3 becomes paragraph 4.

#### **Article 3**

In article 3, paragraph 2, the second sentence is deleted.

#### **Article 4**

After article 4, titles and two new articles are added and they read as follows:

“Headquarters  
Article 4a



(16) If, with its activities or in any other way, the company violates the honour and the reputation of the physical person whose name is entered in the name of that company, this person, i.e. his/her heirs have the right to ask for deletion of his/her name from the name of that company. "

#### **Article 5**

In article 5 and in other provisions of this law, word "profit" is replaced with the word "gain", in adequate grammatical case.

#### **Article 6**

In article 7, after paragraph 3, two new paragraphs are added and they read as follows:



(4) The shareholder of a single-member joint-stock company has the authorisations of the assembly of the joint-stock company and he/she makes all decisions in written form. Decisions are chronologically entered in the decisions book of the company."

### **Article 13**

In article 19, paragraph 2, item 4 is modified and it reads as follows:

"4) provision that the company is a joint-stock company and that the amount of equity is determined as the initial capital and the amount of approved capital expansion (authorised capital), if determined;"

Item 11 is deleted.

### **Article 14**

Above article 20, after the title: "Company formation", a new article is added and it reads as follows:

"Article 19a

Joint-stock company may be founded successively and simultaneously. "

### **Article 15**

Above article 20, a new title is added and it reads as follows: "Successive company formation ".

### **Article 16**

In article 20, paragraph 1 is modified and it reads as follows:

"(1) joint-stock company is founded successively by:

- 1) signing memorandum of association;
- 2) obtaining approvals for constituent issue of shares from the Securities Commission;



(6) If all founders of the company sign decisions on acceptance of the statute of the company, evaluations of non-monetary contributions, selection of management bodies, executive bodies and auditors of the company and other decisions that need to be made at the constituent assembly, the constituent assembly of the company will not be convened.

(7) All signatures on decisions from paragraph 6 of this article are authenticated in accordance with the law.

(8)

taking over the property and liabilities has, directly or through the third persons owning the shares for its account, in companies that cease to exist.

(7) Provisions on restructuring joint-stock companies are accordingly applied also on restructuring of other business companies. "

## **Article 20**

After article 22, titles and three new articles are added and they read as follows:

“Merging of companies

Article 22a

(1) Restructuring of joint-stock companies by merger can be done when one or more companies are merged with the existing company by transferring the entire property and liabilities onto that company which in turn issues shares to the shareholders of companies being merged, or two or more companies are merged by forming a new company that issues the shares of newly formed company to the shareholders of companies being merged. The company to which the others were



- 11) Proposal of the statute of the new company, in case when restructuring is carried out by creating new company through merger.
- (4) Agreed draft of the merger contract is signed, on behalf of each company being merged, by a member of the board of directors determined by each company included in merger.
- (5) Board of directors of each company being merged will determine one or more independent experts to examine the draft of the merger contract. The boards of directors of the companies being merged can determine together one or more same independent experts to examine the draft of the merger contract.
- (6) Independent experts are, in particular, bound to give their opinion in their reports on conditions and merger proposal, used methods, established proportion of share exchange, including additional monetary payment, as well as to name difficulties if they occurred during the evaluation of the property of the company.
- (7) The independent expert may be an auditor, legal assessor in the field of economy or other appraiser selected by the board of directors as well as the auditing company. The independent

company outside the headquarters if the activities are carried out at several locations, at least 30 days prior to the day of the shareholders assembly taking place where the proposed type of merger is to be considered, as well as during the very shareholders assembly:

- 1) draft of the merger contract;
- 2) report of the board of directors with the presentation of reasons and consequences of the merger;
- 3) report of an independent expert;
- 4) annual financial statements for the last three years for each company included in the merger;
- 5) special financial statement presenting the position of the company on the day three months at most prior to the day of making draft of the merger contract, if the draft was made after the expiry of the period of six months from the ending date of the last business year.

(14) Special financial statement from paragraph 13, point 5 of this article presents data in the way they are presented in annual financial statement, where evaluation of the values may be based only on the changes in accounting in relation to the position presented in the last financial statement, without carrying out property inventory.

(15) Companies included in the merger are bound to give or submit free of charge to each shareholder, at his/her request, copies or requested parts of copies of documents from paragraph 13 of this article.

(16) Company that is taking over shall submit to the CRPS (Central Register of the Commercial Court) the merger contract, signed and verified in accordance with paragraph 17 of this article, the minutes from the shareholders assembly meeting where decision on merger was made and decision on issue of shares on the basis of merger, within the period of 15 days at the latest from the day of receiving the decision of Securities Commission about record keeping of the issue of shares on the basis of the merger.

(17) Merger contract is valid when its identical text is adopted by the assemblies of the companies being merged and when all signatures on the contract are authenticated in accordance with the law.

(18) After obtaining the documents from paragraph 16 of this article, CRPS (Central Register of

merger contract in "Official Gazette of the Republic of Montenegro ", from the Court to annul the merger in case important provisions of merger procedures have not been complied with and if creditors, at their request, were not secured with the adequate protection of their claims and merger considerably jeopardized the settlement of their claims. Creditors whose claims have already been settled fully and in reliable manner do not have right on an additional security.

(21) The Court submits the legally binding verdict annulling the merger within 15 days from the day of its coming into effect to CRPS (Central Register of the Commercial Court) so it could be published in "Official Gazette of the Republic of Montenegro ". If within 90 days from the day of publishing legally binding verdict in "Official Gazette of the Republic of Montenegro ", the assembly does not take place and company bodies are not selected, the registrar shall initiate the procedure of winding up by order of the court over the companies involved in the merger.

(22) In case of annulment of the merger, obligations created by the company taking over from the day of recording issue of shares on the basis of new merger in CDA to the day of publishing the verdict of the Court on annulling the merger in "Official Gazette of the Republic of Montenegro " will be valid, and companies that were involved in merger procedure are without limitations jointly and severally liable for the obligations of the company taking over for this period.

#### Simplified merger Article 22b

(1) In case of the merger of company taken over with the company taking over that has at least 90% of shares in company taken over, provisions of the article 22a of this law are applied, where shareholders assembly of the company taking over does not have to take place if the following conditions are fulfilled:

1) If the draft of the merger contract is published in "Official Gazette of the Republic of Montenegro " and notification on merger is published in at least two daily printed media issued in the Republic at least 30 days prior to the day of shareholders assembly of the company taken over taking place;

2) If it is made possible for the shareholders of the company taking over to examine, in the headquarters of the company taking over, the draft of the merger contract, annual financial statements for the last three years and a special financial statement from article 22a paragraph 13, at least 30 days prior to the day of the shareholders assembly of the company taken over taking place where draft of the merger contract is to be considered;

3) If a shareholder or more shareholders of the company taking over who together have at least 5% of shares of this company did not request the decision on the merger to be made by shareholders assembly of the company taking over.

(2) In case as per paragraph 1 of this article, the decision of the board of the directors of the company taking over shall be considered as the decision of the assembly of the company, and the decision of the board of directors on issuing of shares on the basis of restructuring by









## **Article 29**

In article 35, paragraph 1, after the first sentence, a new sentence is added and it reads as follows:  
"Members of the Board of Directors are present, as a rule, at the shareholders assembly."

In paragraph 2, item 2, the words: "approves appointment", are replaced with the word "appoints".

After item 3, a new item is added and it reads as follows:

"3a) appoints and relieves the liquidator;"

Item 4 is modified and it reads as follows:

"4) decides on compensation policy and on compensations of members of the board of directors;"

After item 4, two new items are added and they read as follows:

"4a) adopts annual financial statements and a report on company's business activities;

4b) makes a decision on disposal of company's property (purchase, sales, rent, replacement, acquisition or any other mode of disposal) whose value is bigger than 20% of book value of the company's property (property of great value), unless statute determines lower share;"

After paragraph 2, two new paragraphs are added and they read as follows:

"(3) Part of the report on business activities of the company, as per paragraph 2, item 4a of this article, is the report on relationship with parent company and companies in which its parent company has the status of parent or dependent company. In the report, there are all legal business and transactions the company had with its parent company and companies in which its parent company has the status of parent or dependent company, with the statement of the board of directors whether the company suffered damage due to these businesses and transactions, as well as whether the company was compensated for the damage it had due to such legal businesses and transactions.

(4) In case damage to the company was not compensated, members of the board of directors will be responsible for the damage suffered by the shareholders as per article 44, paragraph 7 of this law. "





### **Article 31**

In article 37, paragraph 3 is modified and it reads as follows:

"(3) Shareholders who have at least 5% of the equity have the right to request from the board of directors the extension of agenda of the shareholders assembly 15 days at the latest prior to shareholders assembly taking place. Along with the request to extend agenda of the shareholders

"(4) After voting as per each separate decision, the chairman of the session informs the assembly also about the voting "for" or "against" of the shareholders having voting privilege at the assembly and who did it in written form."

After paragraph 4, a new paragraph is added and it reads as follows:

"(5) The company determines the form of ballot papers used for voting in absence that must be available to the shareholders. The company cannot annul voting of the shareholder who voted in written form but did not use the form of the prescribed ballot paper, if the identity of the shareholder can be determined from the voting and how this shareholder voted regarding individual issues. "

Previous paragraphs 5 and 6 that become paragraphs 6 and 7 are modified and they read as follows:

"(6) Voting by means of ballot papers is obligatory when members of the board of directors are selected and if requested by the shareholders or their authorised persons owning at least 5% of

Previous paragraphs 5 and 6 become paragraphs 6 and 7.

In previous paragraph 7 that becomes paragraph 8, the words: "seven days", are replaced with the words: "20 days".

### **Article 35**

In article 42, paragraph 5 is modified and it reads as follows:

"(5) Mandate of the members of the board of directors expires at the first annual ordinary session of the shareholders assembly. The person who was BoD member can be re-elected. Num2( )TJ0 -1.14.3(



"(3) The company is bound to enable a shareholder or a previous shareholder, for the period he/she was a shareholder in the company, to examine the minutes book of the shareholders assembly and records and documents as per items 1 to 3 and 7 to 11 of this article within seven days at the latest from the day of submitting written request. Right to examine the records and documents as per paragraph 1, items 5, 6 and 12 of this article is realized in accordance with the article 32, paragraph 7 of this law. Copying the documents which the shareholder may examine is allowed unless it represents the business secret of the company."

#### **Article 41**

In article 50, item 1, the words: "article 52" are replaced with the words: "article 51".

#### **Article 42**

In article 51, after the paragraph 4, a new paragraph is added and it reads as follows:

"(5) Issue of shares on the basis of non-monetary contribution is recorded with the Securities Commission."

In previous paragraph 5 that becomes paragraph 6, the first sentence is modified and it reads as follows:

"The report of the authorised appraiser and the decision of the shareholders assembly on accepting non-monetary contribution shall be submitted to the CRPS (Central Register of the Commercial Court) within seven days from the day of the receipt of the decision of Securities Commission on registering issue of shares on the basis of non-monetary contribution."

Previous paragraph 6 becomes paragraph 7.

### **Article 43**

In article 53, after paragraph 2, two new paragraphs are added and they read as follows:

"(3) The existing shareholders as per paragraph 2 of this article are considered to be only those shareholders who had this status on the day of the decision being made regarding capital expansion.

(4) In case existing shareholders as per paragraph 2 of this article sell their shares, they forfeit the right of purchase and this right is not transferred to the buyer of the shares."

Previous paragraphs 3, 4 and 5 become paragraphs 5, 6 and 7.

After paragraph 7, a new paragraph is added and it reads as follows:

"(8) Right of purchase cannot be used again after the expiry of the period as per paragraph 7 of this article."

Previous paragraph 6 becomes paragraph 9.

In previous paragraph 7 that becomes paragraph 10, the words: "of paragraph 6," are replaced with the words: "of paragraph 9".

### **Article 44**

## **Article 46**

In article 57, after paragraph 2, two new paragraphs are added and they read as follows:

"(3) Paragraph 2 of this article is also applied to all other securities that are convertible into shares or that give right of acquisition of shares.

(4) Equity can be expanded from reserves funds and undistributed gain of the company, under condition that is not contrary to the purpose of reserves funds and if the company, according to the last annual account, does not have uncovered loss. Shares issued on the basis of equity expansion as per this paragraph are given to the persons who were shareholders in the company on the day when the the shareholders assembly reached the decision on equity expansion from the reserves funds or undistributed gain of the company, proportionally to their participation in the total number of shares of the company. "

Previous paragraph 3 becomes paragraph 5.

Previous paragraph 4 is deleted.

Previous paragraphs 5 and 6 become paragraphs 6 and 7.

Previous paragraph 7 that becomes paragraph 8 is modified and it reads as follows:

"(8) With the statute of the company or with the decision of the shareholders assembly that is reached by majority as per paragraph 5 of this article, BoD may be authorised to make a decision on issue of shares. The statute or the decision of the assembly of the company determines the amount of the approved capital expansion (authorised capital) as well as the deadline until which the authorisation of the BoD is valid and which cannot be longer than 5 years from the day of adopting



In previous paragraph 10 that becomes paragraph 11, full stop is replaced with comma and the words are added as follows: "during which an adequate number of shares shall be annulled of





## Article 58

In article 92, paragraph 1, the words: "50.000 Euros" are replaced with the words: "15.000 Euros" and the words: "economic offences" are replaced with the word "infractions".

In paragraph 2, the word "offences" is replaced with the word "infractions" and the words: "25.000 Euros" are replaced with the words: "1.000 Euros".

In paragraph 3, the words: "economic offence" are replaced with the word "infraction"

Item 1 is modified and it reads as follows:

"1) carries out the activity without special approval for carrying out this activity, if obtaining such an approval is prescribed by specific regulation (article 1, paragraph 3);"

In item 4, the words: "item 7" are replaced with the words: "paragraph 6".

In item 8, the words in brackets are replaced with the words: "article 35, paragraph 2, item 10) and paragraph 3;m07(nd pa)5.4.2nd pcle 4(h)4.07(nd pa)5.4.2nd.7(ph 3)8s:rph 33, parag7a1()-5(

In article 95, paragraph 2 is modified and it reads as follows:

"(2) The joint-stock company that fails to extend its registration with CRPS (Central Register of the Commercial Court), shall be fined in the amount of 10.000 Euros, and limited liability

Coming into force

**Article 64**

This law comes into force on the eighth day from the day of its publishing in "Official Gazette of the Republic of Montenegro".