

Pursuant to Article 82 paragraph 1 point 2 and Article 91 paragraph 1 of the Constitution of Montenegro, the 24th Parliament of Montenegro at the tenth sitting of the first ordinary session in 2010, passed on 16 July 2010 the

## **LAW AMENDING THE BANKING LAW**

### **Article 1**

Article 3 point 8) of the Banking Law (OGM 17/08), shall be amended so as to read:

“8) **related parties** mean two or more parties that are connected in at least one of the following forms:

- one party controls or has direct or indirect participation in capital or voting rights of other party of at least 20%,
- two or more parties are controlled by a third party,
- the same persons represent the majority members of the board or another governing body in two or more legal persons,
- two or more parties are family members (a spouse, a person who lives in community equal to matrimony pursuant to the law, and children and other persons who live in household of that party),
- two or more parties, pursuant to a contract, an agreement or informally, jointly performing business activities of a significant volume;
- if a deterioration or improvement in financial situation of one party may lead to deterioration or improvement in financial situation of the other party or other parties, or there is a possibility of loss, profit or creditworthiness transmission among these parties.”

Point 13 shall be amended to read:

“13) a **group of related parties** shall be considered related parties under point 8) indents 1-6 of this Article and parties related to them.”

### **Article 2**

Article 9, paragraph 3 shall be amended to read:

### **Article 3**

After Article 10, a new Article shall be added to read:

#### **“Procedure involving the request for granting approval for acquiring qualified participation**

##### **Article 10a**

The Central Bank shall inform the applicant in writing on the reception of the request for granting the approval for acquiring qualified participation within two business days upon the reception of the orderly request.

If any of the prescribed documentation is not submitted together with the request for granting the approval under paragraph 1, the Central Bank shall, within three business days upon the receipt of the request, send a written notice to the applicant requesting the submission of the lacking documentation within the deadline that shall not be shorter than 8 or longer than 15 business days.

The Central Bank shall decide on the request for granting the approval for acquiring qualified participation within 30 business days following the day of sending the notice under paragraph 1 above in case when the prescribed documentation is submitted with the request, and in case under paragraph 2 above, within 30 business day following the expiry of the deadline specified for the submission of the lacking documentation.

During the procedure of deciding upon the request, within 20 working days following the day of sending the request under paragraph 1 above and/or upon the expiry of the deadline specified for the submission of the lacking documentation, the Central Bank may send a written request to the applicant and other parties to provide additional data and information required for the decision-making process.

The procedure shall remain inactive from the day the request for additional information and data under paragraph 4 above was sent until the day of the submission thereof, and this period shall not last more than 15 business days following the request delivery.

Exceptionally from paragraph 5 of this Article, the inactivity of the decision-making procedure may last up to 20 business days if the applicant has its registered office and/or permanent residence abroad or in case it is not subject to supervision of the relevant authority.

In the procedure of deciding on the request for granting the approval for qualified participation, the Central Bank shall inform the applicant on the date of expiration of the period envisaged for deciding on the request within five business days

following the date of submission of complete documentation and/or within five business days following the date of cessation of the decision-making inactivity period.

If the Central Bank fails to decide on the request within the specified timeframes under this Article, it shall be deemed that it has given its approval for acquiring qualified participation.”

#### **Article 4**

Article 11 shall be amended to read:

“When deciding on granting the approval for acquiring qualified participation, the Central Bank shall assess the eligibility and financial condition of the applicant based on the following:

- 1) reputation of the applicant with respect to its financial and business activities, including whether the applicant’s property has been subject to bankruptcy proceedings and/or whether the applicant – natural person has occupied a managerial position in the bank or any other corporate entity at the time such an entity has been subjected to bankruptcy proceedings;
- 2) indicators that may be of importance for the assessment of the applicant’s influence on risk management in a bank,
- 3) reputation, relevant professional capabilities and experiences of parties who will be proposed by the applicant to run the banking operations after the acquisition of qualified participation,
- 4) financial condition of the applicant, especially in relation to the kind of operations performed by the bank in which qualified participation is acquired,
- 5) capabilities of the bank to adhere to the provisions of this Law, in particular those regulating whether a group which member the bank is to become has such an ownership structure which enables efficient supervision, efficient exchange of information between the competent supervisory authorities and determination of division of responsibilities among the authorities;
- 6) the existence of valid reasons to suspect, pursuant to regulations governing the prevention of money laundering and terrorist financing, that the acquisition involves or may involve money laundering or terrorist financing, or that such an acquisition could increase the risk of money laundering and terrorist financing.”



A person independent from the bank shall be considered a person:

- 1) not holding a qualified participation in the bank or in a superior company in the banking group to which the bank belongs;

### **Article 9**

In Article 32, after the current paragraph 5, two new paragraphs shall be added to read:

“The approval under paragraph 1 of this Article shall cease to be valid:

- 1) if the person whose appointment has been approved is not elected within six months following the approval or the person has not started to perform his/her function;
- 2) on the day of termination of the function of a Board of Directors member;”

The approval referred to in paragraph 1 above shall not cease to be valid in case of re-election of the member of the Board of Directors during his term of office.

### **Article 10**

In Article 35 paragraph 3 shall be amended to read:

“The Board of Directors shall decide by the majority vote of the total number of members of the Board of Directors”.

### **Article 11**

Article 36 shall be amended to read:

“A bank shall have at least two executive directors, of which one shall be the

### **“Approval for the Executive Director Election**

A person that has obtained prior approval of the Central Bank may be elected executive director.

The evidence to prove the meeting of the election requirements under Article 36 of this law must be submitted together with the request for granting the approval for the election of the executive director.

When deciding on granting the approval for the election of the executive director, the Central Bank may require the prospective candidate to submit the presentation on managing bank’s operations.

The Central Bank shall issue approval under paragraph 1 above if, based on the evidence under paragraph 2 above, presentation under paragraph 3 above and other information available, it evaluates that the prospective candidate meets the requirements for his/her election as the executive director of the bank.

The approval of the Central Bank under paragraph 1 above shall be the condition for the registration in the CRCC.

The Central Bank shall revoke the approval under paragraph 1 above if it has been issued on the basis of incorrect data or if the executive director does not meet the requirements based on which the approval has been issued.

The approval referred to in paragraph 1 above shall cease to be valid if:

- 1) the approved person is not elected within 30 days following the approval, or the approved person has not started to perform its function;
- 2) on the day of the termination of the executive director function;
- 3) an employment contract with a banks expires to executive director as of the day of the contract expiry”.

### **Article 13**

Article 38 shall be amended to read:

#### **“Powers and Responsibilities of Executive Directors**

Executive directors shall be responsible for the organisation and management of the bank and supervise the work of the employees of the bank on daily basis.

The Chief Executive Officer shall represent the bank and act on its behalf.









### **Article 21**

In Article 97 paragraph 1, shall be amended to read:

“In case of bank restructuring, the bank that has resulted from amalgamation, or the bank to which another bank has been merged, or the bank that have resulted from bank de-merger or division shall hire an auditor to perform the audit of its financial statements as of the date of such amalgamation, de-merger or division.”

In paragraph 2 words: “or de-merge” shall be replaced by words “de-merge or division”.

### **Article 22**

In Article 106 paragraph 2, the words “that perform duties referring to

After paragraph 2 a new paragraph shall be added to read:

“Unsafe or unsound banking practice referred to in paragraph 2 point 3) above shall mean every action or failure to act which is contrary to the generally accepted standards of prudent banking operations and the consequences of which, in case of a continuing risk, could result in loss or damage to the bank.”

The former paragraph 3 shall now become paragraph 4.

## **Article 25**

Article 116 shall be amended to read:

“If the Central Bank establishes irregularities in the bank’s operations, it may take one of the following measures:”

- 1) warn the bank in writing about the irregularities found and request the bank to undertake one or more activities to remove the irregularities;
- 2) conclude a written agreement with the bank making the bank bound to remove the irregularities found within a specified time;
- 3) issue an order imposing one or more of the following measures:
  - order the bank to remove the irregularities found in its operations and/or undertake other activities to improve the condition in the bank;
  - order the bank to scale down or cease one or more of the activities that, as the Central Bank has established, caused losses for the bank or are contrary to best banking practices;
  - order the bank to establish stricter limits in operations than prescribed by the Central Bank or the bank’s policies;
  - order a bank classification of assets based on the exposure to credit risk in riskier group,
  - order a bank to establish adequate reserves for losses based on country risk;
  - order the bank to increase the amount of own funds, ensure higher solvency ratio and/or other capital adequacy indicators than those prescribed if one or more conditions under Article 71 above are met;
  - order a bank to discharge a member of the Board of Directors, an executive director or an official with special powers and responsibilities and set the time

Unofficial translation

The bank shall submit to the Central Bank for its approval the plan for the improvement of the bank condition prepared in accordance with provisions under paragraph 1 point 4) above.

In the course of the procedure of granting the approval under paragraph 2 above,

The authorised person shall be obliged to monitor all activities taken by the bank with regard to the imposed measures or the state of affairs in the bank and to report to the Central Bank thereof.

During the monitoring of implementation of measures or situation in the bank, the

- 2) it has been found that the bank is illiquid or the liquidity of the bank has worsened down to the level that threatens interests of depositors and other creditors of the bank;
- 3) it has been found that during the timeframe envisaged for the removal of identified irregularities in its operations, the bank has been illiquid or its liquidity has worsened down to the level that threatens interests of depositors and other creditors of the bank;
- 4) the bank has engaged in unsafe or unsound practices or acted contrary to the provisions of the law and regulations passed on the basis of the law and thus jeopardized the interests of the bank depositors or reduced the bank assets;
- 5) the bank precludes or obstructs the Central Bank in performing its supervisory function, including concealing or failing to furnish data or any other information and documents on the bank's operations."

In paragraph 3 words "referred to in paragraph 1 above" shall be replaced with words: "on imposing interim administration"

### **Article 29**

In Article 122 paragraph 1 the words: "ranging from 15-fold to 30-fold official minimum monthly salary in Montenegro", shall be replaced by words: "equal to



The words “executive directors” in paragraph 3 shall be added after the words “Board of Directors”.

### **Article 31**

In Article 125 the following six new paragraphs shall be added after paragraph 1 to read:

“The Central Bank may request the Interim Administrator to deliver information on the implementation of the Interim Administration.

The Central Bank may, upon the proposal of the Interim Administrator, order the suspension of payments to other parties from all accounts owned by the delinquent debtor of the bank under interim administration until such a debtor has paid all outstanding liabilities existing at the time of issuing the order.

The Central Bank may, upon a proposal of the Interim Administrator, issue an order to temporarily suspend payments of liabilities in the bank under interim administration (moratorium) for a period of up to 90 days with a possibility of extending the period for another 90 days.

During the moratorium, the Interim Administrator shall suspend all payments, except for liabilities referring to salaries and other personal income of the bank’s creditors, life and health insurance claims and current expenditures necessary for the bank’s regular functioning.

By the way of exception from paragraph 5 of this Article, the Central bank may, during the moratorium, allow the Interim Administrator to pay out deposits up to the amount of guaranteed deposits and only to persons entitled to the guaranteed deposit payout in accordance with the law governing deposit protection.

During the period of moratorium:

- 1) all proceedings against the bank and the Interim Administrator which have arisen from the bank’s operations shall be suspended;
- 2) the bank’s assets may not be subject to the execution of a judgment;
- 3) the bank may not assume any new liabilities, except the liabilities to the Government of Montenegro, the Central Bank and the Deposit Protection Fund;”

**Article 32**

Article 126 shall be amended to read:

**“Responsibilities of the Interim Administrator**

The Interim Administrator shall take all measures and activities necessary for the bank continuity and the protection of its property, in particular the following:

- a proposal of changes in the bank's internal organization and job position scheme;
  - a sale of the bank's assets;
  - the bank recapitalization;
  - other measures and activities in accordance with the law.
- 2) transfer of the bank's assets and liabilities to another bank, in line with Article 127c of this Law;

- 1) determine the extent of losses;
- 2) prepare the bank's balance sheet.

Upon the preparation of the balance sheet referred to in paragraph 1 point 2) above, the Interim Administrator shall determine the amount of the additionally required share capital at least up to amount that provides the required level of own funds and/or solvency ratio adequate to the risk profile of the bank for which new issue of shares is required.

The Interim Administrator shall determine the price at which the shares issued for sale shall be sold to the existing shareholders in the following manner:

- 1) Total nominal value of the existing shares of the bank shall be increased by the amount of issue premiums reported in the bank's balance sheet, and the obtained amount is then increased or decreased by the amount of profit or loss reported in the bank's balance sheet;
- 2) The amount calculated in accordance with point 1) above shall be divided by total number of the existing shares of the bank, and the obtained amount shall represent the price at which the issued shares shall be sold.

The Interim Administrator shall carry out the issue of shares to be sold exclusively by the existing shareholders of the bank, within the timeframe to be specified by him/her, except in cases when:

- 1) the bank recapitalization ordered by the Central Bank prior to the introduction of interim administration had failed;
- 2) the Central Bank determines that a speedy resolution of the bank under interim administration is necessary with a view to preventing the endangering of safety and soundness of the banking system.

The Securities and Exchange Commission and the Central Depository Agency (hereinafter: the CDA) shall take respective decisions on the approval of the prospectus and registration of shares issued in line with this Article within eight days following the receipt of the request.

The issue of shares for the bank recapitalization shall be considered successful only if the sale of the issued shares has reached the level of the required additional share capital at least to the amount that provides own funds and/or solvency ratio corresponding to the risk profile of the bank.

The Interim Administrator shall immediately inform the Central Bank on the results of recapitalization of the bank under interim administration.”

### **Article 34**

Article 127 shall be amended to read:

#### **“Sale of shares of bank’s shareholders, with mandatory recapitalisation**

If the issue of shares performed on the basis of the Interim Administrator’s decision on bank recapitalisation in line with Article 126a hereof fails, the Central Bank may order the Interim Administrator to organise a sale of shares owned by the bank shareholders (hereinafter: shares of the existing bank shareholders) to new shareholders, with mandatory recapitalisation up to the level providing the required level of own funds and/or solvency ratio adequate to the risk profile of the bank

By way of exception from paragraph 1 above, if the Central Bank determines that a speedy resolution of the bank under interim administration is necessary with a view to maintaining financial stability, it may allow the Interim Administrator to organize the sale of shares of the existing bank shareholders with mandatory recapitalization and without the issue of shares under Article 126a hereof.

The Interim Administrator shall determine the amount of additional capital requirement for which new shares will be issued and the prices of shares necessary for the mandatory bank recapitalization in line with Article 126a paragraph 2 hereof.“

### **Article 35**

Three new Articles shall be added after Article 127 to read:

**“Sale of shares of the existing bank shareholders**

**Article 127a**

The Interim Administrator shall inform potential investors via the electronic and printed media distributed in the entire territory of Montenegro about the planned sale of shares of the existing bank shareholders, the manner of the sale, and the initial prices of the shares, as well as on the amount of the funds needed for mandatory recapitalisation of the bank.

The buyer of shares of the existing bank shareholders during the interim

## **Mandatory recapitalisation of the bank**

### **Article 127b**

The day following the sale of shares of the existing bank shareholders the Interim Administrator shall pass a decision on the issue of bank shares through closed offering up to the amount determined under Article 127 paragraph 3 hereof with a view to their sale to the buyers of shares of the existing bank shareholders.

Buyers of shares of the existing bank shareholders shall be obliged to buy a part of the new issue of shares proportional to their share in the purchase of shares of the existing bank shareholders.

The issue of shares referred to in paragraph 1 above shall be considered successful if all shares of such issue are sold.

When the issue of bank shares under paragraph 1 above is successful, the CDA shall transfer the shares from the transaction account under Article 127a









Board of Directors or if, upon his request, it does not convene a meeting of the Board of Directors or does not allow free insight into banking books, other business documents and records, or insight into bank's IT functioning and computer database (Article 118a)."

In paragraph 2, the words "10-fold up to 20-fold amount of minimum official monthly salary in the Republic" shall be replaced with words "from EUR 500 to EUR 1,000".

#### **Article 40**

The banks shall bring their general acts and corporate governance into compliance with the provisions of this Law and no later than within six months following the day of its entry into force.

#### **Article 41**

This Law shall enter into force on the eighth day following that of its publication in the Official Gazette of Montenegro.

No. 01-437/6