

Pursuant to Article 88, item 2 of the Constitution of the Republic of Montenegro I hereby pass the

**DECREE  
PROMULGATING THE LAW ON BUSINESS ORGANIZATIONS**

I hereby promulgate the Law on Business Organizations adopted by the Parliament of the Republic of Montenegro at the sitting of the first extraordinary session in 2002, held on 29 January 2002.

Number: 01-265/2  
Podgorica, 31 January 2002  
President of the Republic of Montenegro  
Milo Djukanovic, m.p.

**LAW ON BUSINESS ORGANIZATIONS**

(Official Gazette of the Republic of Montenegro 06/02 of 8 February 2002, Official Gazette of Montenegro 17/07 of 31 December 2007, 80/08 of 26 December 2008, 40/10 of 22 July 2010, 36/11 of 27 July 2011)

**PART I - BASIC PROVISIONS**

**Application of the Law  
Article 1**

- (1) This Law shall regulate the forms of organization pursuing economic activities and their registration.
- (2) Business organizations and entrepreneurs shall carry out economic activity.
- (3) The forms of organization pursuing economic activities registered in accordance with this Law shall be obliged to obtain a license prior to commencing their business activity, if the license is envisaged by a separate regulation. The license shall not be a condition for registration in accordance with this Law.

**Forms of Organization Pursuing Economic Activities  
Article 2**

- (1) The forms of organization pursuing economic activities shall be business organizations and other forms determined by this Law:
  - 1) the individual entrepreneur;
  - 2) the general partnership ("GP");
  - 3) the limited partnership ("LP");
  - 4) the joint stock company ("JSC"),
  - 5) the limited liability company ("LLC");
  - 6) the foreign company branch.
- (2) If one or more natural persons or legal person start to perform or perform economic activity but fail to register in accordance with the provisions of this Law, they shall be

deemed to be, respectively, an individual entrepreneur or a general partnership for purposes of relations with third parties.

(3) *Deleted (OG of MN 40/10)*

(4) Any individual who enters into a contract on behalf of an entity knowing that it is not registered shall be required to perform on that contract and liable for any harm arising therefrom.

### **Status of Legal Person Article 3**

(1) Joint stock company and limited liability company shall acquire the status of a legal person on the day of their registration.

(2) Branches of a joint stock company and limited liability company shall not have the status of a legal person.

### **Misuse of the Status of a Legal Person Article 4**

(1) Where there is a misuse of limited liability or gross violations of the provisions on joint stock company, limited liability company or limited partnership, the court may impose unlimited liability upon one or more owners in the case of joint stock company or limited liability company, as well as the limited partner in the case of a limited partnership.

(2) In the case of a joint stock company or limited liability company, gross violations of the provisions, under paragraph 1 of this Article, shall include the co-mingling of assets or funds of the owners and the company; false or misleading registration; failure to keep prescribed records; failure to submit information to the Central Registry of Business Entities (hereinafter referred to as: the Central Registry), as well as inadequate capitalization or insurance coverage that does not commensurate with risks associated with the type of business engaged.

(3) In the case of a limited partnership, in addition to the cases set forth in paragraph 2 of this Article, the direct involvement of a limited partner in the management or affairs of the limited partnership, as well as inclusion of the limited partner's name in the partnership name, shall constitute gross violations of the regulations on limited liability.

### **Registered Office Article 4a**

(1) Registered office shall mean a place where an entrepreneur and a business organization perform their business activity.

(2) If the business activity is performed in several places, a place where the registered office of management of the business organization is located shall be considered as registered office.

**Name**  
**Article 4b**

- (1) Name of a business organization and entrepreneur shall be the name under which they are operating.
- (2) A business organization and entrepreneur shall be obliged to use the registered name in business letters and other documents forwarded to third parties. The name shall be posted on the business premises of the business organization and entrepreneur.
- (3) Names of registered joint stock companies, limited liability companies and limited partnerships must differ from other names registered with the Central Registry.
- (4) Name may also contain an indication of the business activity.
- (5) Name of a business organization and entrepreneur cannot contain data that could lead to confusion regarding the business organization or the entrepreneur, and their business activities.
- (6) The name of a general partnership must contain the indication "general partnership" or "GP" abbreviation.
- (7) The name of a limited partnership must contain the indication "limited partnership" or "LP" abbreviation.
- (8) The name of a joint stock company must contain the indication "joint stock company" or "JSC" abbreviation.
- (9) The name of a limited liability company must contain the indication "limited liability company" or "LLC" abbreviation.
- (10) A foreign company branch must contain the original name of a foreign company, indication or indication abbreviation of the form of that company ("joint stock company" or "JSC", "limited liability company" or "LLC", "limited partnership" or "LP"), alternative name of a foreign company branch, if the original name of a foreign company is used by another business organization in Montenegro, as well as the form of organization of a foreign company branch ("foreign company branch", "business unit", "representative office", and similar).
- (11) Parent company may use in its name the indication "holding", "holding company", "parent company", "group" and similar. Parent company shall mean the company having a majority ownership of or majority right to manage another company - subsidiary.
- (12) A business organization may use, in addition to the full name, an abbreviated name, if it is determined by the Foundation Act of the business organization or its Charter. The abbreviated name of the business organization shall be registered with the Central Registry.
- (13) Name of the business organization may contain the name "Montenegro", coat of arms, flag and other state symbols in accordance with law.
- (14) Name of the business organization may contain names, coat of arms and other symbols of a foreign state or international organization, only with a prior approval of a competent body of the state or international organization that the name or symbols relate to.

(15) Name of business organization may include name or part of the name of a natural person only with his/her consent, and if that person is deceased, with a consent of the person's heirs.

(16) If a business organization with its conduct or in another manner discredits honor and reputation of the natural person whose name is included in its name, that person or the person's heirs shall be entitled to request deletion of the person's name from the name of the business organization.

## **PART II - INDIVIDUAL ENTREPRENEUR**

### **Concept and Registration**

#### **Article 5**

(1) An individual entrepreneur shall be a natural person who engages in economic activity for the purpose of making a gain and who is not performing this activity for the account of another.

(2) For the purposes of this Law, an individual who pursues an independent profession under special regulations shall be regarded as an individual entrepreneur, if so provided by such regulations.

(3) An individual entrepreneur shall be personally liable for all debts incurred to the full extent of his assets.

(4) Where an individual entrepreneur conducts business in any name other than his own name, he shall be obliged to register that trade name in accordance with the provisions of this Law. In case of change of the name, an individual entrepreneur shall be obliged to inform the Central Registry about the change within 30 days from the occurrence of the change.

(5) An individual entrepreneur shall register with the Central Registry by submitting a registration statement in accordance with the provisions of this Law for statistical purposes. The individual entrepreneur shall receive a registration certificate. Such certificate shall not represent a license to do business.

## **PART III - GENERAL PARTNERSHIP**

### **Concept and Constitution**

#### **Article 6**

(1) General partnership shall mean the relationship which subsists between persons carrying on a business in common with a view of gain. All partnerships that are not limited partnerships shall be general partnerships.

(2) A general partnership may arise by operation of law, may be based upon the facts and conduct of the individuals.

- (3) Persons who have entered into partnership with one another shall be called partners and collectively a firm.
- (4) A general partner may be natural or legal person.
- (5) A general partner shall have unlimited joint and several liability.
- (6) A general partnership shall be registered by submitting a registration statement with the Central Registry for statistical purposes; however, the existence of a partnership is not conditioned on the registration. The registration statement shall state the name of the general partnership, the names of partners, their addresses and personal identification numbers (JMBG). The partnership agreement, if any, may be filed by the partners with the Central Registry.

### **Relations of Partners to One Another** **Article 7**

- (1) All property originally brought into the partnership or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, shall hereinafter be called 'partnership property', and must be held and used by the partners exclusively for the purposes of the partnership and in accordance with any partnership agreement.
- (2) Unless otherwise agreed on by the partners, property bought with money belonging to the firm is deemed to have been bought on account of the firm as partnership property.
- (3) No majority of the partners can expel any partner unless a power to do so has been conferred by the agreement.
- (4) The Commercial Court, on the complaint of one or several partners, may decide to expel the partner who violated the agreement on partnership.
- (5) In the case of paragraph 4 of this Article, a share of the partner being expelled shall be divided equally among the partners remaining in partnership. The partners remaining in the partnership shall be obliged to compensate the expelled partner for the amount he would have received in the case of dissolution of the partnership.
- (6) Where a partnership, entered into for a fixed term, continue to conduct business activity after the term has expired, the rights and obligations of the partners remain the same as they were before the expiration of the term.
- (7) A continuance of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, shall be presumed to be a continuance of the partnership.
- (8) Partners shall be required to give full information concerning all things affecting the partnership to any partner or his legal representatives.
- (9) Unless otherwise regulated by the agreement on partnership, or agreed upon among the partners, at the end of the business year, every partner shall equally participate in distribution of gain or loss coverage.

(10) Every partner must account to the firm for any benefit derived by him without the consent of the other partners from any business activity concerning the partnership, such as any use by him of the partnership property, partnership name, business connection or similar.

(11) The provisions of this Article shall apply to business activity undertaken after a partnership has been dissolved by the death of a partner, either by any surviving partner or by the representatives of the deceased partner.

(12) If a partner, without the consent of the other partners, carries on any business of the same nature as, and competing with, that of the firm, he shall be obliged to account for and pay over to the firm all gains made by him in that business.

### **Relations of Partners to Third Parties**

#### **Article 8**

(1) Every partner shall have unlimited joint liability with his co-partners and also several (individual) liability for everything for which the firm becomes liable at the time that he is a partner.

(2) Every partner shall be an agent of the firm and his other partners for the purpose of the business of the partnership. The acts of every partner carried out in the usual way and in the way carried out by the firm of which he is a member shall bind his partners and the firm, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he concluded a contract either knows or could have known that he has no authority.

(3) Any legal transaction or action relating to the business activity of the firm and executed in the firm name, or in any other manner showing an intention to bind the firm, by any person thereto authorized, whether a partner or not, shall be binding on the firm and all the partners.

(4) Partners may give a special authorization to a partner to conclude a pledge agreement. Where one partner pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary course of business, the partner himself shall be personally liable and not the firm.

(5) If it has been agreed between the partners that any restriction shall be placed on the power of any one or more of them to bind the firm by a legal transaction, no act done in breach of this agreement is binding on the firm even if arising from the contract concluded with a person who knew or could have known about that fact.

(6) Where by any harmful act or failure to act in the ordinary course of the business of the firm, or with the authority of the firm, damage is caused to a third party, the firm shall be liable for the payment of a fine or damage compensation to the same extent as the partner who caused the damage.

(7) Where one partner acting within the scope of his ordinary authorities receives the money or property of a third person without a proper authorization and misuses it, the firm shall be liable to compensate the damage.

(8) Where a firm in the course of its business receives money or property of a third person, and the money or property so received is misused by one or more of the partners

while it is in the custody of the firm, the firm shall be liable to compensate the incurred damage.

(9) A person who is admitted as a partner into an existing partnership does not thereby become liable for obligations existing and acts of the partnership done prior to becoming a partner.

(10) A partner who retires from a firm does not thereby cease to be liable for partnership obligations incurred before his retirement.

(11) A retiring partner may be discharged from any existing liabilities, by an agreement to that effect between himself and the members of the firm and the creditors. The agreement may be either express or inferred as a fact from the course of dealing between the creditors and the firm.

### **Dissolution of General Partnership** **Article 9**

(1) Subject to any agreement between the partners, a partnership shall be dissolved where:

- 1) entered into for a fixed term, by the expiration of that term;
- 2) entered into for a single transaction, by the termination of that transaction;
- 3) entered into for an undefined time, by any partner giving notice to the other partners of his intention to dissolve the partnership, in which case, the partnership is dissolved as of date of dissolution stated in the notice, or, if no date is mentioned, as from the date of the submission of the notice.

(2) Unless otherwise agreed between the partners, every partnership shall be dissolved by the death or bankruptcy of any partner.

(3) A partnership may, based on the decision of the other partners, be dissolved if the share of one partner in the partnership property is the object of legal proceedings for the payment of his separate debt.

(4) A partnership shall be dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry it on in partnership.

(5) On application by any partner, the Commercial Court may order a dissolution of the partnership.

(6) If one or more partners, intentionally or due to a gross negligence, fail to meet the obligations in accordance with the agreement on partnership or meeting of that obligation has become impossible, the Commercial Court may decide to distribute the property of the partners, on the basis of the facts determined in the proceeding.

## **PART IV - LIMITED PARTNERSHIP**

### **Concept and Constitution**

#### **Article 10**

(1) A limited partnership shall be partnership of one or more persons called general partners, and one or more persons called limited partners, collectively called a firm. General partners shall be, without limit, jointly and severally liable for all debts and obligations of the partnership. Limited partners shall be liable for debts and obligations of the partnership only to the extent of their contributions. The contributions of limited partners may be in money or property and rights valued at a stated amount.

(2) A limited partner cannot, during the continuance of the partnership, either directly or indirectly, draw out or receive back any part of his contribution, and if he does so draw out or receive back any such part he shall be liable for the obligations of the firm up to the amount so drawn out or received back.

(3) A general partner and a limited partner may be a natural or legal person.

### **Relations of Partners to One Another**

#### **Article 11**

(1) Unless otherwise envisaged by the foundation agreement, decisions on ordinary matters of a limited partnership shall be adopted by a simple majority of votes of general partners.

(2) The provisions of Article 7, paragraphs 10 and 12 of this Law, shall apply to a general partner in a limited partnership.

(3) A limited partner shall not take part in the management of the partnership business, and shall not have power to conclude contracts that bind the partnership.

(4) If a limited partner takes part in the management of the partnership business, he shall be liable as though he were a general partner for the obligations of the firm incurred during the period that he takes part in the management of the partnership business.

(5) A limited partner may by himself or by his representative inspect the books of the partnership at any time and examine into the state and prospects of the partnership business, and may discuss these matters with the other partners.

(6) A limited partner may, with the consent of the general partners, assign his share in the partnership, and upon such an assignment the assignee shall become a limited partner with all the rights of the assignor.

(7) A person may become a partner without the consent of the existing limited partners.

(8) Limited partner who enters the limited partnership upon the establishment of the limited partnership shall be liable for obligations of the limited partnership to third parties that occurred prior to his entering the limited partnership, the same as other limited partners.



### **Initial Registration of Limited Partnership Article 12**

- (1) The registration of a limited partnership shall be done by submitting to the Central Registry a statement or contract signed by all partners containing the following data:
- 1) The partnership name and indication that the partnership is established as limited partnership;
  - 2) The registered office of the partnership;
  - 3) The term, if any, for which the partnership is entered into, and the date of its commencement;
  - 4) The first name, last name and personal identification number, or name of each of the partners;
  - 5) The name of every limited partner as such;
  - 6) The sum contributed by each limited partner, and whether paid in cash or otherwise.

### **Registration of Changes in Limited Partnership Article 13**

- (1) Limited partnership shall be obliged, within seven days from the day of change occurrence, to submit to the Central Registry a signed statement specifying in all cases the following changes in limited partnership:
- 1) the partnership name;
  - 2) the registered office of the partnership;
  - 3) the term of the partnership;
  - 4) the partner or data about partners;
  - 5) the sum contributed by any limited partner;
  - 6) the type of liability of any partner.

### **Submission and Disclosure of Data Article 14**

- (1) If a general partner becomes a limited partner in the limited partnership, a notice to this effect shall be published in the Official Gazette of Montenegro, and the status of a limited partner shall be acquired on the day of publication of the notice.
- (2) If the share of a limited partner is assigned to a third person, a notice to this effect shall be submitted to the Official Gazette for publication, and the rights based on the assigned share shall be acquired on the day of the publication of the notice.
- (3) Any person may inspect data on limited partnership submitted to the Central Registry, in accordance with this Law.

### **Dissolution of Limited Partnership Article 15**

- (1) A limited partnership shall not be dissolved by the death or bankruptcy of a limited partner. Lack of business capacity of a limited partner shall not be a ground for dissolution of the partnership by the court, unless this limited partner's share cannot be otherwise quantified or turned into cash.

- (2) A limited partner shall not be entitled to liquidate the partnership by submitting a notice of such an intention to the other partners.
- (3) The other partners shall not be entitled to liquidate the partnership by reason of the share of any limited partner being the object of legal proceedings in relation to his separate debt.
- (4) The provisions of this Law shall apply to the liquidation of company, and in such case general partners shall have rights and obligations established under this Law for members of board of directors. In case of disputes among general partners related to the partnership dissolution, the decision shall be brought by the Commercial Court in a civil procedure.
- (5) In the event of the dissolution of a limited partnership, its affairs shall be wound up by the general partners unless the Commercial Court orders otherwise.

### **Application of the Law on Limited Partnership** **Article 16**

- (1) If limited partnership is not registered as such in accordance with the provisions of this Law, it shall be deemed to be a general partnership. In such a case, every limited partner shall be deemed to be a general partner.
- (2) Where not specifically regulated by separate provisions of this Law, the provisions regulating general partnership shall apply to limited partnership.

## **PART V - JOINT STOCK COMPANIES**

### **Chapter 1 - General Provisions**

#### **Concept and Basic Characteristics** **Article 17**

- (1) A joint-stock company shall mean a company made of natural or legal persons formed for the purpose of conducting economic activity, and the ownership of which is represented by shares.
- (2) A joint-stock company shall be a legal person, and its assets and liabilities shall be totally separated from that of its shareholders.
- (3) A joint stock company shall be liable for its obligations only to the extent of its assets. Shareholders of joint stock-companies shall bear no personal liability for the obligations of the joint-stock company.
- (4) A joint stock company may be established for a period of limited or unlimited duration. A joint stock company shall cease to exist in accordance with the provisions of this Law.
- (5) The minimum initial capital of a joint-stock company shall be 25,000 euro. The founders shall be obliged to pay the initial capital in cash in the minimum amount of 25,000 euro.

(6) A joint-stock company cannot give shares in return for future work or services performed by a natural or legal person.

### **Founders and Shareholders** **Article 18**

(1) The founders of a joint-stock company shall be natural or legal persons who have executed the company foundation agreement in accordance with the provisions of this Law. Founders may be domestic and foreign natural and legal persons. By executing the foundation agreement of a joint stock company, the founders shall become the shareholders.

(2) A joint stock company may be established by one or more founders.

### **Single-Member Joint Stock Company** **Article 18a**

(1) A single-member joint stock company shall mean a joint stock company established by a single shareholder, i.e. when all shares upon the establishment are acquired by one natural or a legal person.

(2) In the case of establishing a single-member joint stock company, a founder shall be obliged to adopt a decision on establishing a joint stock company. The decision on establishment shall contain:

- 1) first and last name of the founder, his address and personal identification number, or name and registered office of the legal person and its unique registration number;
- 2) name of the company being established;
- 3) indication that it is a joint stock company;
- 4) number of shares held by the founder and their initial value or nominal value of shares, if determined.

(3) If all shares are acquired by one natural or legal person upon the establishment, the company shall be obliged to register the occurred change, as well as the first and last name and permanent residence, or name and registered office of a single shareholder with the Central Registry.

(4) A shareholder of a single-member joint stock company shall have the authorizations of the general meeting of shareholders of the company and shall make all decisions in a written form. Decisions shall be entered in the book of decisions of the company in a chronological order.

### **The Company Charter** **Article 19**

(1) The charter of a joint-stock company shall govern the conduct of the company's business.

(2) The charter shall include:

- 1) The name of the company;
- 2) The company's registered office or address for receiving official notices, if different;
- 3) The company's business activity;

- 4) Provision that the company is a joint stock company and amount of share capital determined as initial capital and amount of authorized increase in capital (authorized capital), if determined;
  - 5) The provisions governing changes in the initial capital;
  - 6) The procedure for exchanging one class of securities for another;
  - 7) Limitation on the right of the company to issue bonds or incur other types of debt;
  - 8) Special benefits granted to the founders;
  - 9) The powers of and procedure for calling and conducting general meetings of shareholders, and provisions on the manner of voting;
  - 10) The rules governing the work of the board of directors' members, the procedure for election and revocation of members of managing and executive bodies, their rights, obligations and authorizations, unless they are determined by separate regulations;
  - 11) Deleted;
  - 12) Deleted (*OG of MN 36/11*);
  - 13) The procedure for issuing and receiving legal notices;
  - 14) The duration of the company, if this is not indefinite;
  - 15) The procedure to propose amendments to the charter;
  - 16) Other provisions, in accordance with this Law.
- (3) The following information must be set forth either in the charter or in a separate legal document submitted to the Central Registry:
- 1) The number of shares;
  - 2) The composition of the share capital by class of shares;
  - 3) Where there are several classes of shares, the number of shares by class, their initial price and the rights they give the holders;
  - 4) The number of shares issued for a consideration other than cash together with the nature of the consideration and the name of the person providing it.
- (4) Use of the stamp shall not be mandatory for business organizations.

## **Chapter 2 - Formation, Restructuring and Liquidation of Joint Stock Company**

### **Formation of Joint Stock Companies Article 19a**

A joint stock company may be a public (successive formation) and private joint stock company (simultaneous formation).

### **Formation of Public Joint Stock Company Article 20**

- (1) A public joint stock company shall be formed by:
- 1) signing of a foundation agreement;
  - 2) obtaining the approval for the initial issue of shares from the Securities Commission;
  - 3) implementing the public invitation for subscription and payment of shares;
  - 4) subscription and payment of shares by founders;
  - 5) obtaining the decision from the Securities Commission on successfulness of the initial issue of shares;
  - 6) adoption of the charter at the statutory general meeting of shareholders;

- 7) registration.
- (2) The foundation agreement shall consist of:
- 1) the first and last names of founders, or names of legal persons, their addresses and personal identification numbers;
  - 2) the name of the company;
  - 3) the indication that the company is a joint-stock company (JSC abbreviation) ;
  - 4) the rights and obligations of the founders and their liability in case of failure to fulfill their obligations;
  - 5) the number of shares acquired by each founder;
  - 5a) names of the founders who make non-monetary contributions, description of those contributions, number and type of shares obtained for those contributions and the deadline within which these non-monetary contributions must be brought into the company;
  - 6) the initial price of shares, or the nominal value if any, the procedure and terms for the offer of shares;
  - 7) the estimated cost of formation and manner of their compensation;
  - 8) the procedure for settling disputes between the founders;
  - 9) the authorization for one or more founders to represent the founders in the procedure for establishing the company.
- (3) The foundation agreement shall be signed by all the founders or by persons authorized by them in writing. The signatures on the agreements shall be authenticated in accordance with law. One person may authenticate all the signatures. If any of the founders is a legal person, the signature of the natural person duly authorized shall be sufficient.
- (4) Upon the signing of the foundation agreement, the founders shall open an account in their name with a bank registered in Montenegro. The money received from the sale of shares shall be deposited in this account until the registration procedure of joint stock company is completed.
- (5) If, during the subscription and payment period, a number of shares determined by the prospectus is not subscribed and paid for, it shall be considered that the issue of shares was not successful and it shall be cancelled. Subscription and payment for more shares than the number of shares issued through the initial issue determined by the foundation agreement can be done, if the prospectus envisages the possibility to pay for more shares.
- (6) In the case referred to in paragraph 5 of this Article, the contributions of the subscribers shall be returned to them without any deduction within the time period determined by the Law on Securities. The founders shall be, without limit, severally and jointly liable for the return of the contributions.
- (7) In the case of successful issue of shares, the statutory general meeting of shareholders shall be held within 30 days from the day of expiration of the deadline for subscription and payment of shares. If, without justifiable reason, the statutory general meeting is not held within the abovementioned period, all the subscribers shall be relieved of their obligations to the company and shall have the right to full return of their contributions within 8 days from the day of the request submission.
- (8) The provisions of this Law on the general meeting of shareholders shall apply to the statutory general meeting of shareholders. The statutory general meeting of shareholders may be attended by the founders and all those who have subscribed and paid for shares or their authorized persons. A quorum for the statutory general meeting of shareholders shall consist of 2/3 of the shares carrying voting rights represented in person or by authorized

person or voting by proxy. If a quorum cannot be established, the provisions of Article 39 of this Law shall apply.

(9) The statutory general meeting of shareholders shall elect the managing and executive bodies of the company and select the company's auditor, and approve any contracts concluded by the founders, and it shall adopt the charter of the company. Decisions on these specific items at the statutory general meeting of shareholders shall be adopted with a 2/3 majority of shares represented.

(10) Decisions on other issues within the competence of the statutory general meeting of shareholders shall be adopted by simple majority of the voting shares represented in person or by authorized person or voting by proxy, unless otherwise determined by this Law or the foundation agreement.

(11) Reimbursement of formation expenses may be paid to the founders or to third persons provided that the aforementioned persons submit the adequate proofs. Disputes concerning reimbursement of formation costs shall be resolved by the competent court.

(12) The founders shall be, without limit, jointly and severally liable for any contracts and expenses incurred until the holding of the statutory general meeting of shareholders that have not been approved by the statutory general meeting of shareholders.

(13) If license to do business is required by separate regulations, the founders shall be, without limit, jointly and severally liable for all liabilities of the company incurred until such license is granted or refused. This provision shall not apply to liabilities under contracts concluded by the joint-stock company conditionally before it receives the license to do business.

(14) The shareholders shall have the right to request that the founders compensate the company for any liabilities incurred prior to the day of its registration due to the founders' failure to fulfill their obligations or the founders' unconscientious conduct regarding the formation of the company. Disputes concerning the compensation for such liabilities shall be resolved by the competent court.

### **Formation of Private Joint Stock Company**

#### **Article 20a**

- (1) Private joint stock company shall be formed by:
- 1) signing the foundation agreement, or by adopting the decision on formation of a single-member joint stock company;
  - 2) purchasing all shares at the moment of formation without issuing a public invitation for subscription and payment of shares;
  - 3) obtaining the decision of the Securities Commission on recording the initial issue of shares;
  - 4) adopting the charter;
  - 5) registration.

(2) The foundation agreement, or the decision on formation, shall contain the data referred to in Article 20, paragraph 2, and Article 18a, paragraph 2 of this Law. Upon signing the foundation agreement of a joint stock company, the founders shall open the account in the name of a founding company with the bank registered in Montenegro. Money received from the payment of shares shall be deposited in this account until the completion of the registration procedure of a joint stock company.

(3) The founders shall be obliged to pay for shares or to make non-monetary contributions within the deadline determined by the foundation agreement.

(4) In the case that a founder did not pay for shares or did not make non-monetary contribution, the founders who paid for shares or made non-monetary contributions shall change the foundation agreement of a joint stock company in the part regarding founders and their shares, if the requirements referred to in Article 17, paragraph 6 of this Law are met.

(5) The founders shall be obliged to record the issue of shares with the Securities Commission.

(6) If all founders of a joint stock company sign decisions on accepting the charter of the company, appraisal of non-monetary contributions, selection of management bodies, executive bodies and auditors of the company and other decisions that should be adopted at the statutory general meeting of shareholders, the statutory general meeting of shareholders shall not be convened.

(7) All signatures on the decisions referred to in paragraph 6 of this Article shall be authenticated in accordance with law.

(8) If the agreement on the issues referred to in paragraph 6 of this Article is not reached, the statutory general meeting of shareholders shall be held within 30 days from the day of payment of shares.

### **Initial Registration Article 21**

(1) The following documents and data must be submitted to the Central Registry for the first registration of a joint stock company:

- 1) The foundation agreement;
- 2) The charter and a special act, if the charter does not contain the data referred to in Article 19, paragraph 3 of this Law;
- 3) A list of members of the Board of Directors:
- 4) The first and last names, and in case of change of first/last name any former name of the member of the Board of Directors, and dates and places of their birth;
- 5) Their personal identification numbers;
- 6) Permanent or temporary residence of the members of the Board of Directors;
- 7) Statements of the members of the Board of Directors indicating their citizenship;
- 8) Business occupation of the members of the Board of Directors;
- 9) Data on any other directorships or positions held in Montenegro or elsewhere and the place of registration of such companies if not in Montenegro;
- 10) Name and address of the Executive Director, Secretary of Company, and auditor;
- 11) The name of the company and the address of its registered office or address for receiving official notices;
- 12) The signed consent of the members of the Board of Directors, the Executive Director, the Secretary of Company, and the auditor to their appointments;
- 13) The Decision of the Securities Commission approving the prospectus for initial offering of shares as well as the decision of the Securities Commission confirming the successfulness of the issue, or the decision of the Securities Commission on recording the initial issue of shares in the case of a private joint stock company;
- 14) The proof of the payment of the appropriate fee.

(2) The registration documents shall indicate whether persons authorized to represent the company either as a body or as individuals may act alone or jointly.

(3) The company shall acquire the status of a legal person on the day of its registration with the Central Registry. The registration is evidenced by the issuance of a registration certificate.

(4) The Central Registry shall publish in the Official Gazette of Montenegro the data on company's name and registered office, the names of the members of managing bodies, Executive Director, Secretary of Company, auditor, as well as the date of concluding the foundation agreement, the date of adopting the charter, and the date of registration.

### **Restructuring of Joint Stock Company** **Article 22**

(1) Joint stock company may be restructured in the following manner:

- 1) By merger;
- 2) By division into two or more separate companies;
- 2a) By carving out portion of the company's assets to constitute one or more companies (Spinoff);
- 3) By changing the organization form.

(2) Restructuring may only take place when the assets of a joint-stock company exceed its liabilities. A company for which bankruptcy proceedings have been instituted shall be restructured in accordance with the law regulating business organization insolvency.

(3) Companies taking over assets and liabilities may give to shareholders of the companies whose assets have been taken over, in addition to shares, cash payment as a fair compensation, provided that the amount is not exceeding 10% of the nominal value of the shares issued for the taken over assets or accounting value if the nominal value is not determined.

(4) The contract on merger, the decision on division into two or more companies, the decision on carving out portion of the company's assets to constitute one or more companies (spinoff), the decision to change organization form, as well as the decision on issue of shares based on restructuring of a company shall be adopted by 2/3 majority vote of shareholders present and represented by authorized person or voting by proxy. If there are several classes of shares, for a decision of a general meeting of shareholders to be made, required majority of every class of shares shall be necessary.

(5) The issuance or cancellation of shares in a restructuring procedure shall be recorded with the Securities Commission.

(6) The companies' own shares shall not be exchanged for shares of the recipient company when the companies cease to exist through merger or division, as well as the shares that the recipient company owns, directly or through third persons holding shares for its account, in companies that cease to exist.

(7) Provisions on restructuring of joint stock companies shall be applied accordingly also to restructuring of other business organizations.



## **Merger of Companies** **Article 22a**

(1) Restructuring of a joint stock company by merger can be done when one or more companies join the existing company by transferring the entire assets and liabilities to that company which in exchange issues shares to the shareholders of the companies being merged, or two or more companies merge into a newly formed company that issues shares of the newly formed company to the shareholders of the companies being merged. The surviving company, or the newly founded company, shall be known as the recipient company, whereas the company transferring assets and liabilities shall be known as merged company.

(2) Board of Directors of the company involved in a merger shall prepare for the general meeting of shareholders a written report giving a detailed legal and economic justification of reasons and consequences of the merger and explanation of the share exchange ratio.

(3) Board of Directors of the company involved in the merger shall notify the general meeting of shareholders on changes in assets and liabilities occurred as from the day of drafting of the contract of merger until the day of holding of the general meeting of shareholders deciding on the draft contract of merger, unless all shareholders or owners of other securities with voting rights of each of the companies taking part in the merger have consented to changes of assets and liabilities.

(4) Boards of Directors of companies involved in merger shall be obliged to harmonize a draft contract of merger, which shall contain:

- 1) the name, form and registered office of each company involved in merger;
- 2) the share exchange ratio and the amount of any proposed cash payments in case those are additionally provided for the fair compensation;
- 3) the manner and deadline for assumption of specific liabilities;
- 4) the manner and conditions relating to the allotment of shares in the companies assuming assets and liabilities;
- 5) the date from which the holders of shares referred to in item 4 of this paragraph shall be entitled to participate in the gain of the recipient company, as well as other conditions that may affect that entitlement;
- 6) the date from which the business transactions of the companies being merged shall be treated for accounting purposes as being those of the recipient company;
- 7) the rights conferred on the shareholders of the merged company, having shares with special rights, by the recipient company, as well as on holders of other securities carrying special rights;
- 8) other payments or benefits, in cash or other means, made or intended to be made to bodies or managers of the companies involved in the merger or to independent expert who prepares the report on draft contract of merger, as well as reasons for such payment or benefits;
- 9) the precise description of the assets and liabilities to be transferred to the recipient company; the form of organization and name of a new company, where the restructuring involves the formation of a new company by merger;
- 10) the proposal of the charter of a new company, in case when restructuring is done by creation of the new company through merger.

(5) Harmonized draft contract of merger, on behalf of every company being merged, shall be signed by a member of the Board of Directors determined by every company included in the merger.

(6) The Board of Directors of every company being merged shall determine one or more independent experts to examine the draft contract of merger. The Boards of Directors of companies being merged may jointly appoint one or several same independent experts to examine the draft contract of merger.

(7) In their reports, independent experts shall be obliged to, including but not limited to, give an opinion on terms and proposal of merger, used methods, determined share exchange ratio, including amount of additional cash payment, as well as to state difficulties, if any, during the assessment of the company's assets.

(8) Independent experts shall not examine a draft contract of merger referred to in paragraph 6 of this Article, if all shareholders or owners of other securities with voting right of each of the company involved in the merger have consented thereof.

(9) Independent expert can be an auditor, court expert with economic background, or another appraiser selected by the Board of Directors, as well as an audit firm. Independent expert cannot be a current or former authorized person or person employed in the company being merged, person who is a business partner of the company being merged, or spouse or first degree relative of a member of the Board of Directors or of employee in the company being merged.

(10) Companies involved in merger shall be obliged to provide, at the request of independent expert, all data and documents necessary for developing a report.

(11) Members of the Board of Directors of the company being merged, as well as independent experts examining a draft contract of merger shall be liable for damage they cause to shareholders of the company in the procedure of merger, if they did not act conscientiously and with due care.

(12) Draft contract of merger shall be submitted to the Central Registry in order to be published in the Official Gazette of Montenegro. The company shall publish the notice of merger at least in two daily printed media outlets published in Montenegro and so at least 30 days prior to holding the general meeting of shareholders where the draft contract of merger shall be considered.

(13) Draft contract of merger published on the web site of each of the companies involved in the merger 30 days prior to holding of the general meeting of shareholders that will consider the draft contract of merger does not have to be submitted to the Central Registry for publication in the Official Gazette of Montenegro.

(14) Every company involved in merger shall inform thereon in writing all creditors at least 30 days prior to holding the general meeting of shareholders where draft contract of merger shall be considered.

(15) The recipient company must provide holders of convertible bonds and other securities entitling them to special rights, which are issued by merged companies, equal rights that were granted by merged companies, or it must provide cash compensation if such rights are not provided for. In the case the agreement on the amount of cash compensation is not reached, the competent court shall determine the amount of cash compensation.

(16) Companies involved in merger shall be obliged to provide their shareholders, at the registered office of the company, or in premises of the company outside its registered office if the business activity is performed at several locations, at least 30 days prior to the day of holding the general meeting of shareholders at which the proposed manner of merger will be

considered, as well as at the very general meeting of shareholders, with the following documents:

- 1) draft contract of merger;
- 2) report of the Board of Directors on justification of reasons and consequences of merger;
- 3) report of an independent expert;
- 4) annual financial statements for the last three years of every company involved in merger;
- 5) special financial statement stating the condition in the company on a day at the most three months prior to the day of preparing the draft contract of merger, if the draft is prepared after the expiration of six months from the day of completing the last business year.

(17) The special financial statement does not have to be submitted if the company publishes semi-annual financial reports and makes it available to shareholders, in accordance with paragraph 16 of this Article or if all shareholders and owners of other securities with voting rights of each of the companies involved in the merger have consented thereto.

(18) The special financial statement referred to in paragraph 16, item 5 of this Article shall present data in the same manner as in the annual financial statement, provided that value estimations can be based only on changes in bookkeeping relative to the condition stated in the last financial statement, without taking inventory of the assets.

(19) Companies involved in merger shall be obliged to deliver or submit, free of charge, to every shareholder, at his request, the copies or requested parts of the copies of documents referred to in paragraph 16 of this Article.

(20) The recipient company shall submit to the Central Registry the contract of merger, signed and authenticated in accordance with paragraph 21 of this Article, the minutes from the general meeting of shareholders at which the decision on merger was adopted, and the decision on the issue of shares based on the merger, at the latest within 15 days from the day of receiving the decision of the Securities Commission on recording the issue of shares based on the merger.

(21) The contract of merger shall be valid when it is adopted as such by general meetings of shareholders of the companies involved in merger and when all signatures in the contract are authenticated in accordance with law.

(22) The Central Registry shall be obliged to publish the contract of merger in the Official Gazette of Montenegro, upon obtaining the documentation referred to in paragraph 20 of this Article.

(23) The Securities Commission shall publish the decision on recording the issue based on the merger in the Official Gazette of Montenegro. By registering the issue of shares based on the merger in the CDA:

- 1) assets and liabilities of the merged company shall become assets and liabilities of the recipient company;
- 2) shareholders of the merged company shall become shareholders of the recipient company;
- 3) the merged company shall cease to exist without conducting a liquidation procedure, and shares of the merged company shall be cancelled;
- 4) employees of the merged company shall continue to work in the recipient company in accordance with the labor regulations and contract of merger.

(24) Merger shall be deemed as completed as of the day of its registration with the Central Registry.

(25) Within three months from the day of publishing the contract of merger in the Official Gazette of Montenegro, a shareholder who voted against or did not attend the general meeting of shareholders that adopted the contract of merger or a creditor of the company, may request from the Court to cancel the merger, if substantial provisions on merger procedure are not complied with, and if creditors, at their request, are not provided with adequate protection of their claims, and the merger substantially endangers the satisfaction of their claims. Right to additional security shall not belong to creditors whose claims have already been fully and reliably secured.

(26) The court shall submit a final and non-appealable decision on canceling the merger, within 15 days from the day the decision becomes final and non-appealable, to the Central Registry for publication in the Official Gazette of Montenegro. If, within 90 days from the day of publication of the final and non-appealable decision in the Official Gazette of Montenegro, the general meeting of shareholders is not held and bodies of the company are not elected, the state administration authority in charge of taxes (hereinafter referred to as the: Tax Administration) shall initiate a court liquidation procedure in the companies that were subject to merger.

(27) In the case of merger cancellation, obligations that recipient company incurred within the period from the day of recording the issue of shares based on the new merger in the CDA until the publishing the decision of the court on cancellation of merger in the Official Gazette of Montenegro shall be valid, and companies that have been involved in the merger procedure shall be, without limitation, jointly and severally liable for obligations of the recipient company for the aforementioned period.

### **Simplified Merger Article 22b**

(1) Provisions of Article 22a of this Law shall apply to the case of merger of the taken over company with the recipient company holding at least 90% of shares of that company, and the general meeting of shareholders of the recipient company does not have to be held if the following requirements are met:

- 1) if the draft contract of merger is published in the Official Gazette of Montenegro, and the notice of merger at least in two daily printed media issued in Montenegro no later than 30 days prior to the day of holding the general meeting of shareholders of the merged company;
- 2) if shareholders of the recipient company are provided with the access in the registered office of the recipient company to the draft contract of merger, annual financial statements for the last three years and special financial statement referred to in paragraph 13, Article 22a of this Law, at least 30 days prior to the day of holding the general meeting of shareholders of the merged company where the draft contract of merger shall be considered;
- 3) if one or more shareholders of the recipient company holding together at least 5% of the shares of that company have not requested that the decision on merger is adopted by the general meeting of shareholders of the recipient company.

(2) In the case referred to in paragraph 1 of this Article, the decision of the Board of Directors of the recipient company shall be considered as the decision of the general meeting of shareholders, whereas the decision of the Board of Directors on the issue of

shares based on restructuring by way of merger shall be considered as the decision of the general meeting of shareholders of the recipient company.

(3) It shall be considered that the recipient company is the owner of shares of the merged company even if another party holds shares of the merged company for the account of the recipient company.

### **Division of Joint Stock Company Article 22c**

(1) A joint stock company shall cease to exist by restructuring by way of division, by transferring entirely its assets and liabilities to two or more existing or newly formed companies, which will in exchange issue shares that are distributed to shareholders of the dividing company.

(2) Provisions of this Law regarding merger of companies shall apply accordingly to division of a joint stock company, unless otherwise determined by this Article.

(3) In the case of division of the company and transfer of assets and liabilities to two or more existing companies, Boards of Directors of companies involved in division shall harmonize the draft contract of regulating mutual relations occurring by division of a joint stock company. In addition to the elements referred to in paragraph 3, Article 22a of this Law, the draft contract must also contain precise description and allocation of assets and liabilities that should be transferred to companies taking over assets and liabilities, as well as the proposal for allocation of shares of the companies taking over assets and liabilities (recipient companies) to shareholders of the dividing company and criteria for such division.

(4) In the case of division of joint stock company to two or more newly founded companies, Board of Directors shall prepare for the general meeting of shareholders a written proposal on terms and manner of division including the data referred to in paragraph 3 of this Article, names of the new companies and the proposal of the decision on the issue of shares based on restructuring by way of division, and the provisions on the draft contract shall also regulate the proposal of the decision on division.

(5) Distribution of shares of companies formed by way of division shall be done proportionally to the ownership structure of the dividing company.

(6) Notwithstanding paragraph 5 of this Article, a different distribution of shares can be envisaged, on the basis of specially stated reasons and criteria.

(7) Shareholders who are dissatisfied with the allocation done in accordance with paragraph 6 of this Article may request buyback of their shares.

(8) Where a part of the assets is not, or cannot be, divided in accordance with the proposed terms of division, the part of the assets shall be allocated to the companies taking over assets and liabilities in proportion to their share in distribution of net assets of the dividing company.

(9) Where liability is not, or cannot be, allocated in accordance with the proposed terms of division, every company taking over assets and liabilities shall be jointly and severally liable for that obligation.

(10) In the case of obligations not fulfilled by the recipient company that assumed these obligations in accordance with the contract referred to in paragraph 3 of this Article or proposal referred to in paragraph 4 of this Article, other recipient companies shall be jointly and severally liable, unless otherwise agreed on by a certain creditor. Joint and several liability referred to in this paragraph shall be limited up to the amount of net assets taken over by the recipient companies.

**Carving out portion of the company's assets to constitute one or more companies  
(Spinoff)  
Article 22g**

(1) By restructuring of a joint stock company by spinoff, the existing company shall transfer a part of its assets and liabilities to one or more companies that are established (new company), which will in exchange issue shares that are distributed to the shareholders of the existing company whose capital is reduced by the value of the transferred assets. The provision of Article 59 of this Law, except for paragraphs 7 and 8, shall not apply to the reduction of capital of the existing company.

(2) The provisions of this Law on division of company shall apply to spinoff of a joint stock company, unless otherwise determined by this Article.

(3) In case of spinoff, the Board of Directors of the existing company shall prepare the following in writing for the general meeting of shareholders: proposal on terms and manner of spinoff including the precise description of the assets and liabilities that should be transferred to the new company, amount of reduction of capital of the existing company, proposal for allocation of shares of the new company to the shareholders of the existing company, name of new company, proposal of the decision on spinoff, and proposal of the decision on issue of shares based on spinoff.

(4) Distribution of shares of the new company to the shareholders of the existing company shall be done proportionally to the ownership structure of the existing company.

(5) Notwithstanding paragraph 4 of this Article, a different distribution of shares of the new company can be envisaged, on the basis of specially stated reasons and criteria.

(6) Shareholders who are dissatisfied with the allocation done in accordance with paragraph 5 of this Article may request buyback of their shares, in accordance with Article 32a of this Law.

(7) Decision on spin off shall represent the decision on the establishment of a new company.

(8) Within three months from the day of publishing the decision on spinoff in the Official Gazette of Montenegro, a shareholder who voted against or did not attend the general meeting of shareholders that adopted the proposal of the decision on terms and manner of spinoff or a creditor of the company may request from the Court to cancel the spinoff, if substantial provisions on spinoff procedure are not complied with, and if creditors, at their request, are not provided with adequate protection of their claims, and the spinoff substantially endangers the satisfaction of their claims. Right to additional security shall not belong to creditors whose claims have already been fully and reliably secured.

(9) In the case of obligations not fulfilled by the new company that assumed these obligations in accordance with the decision referred to in paragraph 7 of this Article, the existing company and the new company shall be jointly and severally liable, or all new

companies shall be jointly and severally liable if more than one company is established by spinoff, unless otherwise agreed on by a certain creditor. The new and the existing company shall be jointly and severally liable for the obligations not fulfilled by the existing company, unless otherwise agreed on by a certain creditor. Joint and several liability of the new company shall be limited up to the amount of net assets transferred to that company.

### **Restructuring of a Joint Stock Company into a Limited Liability Company** **Article 23**

(1) A joint stock company may be restructured into a limited liability company under the following conditions:

- 1) The number of shareholders at the time of proposed restructuring shall be no more than thirty;
- 2) The share capital shall be paid in full;
- 3) The general meeting of shareholders shall adopt a special decision on restructuring of a joint stock company into a limited liability company;
- 4) The provisions of this Law on the formation of a limited liability company shall apply to the restructuring;
- 5) The charter shall be amended to provide that it is a limited liability company;
- 6) The charter shall include the provisions prescribed for a limited liability company and any provisions only appropriate to a joint-stock company shall be deleted;
- 7) The existing ownership structure shall be expressed as "parts" and such parts shall be allocated among the members in the same proportion as their ownership percentage expressed in shares, unless otherwise agreed to by all affected members;
- 8) The joint-stock company's shares shall be de-registered in accordance with the Law on Securities and the shares shall be canceled.

(2) Upon meeting the requirements for the restructuring of a joint-stock company into a limited liability company, the company shall be deemed a limited liability company from the day of registration.

### **Voluntary Liquidation** **Article 24**

(1) Voluntary liquidation under the provisions of this Law may be conducted where a joint stock company financial resources are sufficient to cover liabilities. In circumstances where liabilities exceed available financial resources, or anticipated financial resources, through the sale of assets or otherwise, provisions of Articles 24 and 25 of this Law shall not apply, but provisions of the law regulating business organization insolvency shall apply instead.

(2) A voluntary liquidation of a joint-stock company under the provisions of this Law may be commenced where-

- 1) There are provisions in the charter for the joint-stock company to be voluntarily liquidated after a certain time or on the happening of a specified event and the time has passed or the specified event has occurred;
- 2) A decision that the joint-stock company be voluntarily liquidated has been adopted at an extraordinary general meeting of shareholders. Such a decision shall be made by at least 3/4 of the votes of the shareholders actually present in person or by authorized person or voting by proxy. The notice of convening the extraordinary general meeting of shareholders shall be submitted to the shareholders at least 21 days prior to its holding;

- 3) The joint-stock company in general meeting of shareholders by 2/3 vote actually present in person or by authorized person or voting by proxy makes a decision that it does not wish to continue in business and should be voluntarily liquidated.
- (3) The decision referred to in paragraph 2 point (2) of this Article shall be valid even if the twenty-one day notice of convening the general meeting of shareholders was not given, provided that shareholders holding at least 9/10 of the voting rights agree to hold the general meeting of shareholders.
- (4) The decision to commence the voluntary liquidation of a joint-stock company shall be sent to the Central Registry by the Board of Directors within five days of the day of its adoption.
- (5) Notice of the adoption of the liquidation decision shall be submitted for publication in the Official Gazette by the Central Registry within five days of the day of its receipt.
- (6) Following the adoption of decision on liquidation of the company, the ordinary general meeting of shareholders or extraordinary general meeting of shareholders shall appoint a liquidator nominated by the Board of Directors, in accordance with the conditions it determined for the liquidator's appointment.
- (7) The liquidator shall submit a notice of appointment to the Central Registry containing his name and contact information within ten days of his appointment.
- (8) From the date of the appointment of the liquidator:
- 1) The powers of the Board of Directors shall cease, except to the extent that the liquidator or the company in general meeting of shareholders permits them to continue to act;
  - 2) The company shall cease to carry on business, except to the extent that it is necessary for the prudent, orderly and beneficial completion of company activities and liquidation of the company as determined by the liquidator;
  - 3) Any transfer of shares, disposal of assets, or incurring of debt without the liquidator's consent, shall be voidable to the extent allowed by applicable regulations;
  - 4) Notification that the company is being liquidated shall be indicated on all letters, invoices and order forms issued by the company.
- (9) The company shall solicit in writing all known creditors of the company to submit their claims and shall inform tax authority as well.
- (10) The company shall be obliged to publish the notice of voluntary liquidation at least two times in one daily printed media issued in Montenegro within the range of at least 15 days between the publications, but not exceeding 30 days between the publications.
- (11) The notification referred to in paragraphs 9 and 10 of this Article must contain the deadline within which claims must be submitted, which cannot be shorter than 60 days from the day of submission of the notification referred to in paragraph 9 of this Article, or for companies that have not received the notification in writing from the day of publication of the last notice referred to in paragraph 10 of this Article.
- (12) Claims of creditors that have submitted their claims upon the expiration of the deadline referred to in paragraph 11 of this Article shall be satisfied from the remaining assets until the completion of the procedure of voluntary liquidation.



(13) Creditor whose claim is contested by the liquidator shall be obliged, within 30 days from the day of receiving the notice thereof, to initiate the proceeding before the competent court.

(14) Voluntary liquidation procedure shall not be completed until the procedure referred to in paragraph 13 of this Article is completed or until an adequate security for contested claim is provided.

(15) When the affairs of the company have been fully or substantially concluded the liquidator shall prepare a final report showing how the liquidation has been conducted and how the property of the company has been disposed of. The final report must contain: a final balance sheet; review of revenue sources and their use; the list of assets being divested of; proceeds that have been generated from such divestiture; whether any further matters remain to be resolved and the proposal for their resolution; amount of liquidation costs and fees that the liquidator is entitled to.

(16) After the preparation of the final report, the liquidator shall convene an extraordinary general meeting of shareholders at which he will present the final report.

(17) Within seven days from the day of holding the extraordinary general meeting of shareholders referred to in paragraph 16 of this Article, the liquidator shall submit a copy of the final report to the Central Registry along with a request for de-registration of the company.

(18) On receipt of the final report and the request for de-registration, the Tax Administration will de-register the company from the Central Registry, and submit the notice thereof to the Official Gazette of Montenegro for publication.

### **Abridged Liquidation Procedure** **Article 24a**

(1) Voluntary liquidation may be conducted based on abridged procedure, if upon the adoption of the decision on voluntary liquidation all shareholders present to the court authenticated statements that all liabilities of the company toward creditors have been settled, including liabilities toward the employees.

(2) Shareholders referred to in paragraph 1 of this Article shall be, without limit, jointly and severally liable for liabilities of the joint stock company for the period of three years after the deletion of the company from the Central Registry.

(3) Shareholders, creditors and other parties having legal interest may, within 30 days from the day of the adoption of the decision on termination of the company under the abridged procedure, initiate the procedure for cancellation of the decision before the court.

(4) The court shall annul the decision on voluntary liquidation of the company under the abridged procedure if it determines that shareholders or creditors would have been damaged by such a decision and it shall appoint the liquidator to carry out the voluntary liquidation procedure pursuant to Articles 24 and 25 of this Law.

(5) The joint stock company that ceases to exist under the abridged procedure shall be de-registered from the Central Registry, while personal names, unique personal identification numbers and the addresses of natural persons who are the shareholders, or name, registered office and unique registration number of legal persons who are shareholders shall

be entered in the Central Registry, with the note of their unlimited joint and several liability for the liabilities of the de-registered company, within the deadline referred to in paragraph 2 of this Article.

(8)<sup>1</sup> Notice of de-registration of the company from the Central Registry shall be published in the Official Gazette of Montenegro

### **Authorizations of the Liquidator Article 25**

(1) The liquidator appointed to carry out liquidation in accordance with this Law shall have all the rights and obligations of the company's board of directors. The liquidator shall represent the company in liquidation in court proceedings, in its relations with the state bodies, and with third persons.

(2) The liquidator in accordance with this Law shall:

- 1) prepare an inventory of all assets and prepare an accounting report on operations as of the beginning of the liquidation period, specifically including a liquidation balance sheet;
- 2) complete obligations under existing contracts and, where necessary, enter into new contracts;
- 3) terminate contracts where economically advantageous to do so;
- 4) convene a general meeting of shareholders of the company and preside at such meeting;
- 5) distribute the remaining assets of the company to and among creditors and where appropriate, shareholders in accordance with the rights attached to their shares;
- 5a) submit the petition for the initiation of the bankruptcy proceeding in accordance with the law regulating business organization insolvency if he determines that the assets of the company in liquidation are not sufficient to satisfy all claims of the creditors;
- 6) do all other things necessary for the beneficial liquidation of the company.

(3) Where the process of liquidation of the company lasts for a period exceeding one year, the liquidator shall prepare an interim liquidation report within 3 months upon the expiration of each financial year. The interim report shall contain the data on how the liquidation has been conducted in the interim period. The interim report shall, at minimum, contain an interim balance sheet; sources of revenues and the manner for using them; the list of assets being divested of; proceeds that have been generated from such divestiture; whether any further matters remain to be resolved and the proposal for their resolution; amount of liquidation costs and fee that the liquidator is entitled to date. The interim report shall be available for review by all the shareholders and interested persons at the registered office of the company.

(4) The liquidator shall be liable to the company and third persons for the damage resulting from his own actions. The liquidator shall not be liable for the debts of the company. The liquidator shall not be liable to shareholders or creditors of the company for any losses, liabilities or diminution in asset values resulting from the exercise of prudent and reasonable business judgments within the scope of conducting liquidation activities.

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<sup>1</sup> Editor's note: In the Official Gazette of Montenegro 17/07, Article 24a, paragraphs are published under following numbers: 1, 2, 3, 4, 5 and 8.

## **Declaration of Nullity of Joint Stock Company Article 26**

- (1) Upon request of an interested party, the Commercial Court shall declare the nullity of a joint-stock company upon the following grounds:
- 1) no foundation agreement or charter has been concluded or executed, or the requirements, determined by this Law, regarding the adoption and the contents of these documents were not complied with;
  - 2) the prospectus for the public offering of shares was not published in accordance with the law;
  - 3) the goals of the joint-stock company are unlawful, and business activities contrary to regulations;
  - 4) the foundation agreement or the charter does not state the name of the joint-stock company, the amount of the share capital, the registered administrative office, or address for receiving official letters or the business activity of the joint-stock company;
  - 5) the provisions concerning the minimum amount of capital have not been applied;
  - 6) the legal incapacity of all founders;
- (2) The complaint for exercising the right referred to in paragraph 1 of this Article may be submitted within 3 years from the day of registration of the company in the Central Registry.
- (3) The Commercial Court shall be obliged to submit the final and non-appealable decision determining the nullity to the Central Registry within 15 days from the day the decision has become final and non-appealable, for the purpose of opening a court liquidation proceedings.
- (4) By declaring the nullity of the joint stock company, the shareholders of the company shall become, without limit, jointly and severally liable for the obligations of the company, and contracts concluded prior to declaring the nullity shall remain in force.

## **Chapter III                      Rights and Obligations of the Company and Shareholders**

### **Rights and Obligations of the Company Article 27**

- (1) A joint-stock company shall have all the rights and obligations of a natural person, except where such rights and obligations are restricted exclusively to natural persons by law or by the company's charter.
- (2) The following shall be indicated in the joint-stock company's letters and documents used for business dealings:
- 1) The name of the Central Registry;
  - 2) The number of the company in the Central Registry;
  - 3) The indication that the company is a joint-stock company;
  - 4) The name of the company;
  - 5) The registered office of the company;
  - 6) The note that the company is being liquidated if this is the case.

## **Obligation to Submit Data and Inform the Public**

### **Article 28**

(1) Joint-stock company shall submit to the Central Registry, which shall submit to the Official Gazette of Montenegro for publication, the following documents and data, in accordance with paragraph 2 of this Article:

- 1) any amendments to the charter, a special act referred to in Article 19, paragraph 3 of this Law if the charter does not contain the data from that act, the foundation agreement and any extension of the duration of the company;
- 2) any change in the company name and the registered office or address for receiving official notices;
- 3) the appointment, termination of office and data about the persons who are authorized to represent the company in dealings with third parties, as well as the data whether the persons authorized to represent the company may do so jointly or alone;
- 4) the appointment, termination of office and data of the Executive Director, Secretary of Company, and the auditor;
- 5) the decision of the general meeting of shareholders on liquidation of the company;
- 6) the decision on appointment of a liquidator, his identity, qualifications and powers other than those set out in this Law or in the charter;
- 7) the financial reports, including the auditor's report.

(2) In the Official Gazette of Montenegro, in addition to the data, names of the documents shall be published which also contain the notice that the documents are filed in the Central Registry.

(3) Joint stock company shall be obliged to submit to the Central Registry all amendments made to the foundation agreement, the charter or any other document or data determined by the provisions of this Law within 7 business days from the day of their adoption. The Secretary of Company shall be responsible for the submission of the aforementioned documents and data.

(4) After every amendment to the charter or the foundation agreement, the complete text shall be submitted to the Central Registry. Amendments to the charter or the foundation agreement shall be valid only when registered.

(5) The documents and data shall be binding upon the company towards third persons from the day of their publication in the Official Gazette of Montenegro, unless the company proves that the third parties had knowledge of them. The documents and data shall not be binding upon good faith third parties regarding transactions executed within 16 days from the day of publication of the documents and data, who can prove that they did not know or could not have known about their publication.

(6) There must not be any discrepancy between what is published and what has been filed in the Central Registry. If there is such a discrepancy, the text on file at the Central Registry shall be controlling. The published text may not be asserted by the company as a defense against third parties relying on the text in the Central Registry. However, third parties may rely on such published text unless the company proves that they had knowledge of the text filed in the Central Registry.

## **Legal Consequences of Obligations Entered Into by the Company**

### **Article 29**

(1) Publication of the names of the members of the Board of Directors, Executive Director or Secretary of Company who are authorized to represent the company shall be binding upon the company, and third parties may refer to them, unless the company proves that such third parties knew or could have known about irregularities when they were appointed.

(2) Decisions of the general meeting of shareholders, the Board of Directors, the Executive Director or the Secretary of Company shall be binding on the company even if those decisions are not within the scope of the company's business activity.

(3) The limits of the powers of the company's bodies, arising under the charter or from decisions of such bodies, cannot be asserted as a defense against third parties, even if they have been disclosed.

(4) General power of representation conferred by the charter of a company on a single person or on several persons acting jointly may be asserted as a defense against third parties provided that the publication is done in accordance with this Law.

### **Rights and Obligations of Shareholders** **Article 30**

(1) A shareholder is a natural or legal person whose liability is limited to the extent of his contributions and who owns at least one share in a joint-stock company.

(2) Each shareholder shall have such rights in a joint-stock company as are attached to the shares he owns. All shareholders shall be treated equally in the same circumstances.

(3) The shareholders shall have no other liabilities to the company than the obligation to pay, in the established manner, the initial price of all the shares subscribed for. Any decision of the general meeting of shareholders obliging all or some of the shareholders to make additional contributions shall be invalid unless the decision is unanimous.

(4) When it is determined that there have been irregularities in management or operations of a company, the company shall be entitled to sue a responsible person before the Commercial Court. In the case the company does not sue a responsible person, a shareholder shall be entitled to sue, in his name and for the account of the company, a responsible person in the company that is responsible for irregularities in management or operations of the company (derivative complaint). A shareholder shall be entitled to a derivative complaint, if he previously requested in writing from the company to sue a responsible person, and the company refused that request or did not submit the complaint within 30 days from the day of the submission of the request. Realized damage compensation based on derivative complaint shall belong to the company, and the shareholder who submitted the derivative complaint shall be entitled to compensation of costs.

(5) Any shareholder of a company or his successor shall have a right to submit a complaint to a Commercial Court where:

- 1) any action of the company is illegal or outside the powers of the company;
- 2) where the majority shareholders discriminate the minority shareholders;
- 3) where a shareholder's individual rights have been harmed;
- 4) where those persons who control the company, whether the Board of Directors, or the majority shareholders, commit a fraud on the minority shareholders.

(6) Any shareholder of a company or his successor may initiate a procedure before the Commercial Court if there is evidence that the affairs of the company are being conducted or the powers of the Board of Directors are being exercised in a manner violating the rights of that shareholder or other shareholders or in disregard of his or their interests as shareholders whether or not such acts have been done in good faith. In such case, the shareholder asserts the interest of all similarly affected shareholders and not merely his own.

(7) If the Commercial Court decides that the abovementioned complaint is well founded, it will make such decision as needed to remedy the offending conduct or abuse, and in the case the shareholders suffered the damage, a competent court shall make a decision on damage compensation.

(8) The complaint referred to in this Article may be submitted within 5 years from the day of the occurrence of harmful act and the complaint against responsible persons whose office (function) or membership in the company ceased may also be initiated within the same deadline.

(9) In the circumstances envisaged by paragraph 6 of this Article, the Commercial Court may make an order for the purchase of the shares of any shareholders of the company by other shareholders of the company or by the company itself at a price which reflects the value they would have had but for the oppressive conduct.

### **Property Rights of Shareholders** **Article 31**

- (1) A shareholder shall have the following property rights:
- 1) to receive a certain portion of the company's gain in the form of a dividend when a dividend has been declared;
  - 2) to receive a portion of remaining assets of the company in liquidation;
  - 3) to receive shares without payment if the capital established by the charter is increased from the financial resources of the company, subject to any limiting provision in this Law;
  - 4) to have a priority right in acquiring newly issued shares and convertible bonds, subject to any limiting provision in this Law;
  - 5) to sell or transfer all or part of his shares; and
  - 6) to have other property rights as provided for in the company's charter.

### **Non-Property Rights of the Shareholders** **Article 32**

(1) Shareholders shall have the right to attend all general meetings of shareholder and to vote, unless this Law or the charter provides otherwise.

(2) Each share shall carry one vote at the general meeting of shareholders, except as described in Article 42, paragraph 8 of this Law.

(3) The holders of the same class of shares shall have the same rights. The charter of the company may provide that some classes of shares do not carry the right to vote.

(4) A shareholder shall have no right to take part in voting at the general meeting of shareholders on issues where the shareholder is directly interested in relation to the

appraisal of any non-pecuniary contribution or the purchase of property from a founder or majority shareholder of the company within two years of registration of the company.

(5) Copies of the financial reports including the auditor's reports must be available for the shareholder's inspection at the company registered office during regular business hours at least 30 days prior to holding of the general meeting of shareholders, as well as at the general meeting of shareholders.

(6) Any shareholder shall be entitled, on request, to be furnished, without charge, with a copy of the last balance sheet and income statement of the company, and copies of the Board of Directors' reports to shareholders or auditor's reports.

(7) Shareholders holding at least 5% of the share capital shall have the right to appoint a representative to inspect the company's activities or accounting. The expenses of such inspection shall be paid by the appointing shareholders except when the results of the inspection reveal just cause for payment by the company. In such case, the company shall refund the inspection expenses.

(8) A shareholder shall have the right to request in advance, by letter or on the very general meeting of shareholders, at the event of discussion about specific items of the agenda, explanation, and information from the Board of Directors related to the material in question and proposed decisions. Representative of the Board of Directors shall be obliged to answer to asked questions, fully and truly, immediately on the very general meeting of shareholders at the event of discussion about the specific item of the agenda.

(9) A representative of the Board of Director may publish answers to questions of shareholders presented before holding of the general meeting of shareholders on the web site of the company.

### **Special Rights of Shareholders**

#### **Article 32a**

(1) A shareholder may ask the company to buy back his shares at the average market value of the company's shares on the day when the decision was adopted at the general meeting of shareholders, if at the general meeting of shareholders he voted against the following:

- 1) a change in the foundation agreement or charter of the company violating his rights;
- 2) when he is not satisfied with the distribution of shares of the company resulting from the division of joint stock company which is not conducted in proportion to the ownership structure of the company being divided;
- 3) when he is not satisfied with the adopted share exchange ratio and cash compensation in a restructuring process;
- 4) when the general meeting of shareholders limits or cancels the priority right of shareholders to subscribe for shares or acquire convertible bonds;
- 5) adoption of the decision by the company on disposition (purchase, sale, lease, exchange, acquisition or another disposition) of the property of great value.

(2) A shareholder may exercise the right referred to in paragraph 1 of this Article, if he sent to the company, until the day of holding a general meeting of shareholders, a written notice of the intent to use that right, if the general meeting of shareholders adopts the decision he does not agree with. A written request for buyback of shares may be submitted to the company within 30 days from the day of holding the general meeting of shareholders.

(3) The company shall be obliged to pay the shareholder the value of shares referred to in paragraph 1 of this Article within 30 days from the day of receiving the written request.

(4) If the shareholder believes that the paid amount regarding the value of shares referred to in paragraph 3 of this Article does not correspond to the average market value of shares, or if the company does not pay the compensation within the deadline referred to in paragraph 3 of this Article or if the average market value could not be determined on the day the decision of general meeting of shareholders is made due to the lack of trade in shares, he may initiate a lawsuit before a competent court within 30 days from the day of payment of funds by the company or from the day of payment default. The court shall be authorized to determine the average market value in such cases based on the court witnessing of independent authorized appraisers.

(5) The decision of the court referred to in paragraph 4 of this Article shall relate to all shareholders if they have submitted the written request for buyback of shares within the deadline referred to in paragraph 2 of this Article, in case the adjudicated value is higher than the value paid by the company.

### **Power of Attorney Article 33**

(1) A shareholder shall have the right to authorize another person to vote for him as his authorized person at the general meeting of shareholders or perform other legal acts. Power of attorney must be authenticated. The signature on the power of attorney shall be authenticated in accordance with law. The auditor of the company may not act as authorized person.

(2) The authorized person shall be obliged to present one copy of his power of attorney to the person responsible for recording the power of attorneys immediately before the holding of the general meeting in order for those be recorded in the registration list of shareholders present or represented at the general meeting of shareholders.

(3) One natural or a legal person may act as an authorized person of several shareholders at the general meeting of shareholders. If it is not explicitly stated in the power of attorney that it is given for one general meeting of shareholders and repeated general meetings of shareholders, it shall be considered that the power of attorney is given for all general meetings of shareholders held until the moment of power of attorney revocation. The authorized person shall be obliged to act in accordance with the given instruction, and if the power of attorney does not contain the instruction, the authorized person shall vote conscientiously, at his own discretion and for the best interest of the shareholder who gave the power of attorney. Voting through an authorized person shall be binding on the shareholder as if he voted himself. A power of attorney may be revoked at any time. It shall be considered that a power of attorney is revoked also in the case when a shareholder later gives another power of attorney or votes in person at a general meeting of shareholders.

(4) The authorized person shall have the right to ask questions in accordance with Article 32, paragraph 8 of this Law.

(5) When the state or local self-government unit owns shares, the rights of such shares shall be exercised by the authorized official or persons given the power to attorney to exercise such rights.



## **Chapter IV - Bodies, Administration and Audit**

### **Company Bodies**

#### **Article 34**

- (1) The owners of the company are its shareholders.
- (2) The ultimate authority of a company shall be the general meeting of shareholders, which is an obligatory body.
- (3) The guiding and managing body of a company shall be the Board of Directors whose decisions shall be implemented by a Secretary of Company and Executive Director.
- (4) All joint stock companies shall be required to elect a Board of Directors.
- (5) All joint stock companies shall be required to elect a Secretary of Company and Executive Director.
- (6) A company may designate the same person as both Secretary of Company and Executive Director.
- (7) Joint stock companies shall be required to engage an independent certified auditor.

### **General Meeting of Shareholders**

#### **Article 35**

- (1) All shareholders of the company, irrespective of the number and class of shares they hold, shall have the right to attend the company's general meeting of shareholders. Members of the Board of Directors shall attend, by rule, the general meeting of shareholders. Executive Director and the Secretary of Company must attend the general meeting of shareholders unless unable to do so due to circumstances beyond their control.
- (2) Only the general meeting of shareholders shall have the right to:
  - 1) make amendments to the charter of the company;
  - 2) elect the members of the Board of Directors and appoint the auditor;
  - 3) remove from office members of the Board of Directors and auditor who has been elected by the general meeting of shareholders;
  - 3a) appoint and revoke a liquidator;
  - 4) decide on fee policy and fees for members of the Board of Directors;
  - 4a) adopt the annual financial statements and report on operations of the company;
  - 4b) make a decision on disposition of the company's assets (purchase, sale, lease, replacement, acquisition or another disposition), whose value is greater than 20% of the book value of the company's assets (assets of great value), unless a lower share is determined by the charter.
  - 5) adopt a decision on the distribution of gain;
  - 6) increase or reduce the capital determined by the charter, exchange shares of one class for shares of another class;
  - 7) make a decision on voluntary liquidation of the company, restructuring of the company or submission of the petition for initiation of bankruptcy proceedings;
  - 8) approve the valuation of non-monetary contributions;

- 9) at the request of the Board of Directors, consider issues assigned to the Board of Directors, which pertain to the operations of the company;
- 10) approve all contracts to be entered into by the company concerning property acquisition from a founder or a majority shareholder of the company for a payment of not less than 1/10 of the company's capital determined by the charter, and when such a contract is to be concluded within a period of 2 years from registration of the company;
- 11) adopt a decision to issue any bonds or any convertible bonds or other convertible securities;
- 12) limit or cancel a priority right of shareholders to subscribe for shares or acquire convertible bonds, by the 2/3 majority vote of all affected shareholders.

(3) An integral part of the report on operations of the company referred to in paragraph 2, item 4a of this Article shall be the report on relations with the parent company and companies where its parent company has the status of parent company or subsidiary. The report shall include all legal transactions and transactions that the company concluded with its parent company and companies where its parent company has the status of parent company or subsidiary, with the statement of the Board of Directors whether the company suffered the damage from these legal transactions and transactions, and whether the company was compensated for damage incurred by such legal transactions and transactions.

(4) In the case the company was not compensated for the damage, members of the Board of Directors shall be liable for damage incurred to shareholders, in accordance with Article 44, paragraph 7 of this Law.

### **Convening a General Meeting Article 36**

(1) A joint stock company shall be obliged to hold a general meeting once per year. The first annual general meeting of a company must be held within 18 months of holding the company's statutory general meeting; thereafter a general meeting must be convened once per year. General meetings of shareholders shall be convened and held in accordance with the provisions of this Law.

(2) A general meeting of shareholders shall be organized by the Secretary of Company, based on the instructions of the Board of Directors. The right to convene a general meeting shall be vested in the Board of Directors and in the shareholders whose value of shares is no less than 5% of the share capital, unless the charter envisages that shareholders holding a smaller portion of the share capital are entitled to convene a general meeting.

(3) Shareholders whose shares represent at least 5% of the share capital shall be entitled to convene a general meeting of shareholders within 30 days from the day of publishing in the Official Gazette of Montenegro a final and non-appealable decision on canceling the decision of the general meeting of shareholders on merger or division of the company. Within that deadline, the existing bodies of the company shall be obliged to perform their functions, within their authorizations, except to dispose of the assets.

(4) Shareholders referred to in paragraphs 2 and 3 of this Article shall submit to the Board of Directors the request to convene the general meeting of shareholders, the agenda for the general meeting and proposals of decisions to be adopted at the general meeting. The Board of Directors shall be obliged to convene the general meeting of shareholders, at

the expense of the company, within 30 days from the day of receiving the request for convening the general meeting of shareholders.

(5) With the exception of the first year following the incorporation of a company, the Board of Directors shall convene an ordinary annual general meeting of shareholders within three months of the end of each financial year.

(6) Notice on convening the general meeting of shareholders shall be submitted no later than 30 days prior to holding of the general meeting. The notice shall be delivered by mail, whereas for companies with 100 or more shareholders, the Board of Directors shall be obliged to publish the notice of convening the general meeting of shareholders twice in at least one daily printed media outlet issued in Montenegro and on its website.

(7) The notice on convening the general meeting shall contain the following:

- 1) the location of holding the general meeting;
- 2) the date and time of holding the general meeting;
- 3) proposal for the agenda of the general meeting with clear indication for which items in the agenda adoption of a decision is proposed and stating the class and total number of shares voting on such decision and majority required for adoption of such decision, with the information of where the shareholders may access the materials and proposals of decisions to be considered at the general meeting of shareholders;
- 4) website address of the company where information referred to in paragraph 6 of this Article will be available;
- 5) instruction on rights and manner of exercising shareholders' rights to participate and vote at the general meeting, in accordance with this Law and charter of the company.

(8) The company shall be obliged to publish on its website notification on convening the general meeting of shareholders on the day of publication or sending of the notification on convening the general meeting, in accordance with paragraphs 6 and 7 of this Article, as well as the manner of voting using an authorized person electronically with the proxy form and voting form.

(9) If the company is not able to publish forms referred to in paragraph 8 of this Article on its website due to technical reasons, the company shall be obliged to state on its website in which manner such forms can be obtained in paper form.

(10) The company shall be obliged to obtain the list of shareholders from the CDA at the earliest two days before holding the general meeting. Only those shareholders who are in the list of shareholders from the CDA on the day the list of shareholders is obtained may participated at the general meeting and exercise shareholders' rights. The company shall be obliged to inform shareholders at the general meeting of shareholders of the date of the list of shareholders.

(11) The materials with proposals of decisions to be considered at the general meeting of shareholders must be accessible to shareholders of the company in the registered office of the company or in the premises of the company outside the registered office, if the activity is performed in several locations, at least 20 days prior to holding the general meeting of shareholders.

(12) At the request of a shareholder, the company shall be obliged to submit, within the deadlines referred to in paragraphs 6, 7, and 11 of this Article, the notice of convening the general meeting and materials to be considered at the general meeting with proposals of decisions, by electronic mail to the address determined by a shareholder.

(13) The company shall be obliged to bear costs of publication and delivery of the notice on convening the general meeting referred to in paragraph 6 of this Article.

### **Agenda of the General Meeting of Shareholders Article 37**

(1) The general meeting of shareholders may not adopt decisions on issues that are not on the agenda unless all shareholders who have voting rights attend the general meeting of shareholders.

(2) In the event that the agenda is revised or expanded, the shareholders shall be informed of the changes in the agenda in the same manner in which they are informed about the holding of the general meeting of shareholders and no later than 10 days prior to holding of the general meeting.

(3) Shareholders holding no less than 5% of the share capital shall be entitled to request from the Board of Directors the inclusion of additional items on the agenda of the general meeting of shareholder at the latest 15 days prior to holding the general meeting of shareholders. With the written request for inclusion of additional items on the agenda of the general meeting of shareholders, shareholders shall also submit the proposals of decisions with the proposed items of the agenda. The Board of Directors shall be obliged to include additional items on the agenda of the general meeting of shareholders.

(4) The company shall be obliged to publish forthwith on its website a proposal of the expanded agenda with proposed decisions.

(5) If the general meeting of shareholders is not held, the agenda of the repeated general meeting of shareholders must be the agenda of the general meeting of shareholders which was not held.

### **Proceedings at General Meeting of Shareholders Article 38**

(1) The attendance of shareholders or their authorized persons at the general meeting of shareholders shall be proved by signing the attendance list. The attendance list shall indicate also the number of votes possessed by each shareholder. The attendance list shall be signed by the chairman of the general meeting of shareholders and the Secretary of Company. Secretary of Company shall act as secretary of the general meeting of shareholders.

(2) The Executive Director shall act as the chairman of the general meeting of shareholders unless otherwise decided by majority vote of the shareholders present or represented at the general meeting of shareholders.

(3) In the absence of the Secretary of Company, the Executive Director shall appoint another person to act as secretary of the general meeting of shareholders.

(4) The minutes of the general meeting of shareholders shall be signed by the chairman of the general meeting of shareholders, secretary and at least one shareholder authorized to do so by the general meeting of shareholders. Copies of powers of attorney and proxies of participants in the general meeting of shareholders who voted in advance and at the general meeting of shareholders shall be attached to the minutes.

(5) The minutes from the general meeting of shareholders shall be prepared at the latest within 15 days from the day of holding the general meeting of shareholders.

(6) The minutes from the general meeting of shareholders must contain: date, place and time of holding the general meeting of shareholders, the names of chairperson, secretary of the general meeting of shareholders, person who authenticates the minutes, members of working bodies of the general meeting of shareholders if they were formed, quorum, agenda, data on the manner and results of voting, adopted decisions at the general meeting of shareholders.

### **Quorum and Adoption of Decisions** **Article 39**

(1) A quorum at a general meeting of shareholders shall consist of shareholders who hold at least half of the total voting shares, present either in person or represented by authorized person or who voted by proxy. If the required quorum is not attained at the general meeting of shareholders, the general meeting of shareholders may be reconvened having the same agenda, provided that the notice of convening the repeated general meeting of shareholders must be published at least twice in at least one daily printed media issued in Montenegro, at least seven days prior to holding the repeated general meeting of shareholders, where the quorum shall be made of shareholders holding at least 33% of the total number of voting shares, which are present either in person or represented by an authorized person or who voted by proxy. The repeated general meeting of shareholders may be held at the latest 30 days from the day of holding the general meeting of shareholders at which the quorum was not reached.

(2) If the repeated general meeting of shareholders does not attain the required quorum, a third general meeting of shareholders may be convened in the manner and within the deadlines as the repeated meeting, provided that no quorum is required, and the general meeting of shareholders shall adopt decisions on all the items on the agenda irrespective of the number of shares represented.

(3) If the consent of shareholders holding shares of a certain class is necessary for the adoption of a decision, the decision may be adopted by the shareholders of the respective class, only if the general meeting of shareholders is attended by shareholders who hold more than half of the shares of that class.

(4) Upon voting on every individual decision, a chairperson of the general meeting of shareholders shall inform the general meeting of shareholders on voting "for" or "against" by shareholders who have a voting right at the general meeting of shareholders and who voted in writing.

(5) Upon a request of shareholder, a chairperson of the general meeting shall be obliged to establish an exact number of votes at the very general meeting required for adoption or against adoption of a specific decision. The company shall be obliged to publish on its website, within 15 days following the day of holding the general meeting, exact voting results by specific decisions.

(6) A company shall determine the form of a proxy for voting in absence that must be accessible to shareholders. The company cannot annul a written voting of a shareholder who did not use the form of a prescribed proxy, if the identity of a shareholder and how this shareholder voted on individual issues can be determined from voting.

(7) Voting through a proxy shall be mandatory when members of the Board of Directors are to be elected and when required so by shareholders or their authorized persons having at least 5% of voting rights at the general meeting of shareholders.

(8) The general meeting of shareholders shall adopt a decision by majority votes of the shareholders present either in person or represented by authorized persons or voting through proxies, except in the cases when another majority is required by this Law for adoption of decisions.

(9) A proxy must contain the data on the company's name, date and place of holding the general meeting of shareholders, issues to be voted on, name or corporate name of a shareholder, number of votes of a shareholder, the possibility to vote "for", or "against" on every issue to be voted, and if members of the Board of Directors are voted on, the name of every candidate to be voted on. A proxy must also contain the instruction on the manner of voting and conditions for proclaiming voting valid or invalid.

(10) Present or represented shareholders who do not have a voting right on a certain agenda item shall be counted for determining the quorum at the general meeting of shareholders, but they shall not be taken into account when decisions are adopted.

### **Agreement of Shareholders on Voting Article 39a**

(1) Agreement of shareholders on voting shall be the contract/agreement among certain number of shareholders of the company with the aim to determine in advance the way of voting based on their shares in a certain manner and on certain issues at the general meeting of shareholders, whether it is concluded with the support of the body of a company, club (association) of shareholders or self-organization of shareholders. The agreement shall obligate only shareholders that have signed it.

(2) The agreement on voting may be concluded for a single general meeting of shareholders and repeated session of the general meeting of shareholders or for a specific period of time that cannot exceed five years.

(3) Once the agreement on voting is made, the shareholders shall attend the session of the general meeting of shareholders in order to vote as agreed or shall appoint a joint authorized person and give him the authenticated power of attorney in accordance with the law. If the agreement is concluded for a longer period of time, the agreement shall envisage the manner for reaching the agreement or reconciling the shareholders in advance regarding the voting for forthcoming general meetings of shareholders, as well as the resolution of possible disputes by selected arbitration or by a jointly accepted third party.

(4) Copy of the agreement on voting shall be submitted to the company for records, and it is entered in the registry of company, and if the company in question is the one whose shares are being traded on organized market the agreement shall be submitted to the Securities Commission.

### **Electronic Participation at the General Meeting of Shareholders Article 39b**

(1) One may also participate at the work of the general meeting of shareholders via electronic form, in accordance with the charter, in the following manner:

- 1) by direct broadcast of the general meeting;
- 2) two-way communication enabling shareholders to address the general meeting from another location;
- 3) electronic voting, before or during the very general meeting.

(2) In events referred to in paragraph 1 of this Article, the company may identify a shareholder and verification of security of electronic communications necessary for participation of the shareholder in the work of the general meeting using electronic means.

(3) If there are disruptions in communications during electronic communications referred to in paragraph 1 of this Article, the chairperson shall be obliged to interrupt the general meeting and continue it after removing the disruptions.

### **Extraordinary General Meeting of Shareholders Article 40**

(1) Any meeting other than the ordinary annual general meeting of shareholders shall be an Extraordinary General Meeting of Shareholders.

(2) An Extraordinary General Meeting of Shareholders shall be convened if:

- 1) shareholders, holding at least 5% of the voting rights, submit a written request for holding a general meeting of shareholders to the registered office of the company;
- 2) the Board of Directors or shareholders propose to:
  - (a) alter the business activity of the company;
  - (b) alter the company's share capital;
  - (c) remove an auditor before his term of office expires;
  - (d) remove a member of the Board of Directors before his term of office expires;
- 3) it is required to deal with serious losses of the company; it is required to authorize the company to purchase its own shares;
- 4) for approval of the reorganization, merger, voluntary liquidation or submission of the petition for initiation of bankruptcy procedure of the company;
- 5) it is at the request of an auditor who has resigned;
- 6) a member of the Board of Directors has resigned before his term of office has expired causing the number of members of the Board of Directors to fall below the prescribed minimum number or causing an even number of remaining members of the Board of Directors;
- 7) The Board of Directors is of the opinion that a certain matter has arisen which should be dealt with in an Extraordinary General Meeting of Shareholders.

(3) Where the net assets of a company are half or less of the amount of the company's share capital, the Board of Directors shall, not later than 14 days from the day of finding out about that fact by a member of the Board of Directors, duly convene an Extraordinary General Meeting of Shareholders of the company. The Extraordinary General Meeting of Shareholders shall be held within 30 days from that date for the purpose of considering proposals for measures to be taken to remedy the situation. No decision proposed for the purpose of remedying the situation may be adopted at the general meeting of shareholders unless it has been included as a special item in the notice of convening the meeting.

(4) The Commercial Court shall adopt the decision on convening a general meeting of shareholders or extraordinary general meeting of shareholders, if:

- 1) a general meeting of shareholders has not been convened within 3 months of the end of the business year and a shareholder has brought the matter to the Commercial Court;
- 2) the person entitled to request that a general meeting of shareholders is convened has referred the matter to the Commercial Court because the Board of Directors has rejected his request or, at his request, it failed to schedule the general meeting of shareholders within the prescribed deadline;
- 3) the creditors of the company have appealed to the Commercial Court on the grounds of failure to convene an extraordinary general meeting of shareholders in one of the cases specified in paragraph 2 of this Article.

(5) The decision referred to in paragraph 4 of this Article shall be implemented by the Board of Directors at the expense of a joint stock company. An appeal against the court decision shall not withhold its execution.

(6) The Secretary of Company shall submit a notice, in the name of the Board of Directors, of convening the Extraordinary General Meeting of Shareholders according to the procedure established by this Law and the charter not later than 30 days prior to the day of holding the meeting. If a repeated meeting is convened, the shareholders must be informed thereof not later than 10 days before the day of holding the meeting. A General Meeting of Shareholders may be convened without observing the abovementioned deadlines provided that all the shareholders entitled to vote or their authorized persons give their consent thereto.

(7) The Extraordinary General Meeting of Shareholders shall be convened in the manner determined by Articles 36 through 39 of this Law, and, in addition, the notice of convening the extraordinary general meeting of shareholders shall include the proposals for decisions to be considered at the Extraordinary General Meeting of Shareholders.

(8) The shareholder must be able to review the abovementioned proposals for decisions to be considered at the Extraordinary General Meeting of Shareholders no later than 20 days prior to holding the meeting.

### **Invalidity of the Decisions of a General Meeting of Shareholders** **Article 41**

(1) On the application of the shareholders, the members of the Board of Directors, or the Executive Director, the decisions of a general meeting of shareholders may be declared invalid by the Commercial Court if:

- 1) the issue on which the decision is adopted has not been included in the agenda of the general meeting of shareholders in accordance with the provisions of this Law;
- 2) documents or decisions which must be registered with the Central Registry have not been registered within the deadline prescribed by this Law;
- 3) the provisions of this Law concerning the convening and holding of a general meeting of shareholders have not been complied with;
- 4) the decision is not in compliance with this Law, the charter of the company, and other regulations.

(2) A complaint against a decision of the general meeting of shareholders may be lodged with the Commercial Court within 30 days from the day when the person who lodges the complaint learned or could have learned about the aforementioned decision, but no later than six months after the adoption of the decision.



## **Composition and Election of the Board of Directors**

### **Article 42**

(1) The Board of Directors shall be a collective body whose activities are directed by its chairman. The number of members of the Board of Directors shall be established by the charter of the company. The Board of Directors shall not be less than three in number. There must be an odd number of members of the Board of Directors.

(2) Only legally capable person may be elected as member of the Board of Directors. The following persons may not be elected as members of the Board of Directors:

- 1) a person who, on the basis of a court decision, is prohibited to be elected as a member of the Board of Directors;
- 2) the auditor to the company;
- 3) the Executive Director of the company except in case of single-member joint stock company.

(3) The charter of a company may prescribe other criteria for eligibility as a member of the Board of Directors.

(4) The Commercial Court may make a decision prohibiting the election of a person as a member of the Board of Directors of a joint-stock company for the period up to three years, if it determines:

- 1) that the person while member of the Board of Directors, Secretary of Company, Executive Director or liquidator of a company was guilty of fraud in relation to that company;
- 2) that the person while performing the activities referred to in paragraph 4 item 1 of this Article was guilty of a serious breach of official duty.

(5) Term of office of the members of the Board of Directors shall expire at the first ordinary annual general meeting of shareholders. A person who was a member of the Board of Directors can be reelected. Number of terms of office of a member of the Board of Directors shall not be limited.

(6) By notifying the Board of Directors in writing at least 14 days in advance, a member of the Board of Directors may resign before the expiration of his term of office. In the case of resignation of a member of the Board of Directors or termination of his function in another manner, a new Board of Directors shall be elected

(7) If a member of the Board of Directors has entered into a fee arrangement with the company or is employed by the company, all relevant provisions of such contracts must be stated in the annual financial report of the company.

(8) Members of the Board of Directors shall be elected at the general meeting of shareholders. For their election, each share with voting rights shall have a number of votes equal to the number of members of the Board of Directors established by the charter of the company (cumulative voting). A shareholder or his authorized person may give all votes to one candidate or distribute them, at his discretion, to several candidates. The candidates receiving the greatest number of votes shall be elected as members of the Board of Directors by a general meeting of shareholders. The members of the Board of Directors shall select a chairman from within their ranks.

(9) Shareholder and shareholders holding together no less than 5% of the share capital shall be entitled to nominate candidates for members of the Board of Directors.

### **Powers of the Board of Directors** **Article 43**

- (1) The powers of the Board of Directors shall be determined by the charter of the company.
- (2) The Board of Directors shall manage and carry out affairs of the company and supervise the current operations, which are entrusted with the Executive Director and to other persons responsible for management (management members).
- (3) The Board of Directors cannot delegate nor waive the execution of rights and duties of: managing the company and issuing guidelines for carrying out affairs, determining the organization of the company, organization of accounting and financial controls, appointing and dismissing responsible persons – members of management and supervision over those persons, in particular in terms of application of the charter, laws and other regulations.
- (4) The Board of Directors shall adopt the Rules of Procedure.
- (5) Unless the Board of Directors decides otherwise, the Executive Director shall attend all meetings of the Board of Directors.

### **Obligations of the Board of Directors** **Article 44**

- (1) The obligations of the Board of Directors shall be determined by law and by the charter of the company.
- (2) The members of the Board of Directors shall be obliged when making decisions to act in good faith and due care.
- (3) This obligations of the Board of Directors shall be including but not limited to:
  - 1) to act in good faith and for the benefit of the company as a whole;
  - 2) to exercise due care and rules of professional conduct in decision-making;
  - 3) to assure that appropriate measures are taken to adequately oversee company activity and that the obligations are assumed by the company;
  - 4) to give adequate consideration to each matter to be decided by the Board;
  - 5) to exercise powers only for proper company purposes; including:
    - (a) not to use company property for their own personal use, as it were in their personal ownership;
    - (b) not to use confidential company information for personal gain;
    - (c) not to engage in self-dealing or personal profit-making at the company's expense or disadvantage;
    - (d) not to usurp company opportunities for conclusion of transactions in order to conclude personal transactions;
    - (e) to avoid conflict of interest between their personal interests and those of the company they are managing;
  - 6) to disclose to the general meeting of shareholders any benefit or privilege that has been granted to them by the company in addition to their fee.
- (4) A company may not enter into the following contracts with a member of the Board of Directors or with a member of the Board of Directors of its parent company or other company

in which a member of the Board of Directors has a personal financial interest, or the member's spouse or first degree relative:

- 1) a loan or quasi loan in the form of a transaction which renders the borrower liable to pay a creditor;
- 2) a credit transaction;
- 3) a security for loans, quasi loans or credit transactions referred to in items 1 and 2 of this paragraph.

(5) Within its regular business activity, the company may, with the persons referred to in paragraph 4 of this Article, conclude the loan agreements and credit transactions and securities for loans and credit transactions.

(6) A member of the Board of Directors shall manage the company's affairs with due care and with the reasonable assurance that he acts in the best interest of the company. He shall not be liable to the company for errors in the exercise of ordinary business judgment if he acted with due care and in compliance with rules of the professional conduct.

(7) If the rights of the shareholders provided for in this Law and in the company's charter have been enforced by shareholders through legal proceedings, the members of the Board of Directors shall jointly refund the legal expenses and compensate for the damages incurred to the shareholders because of the disregard of their rights. A member of the Board of Directors who entered in the minutes his disagreement with the decision on the basis of which a shareholder sustained the damage shall not be liable for damage and costs of procedure, as well as a member of the Board of Directors who did not attend the meeting of the Board of Directors, and he expressed his disagreement in a written form to the Board of Directors immediately after finding out about the adopted decision.

(8) The right to convene a meeting of the Board of Directors shall be vested in the chairman of the Board of Directors as well as in other members of the Board of Directors provided that more than half of the members approve thereof. A meeting of the Board of Directors may be held if attended by more than half of the members and decisions shall be valid if at least half of the present members of the Board of Directors vote in favor of them. The members of the Board of Directors shall have equal voting rights. In the event of a tie vote, the chairman of the Board shall have the casting vote. A member of the Board of Directors shall have no right to vote when the Board meeting is deciding on issues relative to his material responsibility or his personal work in the company.

(9) The members of the Board of Directors shall be obliged to keep the company's business secrets confidential.

(10) The Board of Directors shall perform its functions until a new Board is elected.

#### **Prohibition to Interfere with the Auditor's Work Article 45**

The Board of Directors must not limit the auditor's powers or interfere with his work in any way.

#### **Administration Article 46**

- (1) Unless otherwise stated in the charter, the Board of Directors shall determine the structure and composition of the management and administration of the company. The members of management and administration shall carry out the instructions of the Board of Directors and perform the activities delegated to them by the Board of Directors.
- (2) The Board of Directors shall have the right in its absolute discretion to engage and terminate the employment of Executive Director and Secretary of Company.
- (3) The Board of Directors shall conclude with Executive Director a special contract defining the rights, obligations and responsibilities of the Executive Director, as well as conditions for termination of the employment of the Executive Director before expiration of the term stated in the contract.
- (4) The Board of Directors shall conclude the contract, which contains the elements of the contract referred to in paragraph 3 of this Article, also with the Secretary of Company.
- (5) Subject to any limitation imposed on his powers by the contract and by the charter of the company, the Executive Director shall be obliged to execute the instructions of the Board of Directors and implement its decisions in relation to the company's activities, the representation of its interests, the management of its property, the conclusion of agreements, the opening of accounts in banks, the engagement of personnel in the name of the company, the issuing of orders and instructions which are compulsory for all employees of the company and the carrying out all other activities necessary for the benefit of the company.
- (6) The Executive Director and other persons holding managerial responsibility of the company shall be obliged to act with a due care and with the reasonable assurance that they act in the best interest of the company, under Article 44, paragraphs 2, 3, 4 and 6, of this Law and may be sued in accordance with Article 30, paragraphs 4 and 5 of this Law, after the management of the company has been delegated to them by the Board of Directors.

#### **Auditor Article 47**

- (1) The company's financial report shall be audited upon the expiration of the financial year and prior to holding of the general meeting of shareholders. The audit shall be performed by an independent auditor. The auditor shall be elected by the general meeting of shareholders for a term specified in the charter but not exceeding one year.
- (2) Shareholders holding no less than 5% of the share capital shall be entitled to nominate candidates for the company's auditor.
- (3) By a decision of the general meeting of shareholders adopted by the majority of votes, the company may cancel the contract with the auditor before the expiration of the agreed term. The notice of convening the general meeting of shareholders shall be submitted within 30 days before the day of holding it. Within seven days of the day of adopting the decision on cancellation of the contract with the auditor, the company shall submit such decision to the Central Registry.
- (4) An auditor may cancel the contract prior to expiration of the agreed term by giving a written notice to the company of his intention to do so.

(5) The notice of cancellation of the contract shall include the statement that there are no circumstances connected with the resignation which are required to be brought to the notice of the shareholders or creditors or similar circumstances. The auditor shall be obliged, within 7 days of serving the notice of his resignation, to deliver a copy of the notice to the Central Registry.

(6) If the notice of cancellation of the contract contains a statement of circumstances which are required to be brought to the notice of the shareholders or creditors, the company shall be obliged, within 7 days of receiving the notice, to send a copy of the notice to every person who is entitled to receive copies of the financial reports. If the notice contains a statement of circumstances which are required to be brought to the notice of the shareholders or creditors, the auditor may request that the general meeting of shareholders is convened to explain the circumstances. The Board of Directors shall be obliged to convene such a general meeting of shareholders within 28 days from the day of receiving the notice.

(7) The auditor may prepare a further written statement which the Board of Directors shall be obliged to submit (to the general meeting of shareholders) in the prescribed manner, and this statement shall be considered at the convened meeting or the next general meeting of shareholders depending on the case.

(8) The auditor shall be obliged to perform the audit of the company's annual financial reports in accordance with international accounting standards, and to submit the report on audit to the general meeting of shareholders.

(9) Extract from the auditor's report shall be read at the annual general meeting of shareholders and shall be accessible for review to all shareholders at that general meeting of shareholders.

(10) The auditor shall have a right of access at the agreed time to all business books of the company and shall be entitled to request from the members of the Board of Directors and from management of the company to be informed about all data and explanations that are within their knowledge or can be procured by them as he thinks necessary to prepare the report.

### **Responsibility of the Auditor Article 47a**

(1) The auditor shall have the right to attend the annual general meeting of shareholders of the company and to give explanations and answers to asked questions related to the qualifications and opinion in the submitted report, as well as to be invited as he were the shareholder of the company.

(2) The auditor shall be responsible for abuse of his position and authorizations, in particular if he intentionally or by negligence contributes to a fraudulent activity of the manager or publishes or reveals contrary to law business secrets of the client to unauthorized persons or in another manner contributes to the occurrence of damage to the company, and he may be sued for damage compensation together with members of the Board of Directors and the Executive Director.

## **Records and Document Article 48**

(1) Every company shall keep the following records and documents at its registered office:

- 1) foundation agreement;
- 2) charter of the company;
- 3) financial statements, reports on operations of the company and reports of the auditor of the company;
- 4) books of minutes containing:
  - a) the minutes of all meetings of the Board of Directors or bodies formed by the Board;
  - b) the minutes of all general meetings of shareholders;
  - c) the minutes of general meetings of shareholders holding certain classes of shares;
- 5) bookkeeping records that are, in accordance with the international accounting standards, kept on a continuous basis and which:
  - a) correctly record and explain material transactions of the company;
  - b) enable the financial position of the company to be determined with reasonable accuracy;
  - c) enable the members of the Board of Directors to ensure that financial reports comply with the provisions of this Law;
  - d) enable the accounts of the company to be readily and properly audited;
- 6) a copy of every instrument creating or evidencing a legal encumbrance over the company's property;
- 7) the list of shareholders (CDA);
- 8) records on shares, parts and contributions that the company has in other business organizations;
- 9) the list of members of the Board of Directors;
- 10) the record on shares of the company owned by members of the Board of Directors and the Executive Director of the company;
- 11) the list of holders of bonds issued by the company;
- 12) the list of contracts that the members of the Board of Directors concluded with the company, and contracts in which they have interests.

(2) Extracts from the registry kept by the Central Depository Agency shall be valid proofs of the existence of the list of shareholders or list of holders of bonds issued by the company.

(3) The company shall be obliged to provide a shareholder or a former shareholder, for the period he was a shareholder in the company, with the access to the book of minutes of the general meeting of shareholders and the records and documentation referred to in items 1 to 3 and 7 to 11 of this Article, at the latest within seven days from the day of submitting a written request. The right to access to the records and documentation referred to in paragraph 1, items 5, 6 and 12 of this Article shall be exercised in accordance with Article 32, paragraph 7 of this Law. Copying of documents that the shareholder can access to shall be allowed if they do not represent a business secret of the company.

## **Chapter 5 - Capital of the Company**

## **Capital Structure Article 49**

The structure and components of capital shall be those required by the international accounting standards promulgated by the International Accounting Standards Committee (IASC).

## **Acquisition of Property from Founder or Shareholder Article 50**

For any proposed acquisition of an asset from a founder or a shareholder of the company within 2 years following the registration of a company, proposing payment of an amount greater than 1/10 of the share capital of the company, the following conditions must be met:

- 1) the acquisition must be examined in the manner provided in Article 51 of this Law;
- 2) the appraiser's report shall be submitted to the general meeting of shareholders and the general meeting of shareholders shall decide by a 2/3 majority of shareholders present either in person or represented by authorized person or voting by proxy whether or not to accept the transaction;
- 3) in case of a dispute, a shareholder shall be entitled to submit a complaint to the court, in accordance with Article 30, paragraph 5 of this Law;
- 4) the appraiser's report shall be submitted to the Central Registry.

## **Appraisal of Non-Monetary Contributions Article 51**

(1) Non-monetary contributions shall be appraised by one or more licensed independent appraisal experts. Such expert may be a natural person, a legal person or firm (partnership or limited partnership).

(2) Such appraisal shall take place before the non-monetary contribution is accepted by the general meeting of shareholders.

(3) The appraisal report shall contain:

- 1) the name of the owner of the property;
- 2) a description of the each part of the property being appraised;
- 3) a description of the methods of appraisal being used;
- 4) a statement as to whether the value of property recommended in the report corresponds to the number and the initial price of the shares to be issued to the person making the contribution.

(4) The decision of the general meeting of shareholders for approval of the non-monetary contribution shall specify the number of the shares issued for this contribution, the name of the person making the contribution and the nature of the contribution.

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

(6) The licensed appraiser's report and a decision of the general meeting of shareholders to accept the non-monetary contribution shall be submitted to the Central Registry within 7 days as of the day of receiving the decision of the Securities Commission on registering the issue of shares on the basis of non-monetary contribution. The Tax Administration shall send a notice of the decision to accept a non-monetary contribution to

the Official Gazette of Montenegro for publication within two business days from the day of receiving the decision.

(7) A joint-stock company shall not issue shares for non-monetary contributions unless the contributions have been appraised by an independent appraiser in accordance with this Law.

### **Shares Article 52**

(1) A share shall mean an equity interest in a company consisting of a right to participate in the distribution of its gain and other rights defined by this Law and a company's charter. In Montenegro shares shall be issued, transferred and kept in dematerialized form and shall exist in electronic form in the information system of the Central Depository Agency (hereinafter referred to as: the CDA).

(2) The issuance of and trading in shares of a joint-stock company shall be carried out in accordance with the Law on Securities.

(3) A share shall not be divisible into smaller parts. If a share is held by several persons, all its holders shall be considered as a single shareholder. The rights carried by the share shall be exercised by one of the holders by a general agreement. All holders of a share shall be, without limit, severally and jointly liable for the shareholders' obligations.

(4) The initial, i.e. nominal as well as market value of a share shall be denominated in Euro.

(5) Shares of joint-stock companies shall be issued in the name of the holder and must be registered with the Securities Commission and the CDA.

(6) It is possible to acquire the shares of a company in bankruptcy proceedings.

(7) Shares shall be classified by the rights they carry. The rights shall be specified in the charter of the company or in a separate legal document which is adopted when new shares are issued.

(8) Subscription, issuance, registration, ownership, proof of ownership, public offering and transfer of shares, insider trading or security market abuses shall be regulated by the Law on Securities.

### **Payment for Shares and Preemptive Right to Purchase Shares Article 53**

(1) The shares issued by a company must be fully paid prior to issuance to their owners.

(2) Whenever the capital is increased by monetary contributions, the shares must be offered on a preemptive basis to present shareholders in proportion to the number of shares they own.

(3) Only those shareholders that had such status on the day of the adoption of the decision for the increase in capital shall be deemed to be the present shareholders referred to in paragraph 2 of this Article.



(4) If the present shareholders referred to in paragraph 2 of this Article sell their shares, they shall lose the preemptive right and such right shall not be transferred to the buyer of shares.

(5) Where the subscribed capital of a company has several classes of common shares or other equity issues, the rights of these other classes must be protected by offering them shares so as to maintain proportioned equity in the company.

(6) A decision on preemptive purchase right may be adopted only on the general meeting of shareholders, attended by shareholders having at least two thirds of shares, by majority of present or represented shareholders with voting right.

(7) The terms of offer of shares made on a preemptive basis, including the period within which this right must be exercised, shall be published in the Official Gazette of Montenegro and all the shareholders must be informed thereof in writing.

(8) The right of preemption must be exercised within a period not less than 30 days from the day of publication of the offer or from the day of submission of written notice to the shareholders, whichever is later.

(9) Preemptive right cannot be used again upon the expiration of the deadline referred to in paragraph 7 of this Article.

(10) The right of preemption may not be restricted or withdrawn by the charter and may be modified or withdrawn only by a decision adopted by the general meeting of shareholders in accordance with Article 35 paragraph 2 item (12) of this Law. The Board of Directors shall submit to the general meeting of shareholders a written report indicating the reasons for restriction or withdrawal of the right of preemption and justifying the proposed initial price of shares.

(11) The decision referred to in paragraph 9 of this Article shall be filed with the Central Registry within seven days from the day of its adoption.

### **Common and Preferred Shares**

#### **Article 54**

(1) A company's shares may be divided into common shares and preferred shares, classified according to the respective rights attached to the shares. Preferred shares shall be shares which have priority over common shares with respect to dividend payments and residual distribution of property when the company is liquidated.

(2) The holders of common shares shall be entitled to receive dividends and a pro rata portion of a company's assets in the event of a company's liquidation after the claims of the holders of preferred shares have been satisfied. If share capital is increased by the issuance of new shares, holders of common shares or other forms of equity holdings shall have equal rights to acquisition of new shares.

(3) The rights of preferred shareholders and the procedure for changing these rights must be established prior to their issuance and set forth in the company's charter or a separate legal document published at the time of their issue. The amount of the dividend shall be determined as a fixed amount denominated in Euro.

(4) Dividends of preferred shares may be cumulative or non-cumulative. Their nature shall be established in the charter prior to their issuance.

(5) The holder of cumulative preferred shares shall be guaranteed the right to the dividend specified in the shares. If the gain is not sufficient for the payment of all dividends, the unpaid balance shall be paid in subsequent business years when the gain is sufficient.

(6) The unpaid dividend or part of unpaid dividend on non-cumulative preferred shares may not be transferred to subsequent business years.

(7) Before converting cumulative preferred shares into common shares, the company shall be obliged to settle accounts with the holders of these preferred shares.

### **Bonds** **Article 55**

(1) The bond of a joint-stock company shall mean a fixed income security entitling its owner to receive interest and other rights specified in the decision to issue bonds or in the indenture agreement. Upon maturity, a bondholder shall be repaid an amount of principle equal to the bond's agreed upon maturity value.

(2) A decision to issue bonds, except for convertible bonds, shall be adopted by a general meeting of shareholders by a simple majority vote of shareholders present or represented or by the Board of Directors, if this is envisaged by the charter.

(3) A joint-stock company shall be obliged to redeem its bonds on the date set by the indenture, unless the indenture permits bonds to be redeemed prior to their maturity.

### **Convertible Bonds** **Article 56**

(1) A convertible bond shall be a bond that may be exchanged for share of the company.

(2) A decision to issue convertible bonds shall be adopted by a general meeting of shareholders attended by 2/3 of shareholders in person or represented by authorized persons or voting by proxy. This decision must state the number of shares necessary to satisfy conversion requirements. The decision of the general meeting of shareholders shall be published in the Official Gazette of Montenegro.

(3) Shareholders shall have a pre-emptive right to acquire convertible bonds in proportion to the number of shares held by them in the joint-stock company. The period within which shareholders may exercise this right shall be no less than 30 days after the day of the publication of the proposal to issue convertible bonds or the day of submitting the notice to shareholders, whichever is later.

(4) A pre-emptive right to purchase convertible bonds held by the existing shareholders may be limited or annulled by a decision of a general meeting of shareholders adopted in accordance with Article 35, paragraph 2, item 12 of this Law. The Board of Directors of the company shall submit to the general meeting of shareholders a written statement indicating the reasons for limitation or annulment of pre-emptive right to purchase convertible bonds.

(5) Provisions of this Article shall apply to the issue of other securities that can be converted into shares or granting the right to acquire shares.

### **Increase of Initial Capital Article 57**

(1) A company may increase its share capital by additional contributions of its shareholders or of other persons in return for the issuance of new shares.

(2) If a company has issued convertible bonds, its share capital may be increased by issuing new shares (of a type and class specified in the decision on issuing convertible bonds), for which convertible bondholders can exchange their bonds.

(3) Paragraph 2 of this Article shall also apply to all other securities convertible into shares or granting the right to acquire shares.

(4) Share capital can be increased from the reserve funds and retained earnings of the company, provided that it is not contrary to the purpose of reserve funds and if the company does not have uncovered loss in accordance with the last annual account. Shares issued on the basis of the increase in initial capital referred to in this paragraph shall be allocated to the persons that were shareholders on the day when the general meeting of shareholders adopted the decision on the increase in initial capital of the company from the reserve funds of the company or retained earnings of the company, proportionally to their share in the total number of company's shares.

(5) The company's capital shall be increased provided that a general meeting of shareholders attended by shareholders holding at least 2/3 of the shares makes a decision to have a new issue of shares and to amend the charter accordingly. If there are several classes of shares, a decision concerning an increase of capital shall be subject to a separate vote by each class of shareholders whose equity rights are affected.

(6) Amendments to the charter related to the increase of share capital shall be registered in the Central Registry after the shares have been subscribed and paid for.

(7) The capital shall be considered increased by the submission of the amendments to the charter to the Central Registry.

(8) The charter of the company or a decision of the general meeting of shareholders adopted by the 2/3 majority of the shareholders present in person or represented by authorized person or voting by proxy may authorize the Board of Directors to make a decision on issue of shares. The charter or decision of the general meeting of shareholders shall determine the amount of approved increase in capital (authorized capital) and the deadline until which the authorization of the Board of Directors is valid, which cannot exceed five years from the day of adoption of the charter or amendments to the charter based on which the decision on authorized capital is made, i.e. from the day of adoption of the decision on the general meeting of shareholders. The approval may be extended by the decision of the general meeting of shareholders once or several times for the period not exceeding five years per every approval.

### **Stock Dividends and Stock Splits Article 58**

- (1) When the company is paying out dividends in the form of shares or is increasing the number of shares in the form of stock split, shareholders shall have the right to receive these shares without payment, and their number must be proportionate to the total number of shares they hold.
- (2) The new shares shall have the same rights to receive dividends as other shares of the same class.

### **Reduction of the Initial Capital** **Article 59**

- (1) The share capital may be reduced by a decision of the general meeting of shareholders adopted by at least a 2/3 majority of the shareholders present in person or represented by authorized person or voting by proxy. When the company has issued shares of different classes, the decision by the general meeting of shareholders shall be subject to a separate vote for each class of shareholders whose equity rights are affected.
- (2) The notice of convening the general meeting of shareholders shall include the reasons for the reduction of capital, as well as the way it is to be carried out. The decision of the general meeting of shareholders to reduce the share capital shall be submitted to the Central Registry that submits it to the Official Gazette of Montenegro for publication.
- (3) The company cannot reduce its capital if it does not offer additional guarantees for its liabilities to each creditor who demands them and whose claims were in force prior to the day of the publication of the decision to reduce the capital.
- (4) The company shall be obliged to notify each creditor in writing about the decision to reduce its capital. Creditors may request the satisfaction of their claims within 60 days from the day of such notification or from the day of the publication of the notification in the Official Gazette of Montenegro, whichever is later.
- (5) The company may not give additional guarantees for its liabilities if aggregate claims of creditors exceed the net asset value of the company evaluated by an independent appraiser after the reduction of the company's capital. The company may not give additional guarantees for its liabilities to a creditor, if his claims are already fully and reliably secured. The company may not give additional guarantees to creditors when the purpose of the reduction of capital is to offset losses. Disputes concerning additional guarantees for liabilities shall be settled by the Commercial Court.
- (6) Any reduction shall be void and no payment may be made to shareholders, until the creditors have achieved satisfaction or the Commercial Court has declared that their claims are without merit.
- (7) Capital of the company can be reduced by cancellation of proportional number of shares, in proportion to the share of each shareholder in the total number of shares, or by reducing a nominal value of shares.
- (8) Capital of the company may not be reduced to an amount less than the minimum capital prescribed by this Law.
- (9) Capital shall be considered reduced when amendments to the charter have been registered in the Central Registry.

(10) The decision on reduction of share capital shall be published in the Official Gazette of Montenegro.

(11) In accordance with the provisions of this Law on reduction of capital, a company may return to the shareholders their contributions fully or in part, on the occasion of which the adequate number of shares of shareholders to whom a part of contribution or the entire contribution was returned shall be cancelled.

### **Acquisition of Own Shares** **Article 60**

(1) Own shares, for the purpose of this Law, shall be shares acquired by a joint stock company from its shareholders.

(2) A company may purchase its own shares in accordance with the charter of a decision of the Board of Directors, based on the authorization by the general meeting of shareholders.

(3) A purchase of own shares shall be authorized by the general meeting of shareholders and shall specify the maximum number of shares which may be purchased and the maximum price which may be paid for such shares.

(4) The decision of the general meeting of shareholders shall specify a deadline for purchasing its own shares, which cannot exceed 12 months after the decision has been adopted, and after the expiration of that deadline, the shares may be bought only with a new authorization.

(5) Notwithstanding paragraph 3 of this Article, the Board of Directors may adopt a decision on acquiring the company's own shares, if acquisition of own shares is envisaged by the charter and if necessary as protection against serious and immediate damage to the company, however, the shares acquired in such a manner cannot exceed 10% of the company's share capital. The Board of Directors shall be obliged to submit at the first following general meeting of shareholders a detailed report on reasons for acquiring the company's own shares, number and nominal value of acquired shares, their participation in the total share capital of the company and the price at which those shares were purchased.

(6) The shares acquired, purchased and held by the company, as well as shares purchased by a person in his own name but for the account of the company, including also previously acquired shares, may not exceed 10 % of the share capital of the company, except where shares are acquired:

- 1) in carrying out a decision of the general meeting to reduce capital;
- 2) by transfer of assets when restructuring is implemented in accordance with this Law;
- 3) to satisfy a legal obligations or enforce court ruling requiring indemnification of minority shareholders by purchasing their shares;
- 4) in the procedure of involuntary sale based on a court decision for paying a debt of the joint stock company by shareholders, if there are no other ways for collection.

(7) Subscription, acquisition and holding of shares by the company for its own account where the issuer of shares is a shareholder and has majority management or majority voting right or is a shareholder and may, based on an agreement entered into with such company, have majority management shall be considered as subscription, acquisition and holding of shares by the very company being the issuer of shares.

(8) Paragraph 7 of this Article shall not apply to shares acquired by the company in a company of the issuer of shares, where the issuer of shares has majority management or majority of members of the Board of Directors, or majority voting right, or majority ownership in the company, before the issuer of shares has acquired majority management or majority voting right in such company. Such shares shall not carry a voting right and shall be taken into account when determining the conditions referred to in paragraph 6 of this Article for purchasing of own shares by the company.

(9) When a company purchases its own shares, these shares shall be either cancelled or deposited.

(10) During holding of own shares by the company:

- 1) par value of such shares, or accounting value in case of shares with no par value, may be included in the core capital of the company or excluded from such capital, and in such case reserves that cannot be paid to shareholders shall be increased by such amount;
- 2) own shares shall not bear voting right and shall not be counted in the quorum of a general meeting of shareholders;
- 3) own shares shall not bear right to dividend and other income.

(11) Own shares acquired by the company up to 10% of shareholders capital must be disposed within 12 months of their acquisition, and shares acquired in accordance with paragraph 6 of this Article exceeding 10% of the shareholders capital must be disposed within three years of their acquisition.

(12) The company shall be obliged to cancel own shares not disposed of within deadline referred to in paragraph 11 of this Article within three days from the day of expiration of the deadline without special decisions of the general meeting of the company and to inform the Securities Commission and CDA on cancellation of own shares within three days.

(13) In the event that the cancellation of shares referred to in paragraph 12 of this Article would result in net assets of the company being less than its core capital, plus reserves that can be used to pay shareholders, in accordance with this Law and law governing accounting and auditing, the company shall be obliged to execute the cancellation of shares by reducing core capital of the company in accordance with Article 59 of this Law.

(14) The company shall be obliged to register the number of own shares purchased with the Central Registry.

(15) The annual report of the company shall include reasons for acquiring the company's own shares during the financial year, data on the number and nominal value of purchased and sold company's own shares during the year, the value that the company gave for the purchase or received on the basis of the sale of own shares, and participation of the acquired company's own shares in the total number of company's shares.

(16) The company shall not give loans, guarantees or provide any other form of financial assistance to any person wishing to buy shares of the company.

(17) Notwithstanding paragraph 16 of this Article, the restriction on giving loans, guarantees or provision of other financial support by the company shall not apply for operations of financial organization, as well as in the case of acquisition of shares as employee incentive stock purchase plans.

(18) A joint stock company may directly or via person acting on its own behalf or for the account of the company take its own shares as pledge, if the total amount of claim secured by the pledge of shares is lower than the paid value of shares.

## **Chapter 6 - Finances and Distribution of Profit**

### **Financial Year Article 61**

The financial year of a company shall be a calendar year. If a company is registered after the commencement of the financial year, the day of the end of the company's financial year shall be deemed to be the end of the first financial year. If a company is de-registered from the Central Registry prior to the end of its financial year, the last financial year shall end on the day the company is de-registered from the Registry.

### **Distribution of Gain Article 62**

(1) Except where a decision on return of invested capital is made under Article 59, paragraph 11 of this Law, no distribution of gain to shareholders may be made by the company when, on the closing day of the last financial year, the net assets of the company as set forth in the company's annual report are, or following such a distribution to shareholders, would become, lower than the amount of the company's capital plus those reserves which may not be distributed under law or the terms of the company's charter.

(2) The amount intended for a distribution to shareholders may not exceed the amount of the gain generated at the end of the last fiscal year plus any gain brought forward from the previous year and sums drawn from reserves available for this purpose, less any losses brought forward from the previous year and sums placed to reserve in accordance with law and the company's charter.

(3) Any distribution to shareholders made contrary to paragraph 2 of this Article must be returned by shareholders who have received it, if the company proves that the said shareholders knew of the irregularity of the distributions made to them or could not in the circumstances have been unaware of it.

### **Dividends Article 63**

(1) A dividend shall be a payment of part of company's gain to its shareholders.

(2) Dividends declared by the general meeting of shareholders shall become the company's liability to its shareholders.

(3) A joint-stock company shall only pay a dividend if its net asset value is not less than the value of the initial capital, and provided that the payment of the dividend shall not reduce the net asset value below the initial capital.

(4) Dividends may only be paid out of accumulated net gain.

(5) It shall be the normal practice that the company shall pay dividends in money. The dividends may also be paid in the form of company's shares or other securities.

(6) Dividends may only be paid to persons who were shareholders in the company on the day when the general meeting of shareholders made a decision on dividend payment. If a shareholder is not paid a dividend, he shall retain the right to dividend, even if he divested of shares after the day of holding the general meeting of shareholders at which the decision on dividend payment was made.

## **PART VI - LIMITED LIABILITY COMPANY**

### **Concept of the Limited Liability Company Article 64**

(1) A limited liability company may be formed by natural or legal persons who shall make a monetary or non-monetary contribution in the company for the purpose of generating gain, and its founders shall be liable for the obligations of the limited liability company to the amount of their contributions. The contributions shall constitute the limited liability company's initial capital.

(2) On payment of an initial contribution a person shall acquire part in a limited liability company proportionate to the amount of his contribution.

(3) Upon acquisition of a part a person shall become a member of the limited liability company.

(4) A member of a limited liability company shall hold only one part in the limited liability company representing his percentage in ownership interest.

(5) A part in a limited liability company may entitle a member of the company to cast more than one vote.

### **Membership in the Limited Liability Company Article 65**

(1) One or more persons may found a limited liability company.

(2) A limited liability company must limit the maximum number of its members to 30.

(3) The charter of a limited liability company shall restrict the transfer of its parts. A limited liability company shall not have the right to issue a public invitation subscription of any of its parts.

### **The Capital of a Limited Liability Company Article 66**

(1) The founders of a limited liability company shall be obliged to determine the amount of initial capital which may not be less than 1 Euro.



(2) The capital of a limited liability company shall be composed of contributions received from the founders and from persons known to at least one founder and personally invited by the founders to contribute. For all additional contributions, the name of the new contributor and the amount of contribution shall be stated in a document submitted to the Central Registry.

### **Non-Monetary Contributions** **Article 67**

A member may contribute non-monetary contributions as his contribution in exchange for a part in the company. An appraisal of non-monetary contribution shall be done in accordance with Article 51 of this Law.

### **Company Charter** **Article 68**

The charter shall include:

- 1) the name of the company;
- 2) the registered office of the company and address for receiving official notices;
- 3) the core business activity of the company;
- 4) a statement that the company is established as a limited liability company and the amount of the capital;
- 5) the rules of conduct and the procedure for appointing the members of the Board of Directors, if elected, for appointing the members of management and executive bodies, their respective powers and obligations, revocation and the allocation of powers among these bodies;
- 6) provisions on the manner of alteration of capital amount, if not determined by law;
- 7) persons authorized to represent the company either jointly or individually;
- 8) the conditions set out in Article 65 of this Law.

### **Foundation of Limited Liability Company** **Article 69**

(1) The foundation agreement or decision on foundation and other documents determined by this Law shall be submitted the Central Registry for registration.

(2) Following the signing of the foundation agreement of a limited liability company, the founders may invite the persons referred to in paragraph 2 Article 66 of this Law to subscribe their parts and become members of the limited liability company.

### **Initial Registration** **Article 70**

(1) The following documents and data shall be submitted to the Central Registry and published at the first registration of a limited liability company:

- 1) the foundation agreement;
- 2) the charter;
- 3) a list of founders, members of the company, managers and members of the Board of Directors, if appointed, including--
  - a) the first and last names and former names in case of change of the first/last name;

- b) the date and place of birth of members of the Board of Directors, their personal identification number, or passport number if a foreign national;
  - c) the permanent or temporary residence of the members of the Board of Directors;
  - d) the statement of the members of the Board of Directors regarding their citizenship;
  - e) data on any other company memberships, directorships or other functions held in Montenegro or elsewhere, as well as the place of registration of such companies if not in Montenegro;
- 4) the name of the Executive Director;
  - 5) the name of company, the address of the registered office and address of place for receipt of official notices, if different;
  - 6) persons authorized to represent the company either jointly or individually;
  - 7) the signed consent of the members of the Board of Directors to their appointments, if any;
  - 8) a document confirming payment of the registration fee.

(2) The company shall acquire the status of a legal person on the day of its registration. The issuance of a registration certificate by the Tax Administration shall be the evidence of registration.

(3) The Central Registry shall publish in the Official Gazette of Montenegro the data on company's name and registered office, name of Executive Director, names of members of the Board of Directors, if appointed, date of adoption of foundation agreement and charter, as well as date of the registration.

(4) Publication of documents in the Official Gazette of Montenegro shall be by reference to the document in question.

(5) All amendments to the foundation agreement, the charter or any other documents or data which a limited liability company is obliged to file, in accordance with this Law, with the Central Registry shall be submitted within seven working days from the day the amendments have been made. The submission of data shall be within the competence of the Executive Director or another designee.

(6) After every amendment of the charter or the foundation agreement, the complete text as amended shall be submitted to the Central Registry. Amendments to the charter or the foundation agreement shall come into force on the day of their registration.

(7) The documents and data submitted to the Central Registry shall be binding on the company in relation to third parties from the day of their publication in the Official Gazette of Montenegro, unless the company proves that the third parties had knowledge of them. With regard to transactions taking place within sixteen days following the publication of documents and data, the documents and data shall not be binding on good faith third parties who can prove that they did not know and could not have known about their publication.

(8) There must not be discrepancy between what is published and what has been filed in the Central Registry. If there is a discrepancy the published text cannot be relied on as against third parties. Third parties may, however, rely on such text unless the company proves that they had knowledge of the text filed in the Central Registry.

### **Obligation to Submit and Publish Data and Documents**

#### **Article 71**

- (1) Limited liability company shall be obliged to submit to the Central Registry that shall publish in the Official Gazette of Montenegro, the following documents and data:
- 1) any amendments to the charter or the foundation agreement, including any extension of the duration of the company;
  - 2) any change in the name of the company and the address of its registered office or place for receiving official notices;
  - 3) the appointment, termination of office and data on persons elected as members of the Board of Directors, managers or other authorized persons where applicable. It must be published whether the persons authorized to represent the company may do so alone or jointly;
  - 4) the appointment, termination of office and data on the persons who, either jointly or as individuals, are authorized to represent the company in dealings with third parties. It must be published whether the persons authorized to represent the company may do so jointly or alone;
  - 5) the liquidation of the company;
  - 6) any declaration of nullity of the company by the Commercial Court;
  - 7) the appointment of a liquidator, his identity, qualifications and powers other than those set out in this Law or in the charter;
  - 8) the amount of capital unless an increase in the capital requires an amendment of the charter;

### **Legal Consequences of the Obligations Assumed by the Company** **Article 72**

- (1) Publication of the names of the members of the Board of Directors, Secretary of Company and Executive Director who is authorized to represent the company shall be binding on the company, and third parties may refer to them, unless the company proves that such third parties had knowledge of the irregularity.
- (2) Legal acts of the company's bodies or other persons authorized to represent the company shall be binding on the company even if those acts are not within the scope of the company's registered business activity.
- (3) The limits of the powers of the company's bodies or other persons authorized to represent the company arising under the charter or from decisions of such bodies cannot be asserted as a defense against third parties, even if they have been disclosed.
- (4) General power of representation conferred by the charter of a company on a single person or on several persons acting jointly may be asserted as a defense against third parties provided that all the provisions on disclosure of data were applied in accordance with the provisions of this Law.
- (5) Reference shall be made to the general power of representation on official letters and company's forms.

### **Company Bodies** **Article 73**

- (1) The general meeting of shareholders shall not be an obligatory body of a limited liability company. The members of a limited liability company may regulate the management of the company by the contract or charter of the company, and vote on decisions, in proportion to their parts in the company.

(2) Unless otherwise determined by the charter, with the exception of single member limited liability companies, members personally present or represented by authorized persons or voting by proxies who hold parts representing more than half the capital of the limited liability company shall constitute a quorum.

(3) Executive Director shall be mandatory body of the company. The members of a limited liability company, either by majority vote or as indicated in the charter, shall appoint Executive Director and set his compensation.

(4) A limited liability company may or may not form a Board of Directors.

(5) The members of the company or the members of the Board of Directors, if a board exists, may delegate a general power of representation to the Executive Director of the company to act on their behalf.

### **Transfer of Parts** **Article 74**

(1) The parts of a limited liability company may be transferred only in accordance with the provisions established in the charter. These parts shall not be registered with the Securities Commission and the CDA.

(2) A part may be transferred among members of the company without restriction in conformity with the charter.

(3) Where a member of the company intends to transfer his part, other members of the company and the company itself shall have a preemptive right to purchase the part, in accordance with the charter. Where no agreement to purchase the part is reached between the transferor of the part and other members of the company, the part shall be divided among them proportionately to their current parts in the company, unless otherwise provided in the charter. Where the members and the company itself have declined to purchase the part proposed to be sold within 30 days from the day on which the part was offered, the part may be transferred to a third party under terms no less favorable than the terms offered to the existing members or the company.

(4) If the part is being sold by enforcement procedure, the court shall notify thereof the members of the company and the company. If the members of the company and the company itself fail to express their interest to buy the part within 15 days from the day of receiving the notice, such part shall be sold in accordance with the provisions on enforcement procedure.

(5) In the event of death of natural person or dissolution of a legal person, his part shall be transferred to his heirs or legal successors, unless otherwise provided by the charter. Where the charter prohibits transfer of a part, the charter shall provide that such part be bought by members of the company or the company itself. Where the members of the company or the company itself do not buy the part, the part shall be withdrawn in conformity with the provisions of this Law relating to the reduction of the share capital.

(6) In the event of a part being transferred, the transferor and transferee shall be, without limit, jointly and severally liable to the limited liability company for obligations associated with membership. A part shall be transferred by written agreement.

### **Pre-Emptive Right to Purchase the Parts** **Article 75**

- (1) The charter of a limited liability company may determine the pre-emptive right to purchase the parts of the company in case the company decides to increase its capital.
- (2) The size of the increase in the value of a part shall be proportionate to the relationship of the part to the total value of the limited company's capital, unless the charter states otherwise.

### **Acquisition of Its Own Parts by the Limited Liability Company** **Article 76**

- (1) A limited liability company may reduce its capital by the purchase of one or more of its members' parts. The terms of the purchase shall be authorized by members of the company whose parts represent at least 2/3 of total capital. A copy of the proposed contract shall be submitted to all members at least 21 days before the decision is made.
- (2) A limited liability company may not, directly or indirectly, provide financial assistance of any kind for the purchase of its parts except upon unanimous agreement of its members.

### **Single Member Limited Liability Companies** **Article 77**

- (1) A limited liability company may have a sole member when it is formed and also when all its parts are acquired by a single person. Such company shall be called a single member limited liability company, and its member may be a natural or legal person.
- (2) Where a limited liability company becomes a single member limited liability company this fact shall be registered in the Central Registry and in the company's records on parts.
- (3) The sole member of the company shall have the powers of the general meeting of the company. Decisions, taken by the sole member shall, be recorded in the books of the company. Contracts, other than the contracts concluded within current operations performed under normal conditions, between the sole member and the company as represented by him shall be also recorded in the books of the company.
- (4) The liability of a single member company shall be limited to the amount of contribution in the company.
- (5) The founder or sole member of a single-member limited liability company may be its Executive Director or may appoint another person to be Executive Director.

### **Restructuring of a Limited Liability Company into a Joint-Stock Company** **Article 78**

- (1) A limited liability company may be restructured into a joint-stock company under the following conditions:
  - 1) the share capital must not be less than Euro 25,000;
  - 2) the share capital must be paid in full;

- 3) the provisions of this Law on the formation of a joint stock company shall apply to restructuring;
- 4) the general meeting shall adopt a special decision on restructuring of the limited liability company into a joint stock company;
- 5) the charter must be amended to provide that it is a joint-stock company;
- 6) the charter must include the provisions prescribed for a joint stock company and any provisions only appropriate to a limited liability company must be deleted;
- 7) parts of members in the limited liability company shall be cancelled and shares shall be issued to the members in the proportion of their existing ownership, unless otherwise agreed to by all affected members;
- 8) the joint-stock company's shares shall be registered in accordance with the Law on Securities.

(2) Upon completion of all conditions for the restructuring of a limited liability company into a joint stock company, the company shall continue to operate as a joint stock company from the day of its registration.

### **Application of the Provisions of this Law to Limited Liability Company** **Article 79**

Except for the provisions governing limited liability companies, the provisions of this Law relating to joint stock companies shall accordingly apply to limited liability companies. Relevant references to 'shares' shall be construed as references to 'parts' where appropriate. Where a contradiction exists between provisions relating to limited liability company and the provisions relating to joint stock companies, the provisions relating to limited liability companies shall apply.

## **PART VII - FOREIGN COMPANY BRANCH**

### **Concept and Registration** **Article 80**

(1) A foreign company branch shall be a branch of a company established and registered outside Montenegro which performs business activity on the territory of Montenegro. A foreign company branch shall exit and perform the economic activity in accordance with this and other laws of Montenegro.

(2) Any foreign company performing economic activity through its branch on the territory of Montenegro shall be obliged to comply with the relevant provisions of this Law and other laws of Montenegro.

(3) Foreign companies which establish a foreign company branch in Montenegro shall be obliged, within 30 days from the day of the establishment of the branch, to submit to the Central Registry the following data for registration:

- 1) the address of the registered office of the foreign company branch in Montenegro;
- 2) the business activity;
- 3) the name and legal form of the foreign company and the name of the foreign company branch if it is different from the name of the company;
- 4) an authenticated copy of the charter of the foreign company and a translation of the charter in the language officially used authenticated by a court interpreter;

- 5) a copy of the foreign company's registration certificate or a corresponding duly authenticated document confirming the legal registration of the company in its home state;
  - 6) the names and addresses of the persons who are authorized to represent the company in dealings with third parties:
    - a) as a company body constituted pursuant to law or as members of any such body;
    - b) as permanent representatives of the company for the activities of the branch, and the authorizations for the persons to represent the company, whether they may do so alone or jointly.
  - 7) the names and addresses of one or more persons with permanent residence in Montenegro authorized to represent the company in legal proceedings;
  - 8) the most recent balance sheet and income statement or similar financial documents prescribed by the law of the country where the company is registered.
- (4) Foreign companies with foreign company branches established on the territory of Montenegro shall submit to the Central Registry changes of data referred to in paragraph 3 of this Article within 20 days of the change, and, in addition, they shall submit the following for registration:
- 1) notice of liquidating the company, the appointment of liquidators, data concerning them, opening of bankruptcy proceedings or other proceedings to which the company is subject;
  - 2) the cessation of economic activity of the branch.
- (5) A foreign company branch shall state in business letters and other business documents:
- 1) Name in the Central Registry;
  - 2) Registration number of the company from the Central Registry;
  - 3) name, legal form and registered office of a foreign company and name of a foreign company branch, if different from the foreign company name;
  - 4) registered office of the foreign company branch;
  - 5) note that a foreign company is under liquidation, if that is the case.

## **PART VIII – REGISTRATION**

### **General Provisions**

#### **Article 81**

- (1) The provisions on registration shall regulate:
  - 1) the procedure by which legal and natural persons engaged in economic activity shall register required documents and data defined under this Law;
  - 2) the procedure for submission of documents required for registration;
  - 3) the purpose and legal effect of such registration;
  - 4) the rights and obligations of the Central Registry regarding registration.
- (2) All forms of organization pursuing economic activity in Montenegro shall be obliged to register in accordance with the provisions of this Law.

### **Definitions**

#### **Article 82**

The following terms shall have the following meaning under this Law:

“Submission of data and documentation” shall mean the act of presentation, physically or electronically, of a registration application or document to the Central Registry or Authorized Registry Agent registered by the Central Registry in accordance with this Law;

“Memoranda of Organization” shall mean any and all founding documents required for establishing any of the various forms of organizations pursuing economic activities, governed by this Law;

“Registration Applicant” shall mean the natural person, legal person or firm submitting to the Central Registry the documents and data required for its registration;

“Authorized Registry Agent” shall be a, natural person, legal person or firm specifically authorized to accept documents and applications for registration;

“Registration” shall mean the act of entering the data into the official records of the Central Registry;

“Time of Registration” shall be the time of submission of a registration application or document to the Central Registry or Authorized Registry Agent;

“Registration Decision” shall be a document bearing the seal of the Central Registry evidencing that the company or entrepreneur has been registered;

“Certificate of Registration Expiry” shall be a document certifying that no records exist in the Central Registry a given company;

“Abstract” shall be a document issued by the Central Registry which sets forth the documents and data filed with the Central Registry by an applicant.

### **Central Registry (CRPS) Article 83**

- (1) The Tax Administration shall keep the Central Registry,
- (2) The Central Registry shall be located in Podgorica.
- (3) The Tax Administration shall make registrations in the Central Registry based on the Registration Application, attached thereto shall be the documents set forth by this Law.
- (4) The registration application may be lodged in regional offices of the Tax Administration.
- (5) The data and documentation submitted to the Central Registry shall be kept in a single, information database.
- (6) The Central Registry database may be inspected six hours per day on each business day.
- (7) During the inspection period, any person may view, transcribe, or copy the abstract from the Registry and the documents submitted to the Central Registry.
- (8) The Tax Administration shall be obliged to issue registration decisions, and certificates of registration expiry, and to receive company constitutional and other documents being registered in accordance with this Law even during the time envisaged for the inspection period.
- (10) Inspection of the Central Registry’s data shall also be possible through electronic means of communication including its website.



## **Article 84**

*Deleted (OG of MN 36/11)*

## **Submission of Data and Documentation**

### **Article 85**

- (1) Any member of management or owner of the legal person, or an authorized person, may submit a memorandum of organization to the Central Registry.
- (2) Only authorized persons may submit the documentation determined by the regulations for registration.
- (3) With respect to bankruptcy, only persons authorized by the law regulating insolvency or authorized designees may submit the documentation determined by the regulations for registration.
- (4) Only persons authorized by another law to submit documentation for registration may submit the documentation determined by those regulations.
- (5) Bankruptcy administrators shall be empowered to make submissions in accordance with this Law.
- (6) Liquidators of joint stock companies, limited liability companies, limited partnerships, and general partnerships shall be empowered to make submissions for registration in accordance with this Law.
- (7) *Deleted (OG of MN 36/11)*
- (8) The Authorized Registry Agent, authorized authority upon receiving a submission shall issue to the applicant written evidence in the form of a receipt indicating the time of submission, and shall attach a copy of the receipt to the documents being archived.

## **Registration Procedure**

### **Article 86**

- (1) Upon submission of a registration application and documents necessary for registration, the Tax Administration shall issue a receipt evidencing time the registration application and documents are received.
- (2) The Tax Administration shall be obliged, upon receiving the registration application, to register the business organization or entrepreneur, if submitted documents contain all necessary data set forth under this Law and to assign a registration number.
- (3) Documents referred to in paragraph 2 of this Article shall be recorded – registered in the Central Registry.
- (4) The Tax Administration shall reject the registration if:
  - 1) documentation is not complete, or if not submitted in stipulated form;
  - 2) data are incomplete;
  - 3) another form of business activity is registered under the same name or there is breach of some other regulation.

- (5) A decision on rejecting the registration must be adopted within four business days following the day of receipt of documentation.
- (6) If the Tax Administration fails to reject the registration within the deadline referred to in paragraph 5 of this Article, a business organization or entrepreneur shall be deemed to be validly registered.
- (7) A joint stock company and limited liability company shall acquire the status of a legal person on the day of recording - registration in the Central Registry.
- (8) Recording – registration in the Central Registry shall be done based on the registration decision.
- (8) Recording – registration in the Central Registry shall be done based on the registration decision.
- (9) The decision referred to in paragraph 8 of this Article shall also determine the tax identification number.
- (10) The decision referred to in paragraph 8 of this Article may also determine the VAT registration number and excise taxpayer registration number, upon a request of the registration application, in accordance with law.
- (11) A complaint may be lodged against the decisions of the Tax Administration to the state administration authority in charge of finances (hereinafter referred to as the Ministry).
- (12) The Ministry shall set forth the forms for registration and instruction for the work of the Central Registry by way of its regulation.

### **Fees for registration in the Central Registry** **Article 87**

- (1) A fee shall be paid for registration in the Central Registry.
- (2) The fees for recording in the Central Registry shall be as follows:
- 1) for registration of a joint stock company - EUR 50;
  - 2) for registration of entrepreneur, general partnership, limited partnership, and limited liability company - EUR 10;
  - 3) for the issuance of an authenticated registration decision or a certificate that the business organization or entrepreneur is not registered - EUR 5;
  - 4) for the submission of any other request, including a request for de-registration - EUR 5;
  - 5) for publication of data in the Official Gazette of Montenegro - amount of actual publication costs.
- (3) Proceeds from fees referred to in paragraph 2 of this Article shall be revenues of the Budget of Montenegro,

**Liability**  
**Article 88**

(1) The Central Registry shall ensure that the data contained in the index and the other data archived in the database of the Central Registry are the same as the data provided to it for registration, and that the public may rely thereon to that extent. Registration on the basis of this Law shall be only a certification that the Memorandum of Organization, which formed the basis of the registration contains the data required by this Law. Registration shall not be an attestation as to the truth of the data contained in the said Memorandum of Organization. Persons that conclude legal transactions with registered entities shall bear the risk to verify, for their own needs, the accuracy of data contained in the registry.

**PART IX - PENALTY PROVISIONS**

**Article 89**

Deleted (Official Gazette of Montenegro 17/07)

**Article 90**

Deleted (Official Gazette of Montenegro 17/07)

**Article 91**

Deleted (Official Gazette of Montenegro 17/07)

**Offences**

**Article 92**

(1) A pecuniary fine in the amount not exceeding EUR 15,000 shall be imposed on a company or another form of organization pursuing economic activity for the offences referred to in paragraph 3 of this Article.

(2) A pecuniary fine in the amount not exceeding EUR 1,000 shall be imposed on any person within a company or another form of organization pursuing economic activities who is responsible for the offences referred to in paragraph 3 of this Article.

(3) A company or another form of organization pursuing economic activities shall commit an offence in the following circumstances:

- 1) If it conducts a business activity without license, if such a license is envisaged by a separate regulation (Article 1 paragraph 3);
- 2) If in conducting its business activity, it does not use the registered name of the company (Article 6 paragraph 6, Article 12 paragraph 1, item (1), Article 21 paragraph 1, item (11), Article 70 paragraph 1, item (5), Article 80 paragraph 3, item (3));
- 3) If a member or shareholder misuses the company with the intent to achieve objectives prohibited by law, treating the company's assets as its own personal assets, illegally disposes of assets with the intent to provide illegal material benefit to itself or a third party (Article 4);
- 4) If it operates without having invested the minimum initial capital required by law (Article 17 paragraph 6);

- 5) If it pays out dividends, distributes gain, returns capital, issues new shares, or parts contrary to this Law, its charter, foundation agreement or other founding or governing documents (Article 62);
- 6) If it fails to elect or appoint mandatory bodies, officers or an auditor of the company within the deadlines determined by law (Article 34 and Article 73 paragraph 3);
- 7) If it interferes or attempts to improperly influence the work of the auditor (Article 45 paragraph 1);
- 8) A member of the Board of Directors, member of the company, officer or manager violates duties envisaged by this Law, or enters into a legal transaction with the company without first obtaining the appropriate approvals and contrary to the procedure required under this Law (Article 35 paragraph 2 item 10) and paragraph 3 Article 40 paragraph 4; Article 44; Article 48 paragraph 3, Article 60 paragraph 4, Article 79, paragraph 1);
- 9) If it provides loan, guarantee or other type of financial assistance to individual for the purpose of purchasing the company's shares contrary to this Law (Article 60 paragraph 12, Article 79 paragraph 1);
- 10) If it makes a public call for subscription and payment for shares in a prospectus or other public document which includes a false statement, false data or does not include the data required under this Law and does not meet the conditions set by law (Article 28 and Article 52 paragraph 2);
- 11) If as a person in his own name purchases shares for the control or benefit of a joint stock company, and fails to disclose or transfer shares to the joint stock company on whose account he has acquired or controls the shares (Article 60 paragraph 5);
- 12) If it fails to keep the book of decisions in the manner determined by this Law (Article 18a, paragraph 4 and Article 77, paragraph 3);
- 13) If it fails to make a report on relationship with the parent company and companies in which its parent company has the status of the parent company or subsidiary (Article 35, paragraph 3).

### **Article 93**

(1) A pecuniary fine in the amount not exceeding EUR 10,000 shall be imposed on a company or another form of organization pursuing economic activities for the offences referred to in paragraph 3 of this Article.

(2) A pecuniary fine in the amount not exceeding EUR 500 shall be imposed on any person within a company or another form of organization pursuing economic activities who is responsible for an offence referred to in paragraph 3 of this Article.

(3) A company or another form of organization pursuing economic activities shall commit a breach in the following circumstances:

- 1) If it fails to properly submit a written foundation agreement, charter or other required founding document in compliance with this Law, or if it fails to include in that document any data which are required by law (Articles 14 and 71);
- 2) If it fails to timely submit for registration any data prescribed by this Law, or any changes of such data that it is obliged to submit in accordance with this Law (Article 6 paragraph 6, Articles 12, 13, 21, 28, 70, 71, Article 80 paragraph 3);
- 3) If it refuses to give information or answer that it is obliged to provide pursuant to this Law or its charter, foundation agreement or other founding document to a member or shareholder of the company, or if it provides false information or prevents them from exercising their right to get information, or if it fails to make public information required to be disclosed by law, if it fails to issue notices in the manner required by law, or if it makes any false public statement or other public notice or announcement (Articles 32, 48 and 71);

- 4) In the event of failed subscription of shares, the company or the founders fails to refund to the subscribers the amounts paid in within the deadline set by law (Article 20 paragraph 6);
- 5) If it fails in the capacity of founder, member of the Board of Directors or executive officer to convene the statutory general meeting of shareholders, ordinary general meeting of shareholders, or extraordinary general meeting of shareholders in a timely manner when required so under the law or fails to convene the general meeting of shareholders in accordance with the procedure determined for convening the general meeting of shareholders (Article 36);
- 6) If it fails to organize itself and adjust its general acts with the provisions of this Law within the established deadline, unless otherwise determined by this Law (Article 96 paragraph 3);
- 7) If it fails to state the prescribed data in business letters and other business documents (Article 27, paragraph 2 and Article 80, paragraph 5).

#### **Offences by an Individual Entrepreneur Article 94**

A pecuniary fine in the amount not exceeding EUR 5,000 shall be imposed on any individual entrepreneur who conducts business under a name other than his own without registering the trade name with the Central Registry (Article 5 paragraph 4).

#### **Failure to Register Article 95**

(1) A pecuniary fine in the amount not exceeding EUR 1,000 shall be imposed on any person carrying on an economic activity which has been in operation for more than 30 days claiming to have limited liability of shareholders or members of a joint stock company, limited liability company or limited partnership without validly registering in accordance with this Law.

(2) *deleted (OG of MN 40/10)*

(3) A pecuniary fine in the amount not exceeding EUR 1,000 shall be imposed on every general partner if limited partnership fails to submit the information required in Article 13 paragraph 1 of this Law.

## **PART X - TRANSITIONAL AND FINAL PROVISIONS**

#### **Transitional Provisions Article 96**

(1) The existing companies and other forms of organizations pursuing economic activities, as well as entrepreneurs, shall continue to operate on the effective day of this Law in the manner and under the conditions which were valid at the time of their registration.

(2) The Central Registry shall submit a proposal of the general act that shall prescribe the forms and instructions for the work of the Central Registry within 60 days of the effective day of this Law.

- (3) The Ministry of Justice shall be obliged to adopt the act referred to in paragraph 2 of this Article within 30 days of the day of receiving the proposal.
- (4) The Tax Administration shall bring the Central Registry into complete operational capability in accordance with this Law within 90 days of the day of adoption of the act referred to in paragraph 2 of this Article.
- (5) Companies and other forms of organization, as well as entrepreneurs referred to in paragraph 1 of this Article shall bring their respective registration in line with the provisions of this Law within 180 days of the effective day of this Law, unless otherwise provided by certain provisions of this Law.
- (6) Existing joint stock companies registered prior to the effective day of this Law shall be obliged, within 180 days from the effective day of this Law, to submit a balance sheet for the last accounting period which proves that the company has at least EUR 25,000 in monetary or non-monetary share capital.
- (7) The joint stock companies which fail to act in conformity with the provisions of paragraph 6 of this Article shall be de-registered by the Tax Administration, after carried out liquidation procedure.
- (8) The Ministry of Justice, on the basis of this Law, shall be authorized to adopt and implement a separate legal act that prescribes instructions and forms for the operations of the Central Registry.
- (9) Registration initiated prior and after the effective day of this Law and prior to the adoption of the act referred to in paragraph 3 of this Article shall be continued under the existing regulations.

#### **Adoption of Regulations Article 96a**

- (1) Regulations referred to in Article 86, paragraph 10 of this Law shall be adopted within three months as of the day this Law enters into force.
- (2) Regulations adopted pursuant to authorizations referred to in Article 96 of this Law shall apply until adoption of regulations referred to in paragraph 1 of this Article.

#### **Establishing the Central Registry (CRPS) Article 96b**

- (1) The Central Registry shall be established within six months as of the day this Law enters into force.
- (2) Data recorded in the Central Registry of the Commercial Court shall be entered into the Central Registry within the deadlines referred to in paragraph 1 of this Article.
- (3) Until the establishment of the Central Registry referred to in paragraph 1 of this Article, the registration shall be performed in the Central Registry of the Commercial Court.

(4) The Commercial Court shall be obliged to hand over the documentation of the Central Registry of the Commercial Court within 15 days following the day of establishment of the Central Registry.

**Termination of Validity of the Certain Laws  
Article 97**

By coming into force, this Law shall supersede the Law on Entrepreneurs (Official Gazette of the Republic of Montenegro 43/95 and 1/96), as well as provisions of other laws and regulations that are conflicting with this Law.

**Coming into Force  
Article 98**

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

**Note of the Publisher:**

Transitional Provisions referred to in the Law on Amendments to this Law (Official Gazette of Montenegro 17/07) were not entered in the clear text of the Law, which read as follows:

**“Transitional Provisions**

**Article 66**

Restructuring procedures initiated before the effective day of this Law shall be terminated in accordance with the regulations effective until the effective day of this Law.

The existing joint stock companies shall be obliged to harmonize their acts with this Law, at the latest until 30 June 2008.

**Article 67**

The Board for Constitutional Issues and Legislation of the Parliament of Montenegro shall be authorized to determine a clear text of this Law.

**Coming into Force**

**Article 67**

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

SU-SK Number 01-524/17  
Podgorica, 18 December 2007

Parliament of Montenegro  
Speaker of the Parliament  
Ranko Krivokapic, m.p.