

## **BANKING LAW**

(OGM 17/08 of 11 March 2008, 44/10 of 30 July 2010, 40/11 of 8 August 2011, and 73/17 of 3 November 2017)

### **I. GENERAL PROVISIONS**

#### **Scope and Purpose of the Law**

##### **Article 1**

This Law governs foundation, management, operations and supervision of banks and micro-credit financial institutions and credit unions and it governs the conditions and supervision of operations of parties involved in credit and guarantee operations with the purpose of establishing and maintaining safe and sound banking system that provides protection of interests of depositors and other creditors.

#### **Application of Other Laws**

##### **Article 2**

The provisions of the law that governs the legal status of business organizations shall be applied to the banks, unless otherwise specified in this Law.

#### **Terms and Definitions**

##### **Article 3**

Terms and definitions used in this Law shall have following meanings:

- 1) **bank** means a legal person that performs banking operations on the basis of the license or approval issued by the Central Bank of Montenegro (hereinafter referred to as the CBM) for the performance of such operations;
- 2) **banking operations** mean the operations of accepting cash deposits and approving loans for its own account;
- 3) **credit and guarantee operations** mean the operations of issuing guarantees for regular meeting of obligations of loan beneficiaries;
- 4) **deposit** means a sum of money paid to a bank's account, based on the contract or other legal activity, which results in bank's obligation for recovery of the amount on demand of depositor or at the maturity of the contracted period, excluding funds that represent additional element of bank's own funds;
- 5) **branch** means a part of a bank which does not have the status of a legal person and performs all or just some of the activities of that bank;
- 6) **founding capital** means capital which is provided by founders when founding a bank and which may be in money, in things and in rights appraised by the authorized appraiser;
- 7) **qualified participation** is:

- independently or mutually with other related parties, direct or indirect participation in capital or voting rights of a legal person of at least 5%,
  - possibility of making significant influence on management i.e. policy of a legal person based on agreement or contract with other party, or in any other way, regardless of the amount of participation in capital or voting rights in a bank;
- 8) **related parties** mean two or more parties that are connected in at least one of the following forms:
- one party controls or has direct or indirect participation in capital or voting rights of other party of at least 20%,
  - two or more parties are controlled by a third party,
  - the same persons represent the majority members of the board or another governing body in two or more legal persons,
  - two or more parties are family members (a spouse, a person who lives in community equal to matrimony pursuant to the law, and children and other persons who live in household of that party),
  - two or more parties, pursuant to a contract, an agreement or informally, jointly performing business activities of a significant volume;
    - If a deterioration or improvement in financial situation of one party may lead to deterioration or improvement in financial situation of the other party or other parties, or there is a possibility of loss, profit or creditworthiness transmission among these parties;
- 9) **indirect investment** is an investment in the capital or in voting stocks in a legal person, through a third party, where the indirect investor is:
- a party for whose account another party (direct investor) has acquired the voting stocks or participation in the bank's capital;
  - a party who controls another party (the direct investor);
- 10) **significant influence** means that facts have been known indicating that a certain party:
- may appoint at least one representative in the board of directors or in a similar body of that legal person, either as a result of share ownership, on the basis of mutual consent with the shareholders, authorizations, or in any other way;
  - participates in decision making in that legal person, regardless of whether that party can impose or determine such decisions or exercise influence over that legal person;
- 11) **control** means:
- independently or mutually with other related party, direct or indirect participation in capital or voting rights in legal person of at least of 50%,
  - possibility of incurring dominant influence over decision making, business policy and strategy of a legal person, independently or mutually with other parties, without regard to the percentage of participation in capital;
- 12) **bank related parties** are:
- members of bank's bodies, shareholders, bank employees, as well as members of their immediate family (marital partner and children);
  - legal persons in which a party that has a qualified participation in the bank also has a qualified participation;
  - legal persons in which one of the parties in bullets 1 and 2 of this point has significant participation, or a party referred to in bullet 1 above is a director or a member of the board of directors or other managing body of a such legal person;

- a party that has participation in capital or voting rights of at least 50% in a legal person that has qualified participation in a bank.
- 13) **a group of related parties** shall be considered related parties under point 8) indents 1-6 of this Article and parties related to them;
- 14) **illiquidity** means the situation when the bank has no cash to meet its matured obligations when required by creditor;
- 15) **party** means a domestic or foreign natural person or legal person,
- 16) **banking group** means a group of related parties in which a bank or a financial holding with the head-office in Montenegro is superior in relation to one or more banks, financial institutions and/or other parties offering financial services, the operations of which are governed by other laws.
- 17) **superior bank** in a banking group means the bank which:
- controls other members of the banking group and/or
  - has participation in capital or voting rights of at least 20% individually in other members of the banking group.
- 18) **financial holding** means a joint-stock company or limited liability company which has participation in the capital or voting rights of banks or other parties offering financial services, if it controls at least one bank;
- 19) **superior financial holding** in a banking group means the financial holding which:
- controls at least one bank with a head-office in Montenegro,
  - controls or has participation in the capital or voting rights of at least 20% of other members of the banking group,
  - is not at the same time controlled by a bank or financial holding with a head-office in Montenegro, and
  - is not at the same time controlled by a bank licensed in another country;
- 20) **mixed holding** means a joint-stock company or limited liability company which has participation in the capital or voting rights of parties engaged in financial activities as well as parties engaged in non-financial activities, if it controls at least one bank.

## **Prohibition of Performing Banking Operations**

### **Article 4**

No natural person or legal person in Montenegro may engage in the profession or activity of banking, without required license of the Central Bank of Montenegro (hereinafter: the Central Bank).

Should an evidence exist that a person is engaged in the activities referred to in paragraph 1 above without required license or approval of the Central Bank, the Central Bank may perform, for the purpose of gathering additional information, a review of business books and other documentation of such party.

The party referred to in paragraph 1 above shall allow the authorized examiners of the Central Bank to review the documentation and operations of such party.

## **The Use of the Word “Bank” and Other Words**

### **Article 5**

A bank shall have the word “bank” in its title.

A bank must not have in its title the words or derivative of the words that may lead bank’s clients or other parties to incorrect conclusions on the status and/or competitive position of such bank, or that may violate the rights of other parties, particularly the words or derivatives of the words that may create a confusion regarding:

- 1) scope of bank operations,
- 2) identity of the bank, i.e. its founders,
- 3) bank’s connectivity with other legal persons, or
- 4) Competitive advantage of such bank in its relationship with clients.

No party may use the word “bank” or derivative of the word “bank” in its title or in the title of its products or services, unless in case when this word is used in accordance with the provisions of this Law.

## **Bank Business Operations**

### **Article 6**

A bank shall perform banking operations.

In addition to the operations referred to in paragraph 1 above, a bank may perform the following operations:

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

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

## **Bank Founders**

### **Article 7**

A bank shall be founded only as a joint stock company.

A bank may be founded by domestic and foreign legal persons and/or natural persons.

A bank may have one founder.

## **Founding Capital**

### **Article 8**

The financial amount of founding capital may not be less than EUR 5,000,000.

The founding capital referred to in paragraph 1 above must be paid fully before the bank is registered in the Central Register of the Commercial Court (hereinafter referred as CRCC).

## **Qualified Participation in a Bank**

### **Article 9**

No legal or natural person may acquire qualified participation in a bank without prior approval of the Central Bank.

A party with qualified participation may not further increase participation in capital or voting rights in a bank, on the basis of which it acquires 20%, 33%, or 50% or more of participation in voting rights or in capital of the bank, without the prior approval of the Central Bank.

A group of related parties related pursuant to Article 3 point 8) indents 1 to 5 of this Law, shall be deemed as one acquirer of participation in a bank capital and/or voting rights..

## **Restrictions of Mutual Investments**

### **Article 10**

A legal person that is engaged in financial activity and in which a bank has participation in capital or voting rights of at least 20%, shall not acquire participation in capital or voting rights in that bank of 20% or more.

A legal person that is engaged in non financial activity and in which a bank has participation in capital or voting rights of at least 20%, may not acquire participation in capital or voting rights in that bank of 5% or more.

A bank shall not acquire participation in capital or voting rights of 20% or more in a legal person that is engaged in financial activity and which has participation in capital or voting rights of at least 20% in the bank.

A bank may not acquire participation in capital or voting rights of 5% or more in a legal person that is engaged in non financial activity and which has participation in capital or voting rights of at least 20% in the bank.

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

**Article 10a**

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

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

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

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

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

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

In the procedure of deciding on the request for granting the approval for qualified participation, the Central Bank shall inform the applicant on the date of expiration of the period envisaged for deciding on the request within five business days following the date of submission of complete documentation and/or within five business days following the date of cessation of the decision-making inactivity period.

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

## **Deciding on Granting the Approval for Acquiring Qualified Participation**

### **Article 11**

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

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

## **Denial of the Request**

### **Article 12**

The Central Bank shall deny the granting of approval for the acquisition of qualified participation in a bank if:

- 1) the applicant does not submit to the Central Bank the prescribed and/or requested documentation within the timeframe referred to in Article 10a of this law
- 2) the applicant does not meet eligibility and financial condition criteria referred to in Article 11 above;
- 3) the qualified participation would exceed the limits referred to in Article 10 above; or
- 4) the granting of approval would lead to the concentration of the participants at financial market which significantly prevents, restricts or violates the competition, primarily through the creation or strengthening of dominant position at financial market.

### **Acquisition of Qualified Participation without Central Bank Approval**

#### **Article 13**

If there are facts that point out that a party has a qualified participation in a bank for which it does not have appropriate approval, the Central Bank may require such party, other bank shareholders, parent legal person of such party and the bank to submit all information and documentation which is relevant for establishing the existence of qualified participation of such party in the bank.

The parties referred to in paragraph 1 above shall submit requested data and information to the Central Bank no later than eight days as of the day of the reception of the request referred to in paragraph 1 above.

If the Central Bank, on the basis of data and information referred to in paragraph 1 of this article, or on the basis of other data and information it has available, determines that a party has acquired or increased qualified participation in a bank without appropriate approval of the Central Bank, the Central Bank shall inform such party in writing within eight days after the day of the reception of the information that it may submit the request to the Central Bank for issuance of appropriate approval and shall notify such party on the consequences referred to in article 14 paragraph 2 of this Law.

### **Legal Consequences of Illegal Acquisition of Qualified Participation**

#### **Article 14**

A party referred to in article 13 paragraph 3 of this Law may not exercise voting rights above the level of voting rights which the party has had prior to the acquisition or increase of qualified participation in a bank nor exercise the right to dividend payment on the basis of the shares acquired in such way until it obtains appropriate approval of the Central Bank.



The Central Bank shall order a party, which does not submit request for granting the appropriate approval within the timeframe referred to in article 13 paragraph 3 of this Law, or the request for granting the approval is denied, to dispose of shares within the timeframe that may not be shorter than three or longer than six months, on the basis of which such party would exercise rights above the level of qualified participation for which it has had appropriate approval of the Central Bank.

If illegal acquirer of shares does not alienate the shares within the time period specified in the decision of the Central Bank, such illegally acquired shares shall become shares carrying no voting rights until their alienation.

If shares referred to in paragraph 2 above are alienated, the new legal acquirer of such shares shall acquire all rights on the basis of these shares.

### **Timeframes for the Acquisition of Qualified Participation**

#### **Article 15**

A party that has been granted the approval for acquiring qualified participation in a bank shall acquire, within six months as of the date of the approval granted, qualified participation in the bank.

Exceptionally, the Central Bank may, upon the request of the party referred in paragraph 1 above, extend the timeframe referred to in paragraph 1 above for a period no longer than another six months.

### **Cessation of Validity of Approval**

#### **Article 16**

If a party that has been granted the approval for acquisition of qualified participation in a bank acquires, within the timeframes specified in article 15 of this Law, qualified participation in a bank below the level for which the approval has been requested, the approval shall be valid only for the participation in capital or voting rights in the bank such party has acquired.

If a party with qualified participation in a bank decreases its qualified participation through the disposal of shares or in any other way, the approval shall be valid only for the level of participation in capital or voting rights which such party has had after the decrease in qualified participation.

### **Revoking the Approval for Acquisition of Qualified Participation**

#### **Article 17**

The Central Bank may revoke the approval for acquisition of qualified participation if:

- 1) the acquirer of the qualified participation, which is a superior company in a banking group, violates the provisions of this law referring to the supervision of banks on consolidated basis;
- 2) any of the circumstances as listed in article 12 of this Law occurs.

Legal consequences specified in article 14 of this Law shall be applied to by revoking the approval for the acquisition of qualified participation.

## **Informing the Central Bank by Qualified Acquirers**

### **Article 18**

A party with qualified participation in a bank that intends to decrease qualified participation in the bank, through the sale of shares or in any other way below the level for which it has been granted the approval, shall previously inform the Central Bank thereof.

A legal person that has qualified participation in the bank shall immediately inform the Central Bank on restructuring of that legal person.

The financial or mixed holding that represents a superior company in a banking group shall inform the Central Bank on each change in the composition of the board of directors or on change of the executive directors.

## **Shareholder's Agreement**

### **Article 19**

A group of bank shareholders whose total participation in capital or voting rights does not represent qualified participation in a bank, and have signed written or verbal agreement on mutual performance of managerial functions (hereinafter referred to as: the Shareholder's agreement) shall inform the Central Bank on such agreement.

The Shareholder's agreement referred to in paragraph 1 above shall not be signed by the new shareholder without the prior approval of the Central Bank, if by joining of such shareholder total participation in capital or voting rights has increased up to the level that represents qualified participation in a bank.

A group of bank's shareholders whose total participation in capital or voting rights represents qualified participation shall not sign Shareholder's agreement without prior approval of the Central Bank.

Participants in the agreement referred to in paragraph 3 above shall not, without new approval of the Central Bank, increase participation in capital or voting rights which increases total participation in capital of participants in the agreement or voting rights in the bank, above the level for which the approval has been granted.

New shareholder shall not sign the Shareholder's agreement referred to in paragraph 4 above, without prior approval of the Central Bank, if by joining of such shareholder the

total participation in capital of the participants in the agreement or voting rights in a bank has increased above the level for which the approval has been granted.

The provisions of this Law referring to the granting of approval for acquisition of qualified participation in a bank shall be applied to the granting of the approval for signing of the Shareholder's agreement.

Approval for the signing of the Shareholder's agreement shall be considered as approval for acquisition of qualified participation in a bank.

## **Central Bank Register**

### **Article 20**

The Central Bank shall keep the register of the banks, micro-credit financial institutions and credit unions, branches of the foreign banks and representative offices of the foreign banks.

Information from the register referred to in paragraph 1 above shall be public and shall be disclosed at web site of the Central Bank.

The content and the manner of keeping the registers referred to in paragraph 1 above shall be specified in more details in the regulation issued by the Central Bank.

## **II. GRANTING A LICENSE AND APPROVALS**

### **I. Granting a License**

#### **Application for a Bank License**

### **Article 21**

The bank founders shall submit to the Central Bank the application for a bank license, supported by the following documents:

- 1) authorization for a person which will cooperate with the Central Bank in the procedure of discussions on the application for a bank license;
- 2) proposal of the bylaws;
- 3) statement of the founders on the financial amount of the founding capital and evidences on sources of these funds;
- 4) documents and information on legal persons with qualified participation in a bank, which specifically contain a statement of registration or other appropriate statement from public register, financial reports for the last three years with authorized external auditor opinion, bank related parties and their connected interest, including data on parties that have significant influence based on ownership, or in any other way, on the operations of such group of related parties;

- 5) appropriate document of the supervisory authority that there are no obstacles for a foreign bank or other financial institution to be founder of a bank;
- 6) documents, data and information on natural persons with qualified participation in a bank, which specifically contain their names and addresses of permanent or temporary place of residence and other identification data, appropriate evidence on sources of financial amount of founding capital, bank related parties and their connected interest;
- 7) biography data on proposed members of the board of directors that as a minimum contain the following: information on identification, professional qualifications and working experience and information on their achieved and planned education;
- 8) business plan of the bank for the first three years, which specifically contains an overall strategy of a bank, expected targeted market, projections of the balance sheet and income statement and cash flow projections;
- 9) proposal of a strategy for capital management and strategy for risk management in a bank;
- 10) documentation on technical capabilities and organizational structure, which specifically contains evidence on the use of business premise and equipment required for the performance of projected activities, proposal of rules and regulations on organization and job position scheme, and detailed description of organization of accounting and IT support.

Besides the documentation referred to in paragraph 1 of this article the Central Bank may require the bank to submit additional information and data.

### **Meeting Prior to the Submission of Application**

#### **Article 22**

A meeting of the authorized representatives of the Central Bank with potential bank founders upon the request of the parties which intend to found a bank, whose initial contribution enables qualified participation in a bank, shall be held prior to the submission of application referred to article 21 above and it may be attended by other bank founders.

The potential bank founders shall inform the Central Bank representatives at the meeting referred to in paragraph 1 above on:

- 1) planned timeframes for founding a bank and submission of the application on granting a bank license;
- 2) bank's business strategy;
- 3) its financial condition and performance, including information on related interests;
- 4) dynamics of bank's development with regard to the increase in capital, deposit and loan potential;
- 5) the manner of risk management in a bank.

Minutes from the meeting referred to in paragraph 1 above shall be held and signed by one representative of the Central Bank and one representative of potential founders.

### **Deciding on Application**

### **Article 23**

The Central Bank shall decide on the application referred to in article 21 of this Law no later than 180 days after the bank license application has been submitted.

The Central Bank shall issue a decision on application referred to in article 21 of this Law.

The decision referred to in paragraph 2 above shall be final.

The administrative dispute may be carried out against the decision specified in paragraph 2 above.

### **Denial of Application**

#### **Article 24**

The Central Bank shall deny the application referred to in article 21 of this Law if:

- 1) prescribed or requested documentation and data has not been submitted by founders, or the submitted documentation contains untrue or inaccurate data;
- 2) proposed bank bylaws is not in compliance with the law;
- 3) the proposed members of the board of directors do not meet the conditions to be elected as members of the board of directors as determined by this Law;
- 4) one or more founders owning more than 5% of participation in bank's capital or voting rights do not meet the conditions for acquisition of qualified participation in a bank as specified by this Law;
- 5) the bank business plan is not qualitatively prepared using appropriate methodologies, the contradiction between particular elements of business plan is evident, or projected balance sheet and income statement of a bank or cash flows are not based on realistic assumptions;
- 6) the ownership structure of a bank disables effective bank supervision;
- 7) the law and other regulations in the country of bank founders disable supervision on consolidated basis.

### **Allowable Activities of a Bank**

#### **Article 25**

The operations that a bank may perform shall be specified in the decision on granting a license.

Besides operations specified in the decision on granting the license, the bank may also perform the following operations with prior approval of the Central Bank:

- 1) operations referred to in article 6 paragraph 2, which are not determined in the decision on granting a license for a bank;
- 2) operations referred to in article 6 paragraph 3 of this Law.

The Central Bank shall deny granting of approval for performing the operations referred to in paragraph 2 above if:

- 1) the bank does not have sufficient technical and staffing capability to perform operations for which it requests the approval;
- 2) the performance of such operations is not justified from impact on the risk profile of the bank standpoint.

## **Registration**

### **Article 26**

The application for registration of a bank in the CRCC shall be submitted within 60 days after the delivery of the decision on granting the bank license.

The bank shall start to perform its operations no later than 60 days as of the day of its registration in the CRCC.

## **2. Granting Approvals**

### **Deadline for Deciding**

#### **Article 27**

The Central Bank shall reach its decision on the approvals referred to in this law within 60 days as of the day the application for obtaining approval has been orderly submitted, unless other timeframes has been stipulated by this law.

The Central Bank shall prescribe in its regulation the documentation that is submitted together with the application for obtaining approval referred to in paragraph 1 above, and which is not prescribed in accordance with this Law.

### **Resolution upon the Request**

#### **Article 28**

The Central Bank shall decide upon granting, denying and revoking of the approvals in accordance with this law, by way of resolutions.

The resolutions referred to in paragraph 1 above shall be final.

The administrative dispute may be carried out against the resolutions specified in paragraph 1 above.

## **III. CORPORATE GOVERNANCE**

## **General Meeting**

### **Article 29**

A bank's General Meeting shall:

- 1) enact the bank's bylaws;
- 2) review the annual report on the bank's operations with an independent external auditor's report;
- 3) elect and recall members of the bank's Board of Directors;
- 4) decide on distribution of profits;
- 5) decide on capital increases and decreases;
- 6) decide on restructuring and closing of the bank;
- 7) establish the amount of compensation for members of the Board of Directors;
- 8) decide on other issues as specified in the bylaws.

## **Board of Directors**

### **Article 30**

The Board of Directors shall govern a bank and oversee its business activities.

Foreign citizens may be elected members of the Board of Directors.

The Board of Directors shall have at least five members, provided that at least two members of the Board of Directors must be persons independent from the Bank.

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

- 1) not holding a qualified participation in the bank or in a superior company in the banking group to which the bank belongs;
- 2) that has not been employed in that bank or its subsidiary in the last three years.

Employees of the bank may not be members of the Board of Directors.

By way of exception from paragraph 5 of this Article, executive directors of the bank may be members of the Board of Directors, provided that the total number of the executive directors in the Board of Directors may not exceed one third of the total number of the members of the Board of Directors.

Chairman of the Board of Directors shall be elected by the Board of Directors from among their members.

Executive director cannot be elected chairman of the Board of Directors.

The chairman and members of the Board of Directors shall be elected for the period of four years and they may be re-elected.

A member of the Board of Directors may only be a person holding a university degree, of recognized personal reputation and professional qualifications, professional ability and experience in managing a bank by applying the rules of prudent business, unless otherwise restricted by provisions of Article 31 of this law.

The Central Bank shall prescribe detailed requirements under paragraph 10 of this Article.

## **Requirements for the Appointment of Board Members**

### **Article 31**

A member of the Board of Director may not be:

- 1) a person who controls or is a member of the board of directors or an executive director of a bank or financial institution, a legal person controlled by other bank of financial institution, or a financial holding;
- 2) a person who is connected with a legal person:
  - in which the bank has qualified participation, or
  - which is subordinate member of a banking group to which the bank belongs;
- 3) a person who has been employed in the Central Bank for the last 12 months and had the insight in the data on banks' operations considered as a secret which understanding could lead to the competitive advantage in respect to other banks;
- 3a) a person who has been the Director General or a member of the Managing Board of the Deposit Protection Fund over the last 12 months;
- 4) a person whose assets has been subject to bankruptcy proceedings or significant enforcement has been conducted over personal property;
- 5) a person who had been on leading positions in a bank or other business organization at the time when such organization was subject to bankruptcy or liquidation proceedings, unless the Central Bank establishes that the person was not responsible for such bankruptcy or liquidation;
- 6) a person who had been a member of the Board of Directors or an executive officer in the bank at the time when the interim administration was introduced in a bank;
- 7) a person who has been subject to a safety measure prohibiting further conduct of professional work, business activity or duty, imposed by a competent court;
- 8) a person who has been sentenced for a crime which makes him or her not worthy of performing the function of member of the Board of Directors;
- 9) a person to which the bank has a total exposure exceeding 2% of own funds or a person who is the owner, member of the Board of Directors or a director of a business organization to which the bank has a large exposure.

## **Approval of the Election of Members of the Board of Directors**

### **Article 32**



A member of the Board of Directors may not be elected without prior approval of the Central Bank.

The request for obtaining the Central Bank's approval shall be supported by evidence of the compliance with the requirements referred to in Article 30 above.

The Central Bank shall grant the approval referred to in paragraph 1 above if, on the basis of the documents referred to in paragraph 2 above and other available information, the Central Bank evaluates that the candidate meets the requirements for the appointment as member of the Board of Directors.

The approval referred to in paragraph 1 above, given by the Central Bank, shall be a condition for the registration with the CRCC.

The Central Bank shall revoke the approval referred to in paragraph 1 above if it has been granted on the basis of false information or if there are impediments for the appointment referred to in article 31 above.

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

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

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

## **Responsibilities of the Board of Directors**

### **Article 33**

The Board of Directors shall:

- 1) establish and maintain a risk management system for the risks to which the bank has been exposed in its operations;
- 2) determine the bank's objectives and strategies and ensure their implementation;
- 3) determine risk management policies and procedures for all the risks to which the bank has been exposed in its operations;
- 4) define the bank's annual plan, including financial plan as well;
- 5) adopt the bank's annual financial statements together with external auditor's report and reports on the bank's operations during the year;
- 6) approve transactions that may significantly affect the structure of the bank's balance sheet and risks taken in its operations, in accordance with the risk management policies and procedures;
- 7) periodically consider and evaluate exemptions from the established policies and procedures;
- 8) adopt the internal audit annual plan and internal audit reports;
- 9) establish bases for the functioning of internal control systems adequate to the size, complexity of operations and the level of assumed risk;
- 10) review the Central Bank's examination reports;

- 11) elect executive directors and other persons responsible for managing the bank's operations in individual areas and set their salaries;
- 12) elect the bank's external auditor;
- 13) appoint members of the audit committee;
- 14) review annual report of the audit committee;
- 15) prepare proposals of decisions to be approved by the General Meeting and take care of their implementation;
- 16) enact the bank's general acts, except those enacted by the General Meeting;
- 17) enact ethical code of conduct for bank employees;
- 18) approve the introduction of new products and services in the bank's operations;
- 19) convene meetings of the General Meeting;
- 20) perform other duties as specified in the law and the bank bylaws.

## **Responsibilities of the Board of Directors**

### **Article 34**

The Board of Directors shall:

- 1) establish the risk management system for all the risks to which the bank has been exposed in its operations;
- 2) ensure that any operation of the bank is in accordance with the law, the Central Bank's regulations and the bank's internal policies and procedures, as well as that any measures imposed by the Central Bank have been complied with;
- 3) be responsible for the operational safety and financial stability of the bank;
- 4) be responsible for the accuracy of all bank operating reports that are published and submitted to the General Meeting, the Central Bank and competent authorities.

## **Meetings of the Board of Directors**

### **Article 35**

Meetings of the Board of Directors shall be held as needed, but at least once a month.

The Board of Directors may decide if a meeting is attended by majority members of the Board.

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

In case of a conflict of interest, a member of the Board of Directors shall inform the Board thereof and shall not have a right to vote on the matters that involve such conflict of interest.

The manner of work and other matters related to the work of the Board of Directors shall be specified in more details by the Board's Rules of Procedure.

The Central Bank may require an extraordinary meeting of the Board of Directors to be held to jointly consider individual issues relevant to the bank's safe and sound operations.

## **Executive Directors**

### **Article 36**

A bank shall have at least two executive directors, of which one shall be the Chief Executive Officer.

Only a person holding a university degree, of recognized personal reputation and professional qualifications, professional ability and experience at managerial positions in a bank or in the financial sector may be elected executive director, provided that there are no obstacles set out in Article 31 hereof to his/her election.

Foreign citizens may be elected executive directors, and at least one executive director must speak the language that is in official use in Montenegro.

Executive directors shall be full-time employees of the bank.

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

### **Article 37**

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

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

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

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

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

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

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

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

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

### **Article 38**

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

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

The Chief Executive Officer must provide the signature of at least one more executive director when undertaking legal actions for and on behalf of the bank.

Executive directors shall, in particular:

- 1) implement the specified strategies of the bank;
- 2) implement decisions of the bank's General Meeting and Board of Directors;
- 3) decide on business transactions in line with the bank's internal acts;
- 4) ensure that bank employees are familiar with the regulations and other acts of the bank regulating their labour obligations;
- 5) ensure security and regular monitoring of the IT system of the bank;
- 6) inform the Board of Directors on actions that are not in accordance with the regulations and other acts of the bank;
- 7) report to the Board of Directors in accordance with the bank's acts;
- 8) immediately inform the Board of Directors and the Central Bank on any deterioration or potential deterioration of the financial condition of the bank, as well as on other facts that may significantly impact the financial condition of the bank;
- 9) decide on other issues that are not under the competence of the bank's General Meeting and Board of Directors.

Executive directors shall be responsible for managing all risks the bank is exposed to in its operations and performing other obligations in accordance with the law and the bank bylaw.

## **Audit Committee**

### **Article 39**

The Audit Committee shall consist of at least three members, the majority of which are not connected to the bank and have experience on the positions in the area of finance.

Bank executive directors shall not be elected as members of the Audit Committee.

The Audit Committee shall:

- 1) analyse and monitor the functioning of the system for managing risks the bank is exposed to in its operations and proposes the improvement of risk management strategies, policies and procedures;
- 2) analyze and monitor the functioning of internal control systems;
- 3) discuss internal audit programs and reports and give opinion on internal audit findings;
- 4) monitor the implementation of internal audit recommendations;
- 5) analyse financial reports of the bank prior to its submission to the Board of Directors;
- 6) evaluate the quality of reports and information before they are submitted to the Board of Directors, including but not limited to:
  - application of accounting policies and procedures;
  - decisions requiring high level of evaluation;
  - impact of unusual transactions on financial reports;
  - quality of policies of data gathering;
  - changes occurred as consequence of completed audits;
  - assumptions on permanency of operations;
  - compliance with International Financial Reporting Standards and regulations;
- 7) give opinion on the selection of external auditor and propose an audit fee.

The Audit Committee shall draw up proposals, opinions and standpoints on the issues within their scope of work that are to be decided by the Board of Directors.

The Audit Committee shall submit annual reports on its work to the Board of Directors.

## **Bodies of the Board of Directors**

### **Article 40**

The Board of Directors may form standing or temporary bodies for the supervision over the risk management in individual areas of the bank's operations, for the proposal of the amount of salaries, for the proposal of election of executive directors and certain categories of employees with special powers and responsibilities, and the like.

The composition and scope of work of the bodies referred to in paragraph 1 above shall be specified in more details in the bank's regulations, in accordance with the law and banking regulations.

## **Compliance Monitoring Function**

### **Article 41**

The bank shall designate in its organizational structure, subject to its size and complexity of its operations, an organizational unit or persons responsible for monitoring the bank's

compliance with the law, regulations governing the prevention of money laundering and terrorism financing, the Central Bank's regulations and the bank's internal rules and policies.

Employees of the organizational unit or persons referred to in paragraph 1 above may not perform any other duties in the bank, which performance may lead to the conflict of interest.

The manager of the organizational unit or persons referred to in paragraph 1 above shall:

- 1) inform the Board of Directors immediately on any irregularities found in connection with the compliance of the bank's operations;
- 2) periodically, but at least annually, report to the Board of Directors on the bank's compliance.

#### **IV. ORGANIZATIONAL PARTS AND RESTRUCTURING**

##### **Founding an Organizational Part and a Dependent Legal Person**

###### **Article 42**

A bank may found branches, representative offices and other organizational parts (hereinafter: the bank parts) in Montenegro and in foreign countries, which do not have the status of a legal person, and dependent legal persons, under the provisions of this Law.

Bank dependent legal persons and bank parts in foreign countries shall be founded with a prior approval of the Central Bank.

##### **Bank Restructuring**

###### **Article 43**

A bank may be restructured through:

- 1) bank amalgamation that may be performed through:
  - the creation of a new bank;
  - merger into other bank;
- 2) de-merger into two or more banks
- 3) division by forming one or more banks.

##### **Amalgamation of Banks Resulting in a New Bank**

###### **Article 44**

Banks that intend to perform restructuring through amalgamation resulting in the establishment of a new bank, shall submit to the Central Bank a request for granting the

license for a bank that will be established through amalgamation, supported by the following:

- 1) decisions of banks' Shareholder's Assemblies on amalgamation;
- 2) a founding charter of the bank resulting from amalgamation;
- 3) proposal of bylaws of the bank resulting from amalgamation;
- 4) names and data on qualifications and work experience of the proposed members of the board of directors and executive directors of the bank resulting from amalgamation;
- 5) the following three-year business plan of the bank resulting from amalgamation;
- 6) consolidated balance sheet and income statement of banks subject to amalgamation, using information from the month that precedes submission of the request referred to in this paragraph;
- 7) information on technical and staffing capabilities of the bank resulting from amalgamation;
- 8) documents elaborating conditions and reasons for the amalgamation;
- 9) approval of the Central Bank for performance of concentration at financial market.

The Central Bank may require the banks subject to amalgamation to submit other data and documents.

The Central Bank shall reach a decision on the request referred to in paragraph 2 above within 120 days as of date of the receipt of the orderly submitted request.

The provisions of this Law referring to granting a bank license shall accordingly apply to granting a license for a bank resulting from amalgamation.

## **Merger of a Bank**

### **Article 45**

In the case of restructuring performed through merging a bank to another bank, a bank to which other bank is merged (hereinafter: the absorbing bank) shall submit a request to the Central Bank for granting the approval for merger, supported by the following:

- 1) decision of the General Meeting of the merged bank on merger to the absorbing bank;
- 2) decision of the General Meeting of the absorbing bank on acceptance of merger;
- 3) documents elaborating conditions and reasons for merger;
- 4) consolidated balance sheet and income statement of merged bank and absorbing bank using information from the month that precedes submission of the request above;
- 5) decision on issue of shares resulting from bank merger;
- 6) approval of the Central Bank for performance of concentration at financial market.

The Central Bank may require the bank to which other bank is merged to submit other data and documents.

The Central Bank shall grant the approval referred to in paragraph 1 above if:

- 1) the merger does not jeopardize financial condition of the absorbing bank;

- 2) the absorbing bank has the system of organization, management, decision-making and information technology which enables it to integrate completely the merged bank into its system in the manner that does not jeopardize its functioning;
- 3) the merger is economically viable.

The Central Bank shall reach a decision on request referred to in paragraph 1 above within 90 days as of the day of the receipt of orderly submitted request.

## **Bank De-Merger**

### **Article 46**

A bank that intends to perform restructure through de-merger shall submit a request to the Central Bank for granting the licenses for banks that will be founded through de-merger, supported by the following:

- 1) decision of Shareholder's Assemblies of banks on de-merger;
- 2) founding charter of banks resulting from de-merger;
- 3) proposed bylaws of banks resulting from de-merger;
- 4) names and data on qualifications and work experience of the proposed members of the board of directors and executive directors of the banks resulting from de-merger;
- 5) the following three year business plan of the banks resulting from de-merger;
- 6) documents elaborating conditions and reasons for the bank de-merger;
- 7) information on technical and staffing capabilities of the banks resulting from de-merger;

The Central Bank shall reach a decision on request referred to in paragraph 1 above within 90 days as of the day of the receipt of orderly submitted request.

The provisions of this Law referring to granting a bank license shall accordingly apply to granting a license for banks resulting from de-merger.

## **Division by forming one or more banks**

### **Article 46a**

A bank which is in the process of restructuring through division by forming one or more banks, shall submit to the Central Bank also a request for issuing approvals for the division of a part of its assets and liabilities to one or more banks which are being formed (hereinafter: a new bank) and request for issuing the licence for a new bank, supplemented with:

- 1) A decision of the bank's General Meeting on the division of a part of its assets and liabilities when forming a new bank;
- 2) Balance sheet and income statement of the bank which divides a part of its assets and liabilities when forming the new bank, according to the data from the month that precedes the submission of the request from this paragraph;
- 3) Act of incorporation of the new bank;
- 4) Suggestion of the Articles of association of the new bank;



- 5) Information on names, qualifications and working experience of the proposed members of the Board of Directors and Executive Directors of the new bank;
- 6) Business plan of the new bank for the next three years;
- 7) Conditions and reasons for the division of a part of the assets and liabilities when forming a new bank;
- 8) Information on staffing and technical capability of the new bank.

The Central Bank shall decide upon the request referred to in paragraph 1 of this Article within 90 days from the reception of the request and prescribed documentation.

The provisions of this Law governing the issuing of licences for new banks shall apply to the issuing of a licence to a new bank.

## **V. BANK PERFORMANCE**

### **1. Risk Management in Bank**

#### **Obligation for Risk Management**

##### **Article 47**

A bank shall continuously manage all risks it has been exposed to in its operations in accordance with the law, regulations of the Central Bank and best risk management practices in the bank.

The Central Bank may issue guidelines for the application of best risk management practices in the banks.

#### **Establishing Risk Management System in Bank**

##### **Article 48**

A bank shall establish risk management system that provides the following:

- 1) identification of current risks and the risks that may arise from new business products or activities;
- 2) measurement of risks through establishing the mechanisms and the procedures for the accurate and timely assessment of risks;
- 3) monitoring and analyzing of risks;
- 4) control of risks by limiting and minimizing risks.

Risk management system in a bank must correspond to the size of a bank, complexity of products and services in its operations and the level of assumed risk.

#### **Elements of Risk Management System**

##### **Article 49**

Risk management system shall include, as a minimum, the following:

- 1) defined appropriate strategy for risk management;
- 2) adopted policies and developed processes for risk management;
- 3) clearly defined powers and responsibilities for risk management;
- 4) efficient and safe information technology system;
- 5) contingency plans;
- 6) stress testing.

## **Strategy for Risk Management**

### **Article 50**

A strategy for management of risks the bank has been exposed to in its operations shall include, as a minimum, the following:

- 1) objectives, which the bank wants to accomplish with strategy;
- 2) selection of business activities, products and services that will be dominant in the bank's performance;
- 3) expected relation of returns and risks for parts of bank portfolios and total assets;
- 4) general criteria and methods which are relevant for creation of frameworks for risk management.

Strategy for management of risks the bank has been exposed to in its operations shall be adopted for period not less than three years.

The bank shall periodically, and at least annually, review adequacy of the risk management strategy.

## **Risk Management Policies**

### **Article 51**

Risk management policies must provide accomplishment of risk management strategy on a daily basis.

Risk management policies shall include, as a minimum, the following:

- 1) areas in which the identification of risk and methods for risk identification is performed;
- 2) methods, indicators and timeframes for measurement of individual risks;
- 3) limits and control procedures of individual exposures to risks and overall exposure to individual risks that correspond to the size of a bank, complexity of products and services in its operations and the level of assumed risk;
- 4) the manner and the dynamics of reporting and informing the board of directors and bank management on management of individual risks;
- 5) the manner of connection of activities of individual risk management in bank with activities that are performed in dependent legal persons and other entities subject to supervision on consolidated basis and the manner for incorporation of these activities in the structure of risk management on consolidated basis;

6) methods and timeframes for back-testing of quality of risks management.

A bank shall periodically, and at least annually, review adequacy of the adopted policies and processes for management of individual risks.

The Central Bank may require the bank to document processes for management of individual risks.

## **Powers and Responsibilities in Risk Management Process**

### **Article 52**

A bank shall clearly define, in its rules and procedures, powers and responsibilities for risk management in bank for all levels of work process and decision-making.

A bank shall provide segregation of risk taking from risk identification, measurement, monitoring and control.

The Central Bank may prescribe minimum requirements for the information system functioning.

A bank shall designate, within its organizational structure, an organizational part or persons, depending on the size and complexity of the bank's operations, directly responsible for individual risk management on daily basis.

The organizational parts or persons referred to in paragraph 3 above shall provide reports to the bank's board of directors on risk management activities if needed, and at least once a month.

## **Information System of the Bank**

### **Article 53**

A bank shall establish and maintain reliable information system that adequately ensures gathering and processing of information for the following:

- 1) measurement and monitoring of risk exposures on daily basis and in other determined periods;
- 2) monitoring if the established limits for risk management are met;
- 3) creation of reporting formats for bank bodies and other parties included in risk management process.

A bank shall provide preparation of secure electronic backups of information and data on daily basis and store them on a secure location.

The Central Bank may prescribe the minimum requirements for the information system functioning.

## **Stress Testing**

### **Article 54**

A bank shall also conduct, using several types of stress scenarios, testing of the bank's sensitivity to individual types of risks on aggregate basis.

Stress scenario shall include, in the context of this law, assumptions on extreme changes of market and other factors, which may have significant material impact on bank's performance.

The minimum standards for testing the bank's sensitivity to risks, by using stress scenarios, shall be set forth in a Central Bank regulation.

## **Types of Risks**

### **Article 55**

The risks the bank is exposed to in its operations and for which it must establish risk management system are the following:

- 1) liquidity risk,
- 2) credit risk,
- 3) market risks,
- 4) operational risk,
- 5) interest rate risk not resulting from bank trading activities,
- 6) country risk,
- 7) other risks (reputation risk, compliance risk, etc.)

## **Liquidity Risk**

### **Article 56**

Liquidity risk shall be the risk that the bank will not be able to provide a sufficient amount of cash to meet its obligations as they become due, or risk that the bank may obtain cash with significant expenses to meet the matured obligations.

The bank shall operate so that it can meet all its obligations in cash as they become due.

The minimum standards for liquidity risk management shall be prescribed by the regulation of the Central Bank.

## **Credit Risk**

### **Article 57**

Credit risk shall be the risk of incurring losses in bank operations due to the debtor's failure to meet its obligations to the bank.

The minimum standards for credit risk management shall be prescribed by the regulation of the Central Bank.

## **Exposure Limits**

### **Article 58**

Total exposure of a bank to one party or group of related parties may not exceed 25% of bank's own funds.

The exposure of a bank to one party or group of related parties, in accordance with the Central Bank regulation, shall be the total amount of all bank claims on loans and other assets, including amount of off balance sheet obligations and uncollected written off assets, decreased by the amount of claims that is secured by qualitative instruments of security of claims.

The exposure of a bank to one party or group of related parties shall be considered as large if it is equal to or larger than 10% of bank's own funds.

The sum of all large exposures of a bank must not exceed 800% of bank's own funds.

The bank shall apply the following limits for the exposures to bank related parties:

- 1) total exposure of a bank to all bank related parties may not exceed the amount of 200% of bank's own funds;
- 2) total exposure to a party that is member of the board of directors, audit committee or executive director, including members of its immediate family may not exceed 2% of bank's own funds;
- 3) total exposure to legal persons that are controlled by persons referred to in item 2 above and/or members of their immediate families may not exceed 10% of bank's own funds;
- 4) total exposure to an employee not referred to in item 1 above may not exceed 1% of bank's own funds;
- 5) total exposure to a shareholder that does not have qualified participation in a bank, including exposure to legal persons that are controlled by such shareholder may not exceed 10% of bank's own funds;
- 6) sum of the total exposure of a bank to the following parties may not exceed 20% of bank's own funds:
  - shareholders that have qualified participation in a bank, including exposure to legal persons that are controlled by such shareholders;
  - legal persons controlled by a party that controls the bank, and
  - legal persons controlled by the bank.

The Central Bank may also prescribe other exposure limits.

Bank shall establish and keep central register of exposures, which includes information on total exposure of a bank to a party, group of related parties and parties related with a bank.

## **Classification of Assets and Capital Requirements**

### **Article 59**

A bank shall classify all assets items on the basis of the amount of credit risk and evaluate the amount of losses that result from credit risk.

The classification of assets based on which the bank is exposed to credit risk shall depend on the evaluation of the following:

- 1) credit capacity of the debtor, taking into account:
  - current financial condition of the debtor,
  - future primary sources of funds for meeting debtor's obligations,
- 2) the quality of instruments of security of bank's claims (hereinafter referred to as the collateral), taking into account the following:
  - net value of collateral,
  - market conditions for foreclosure of collateral in case of debtor's failure to meet the obligations;
- 3) regularity of debtor's fulfillment of the prior obligations;
- 4) general economic conditions;
- 5) other relevant information relevant for the assessment of credit risk exposure.

Bank shall measure exposure to credit risk and determine capital required for all assets and off balance sheet items on the basis of which the bank is exposed to credit risk.

Individual exposures to credit risk may be grouped if they have mutual risk characteristics.

Bank shall establish capital required for each individual exposure to credit risk based on the risk assessment and classification of exposure based on that assessment.

When calculating capital requirements the exposures to credit risk shall be weighted by appropriate weight for that type of risk.

Methodology and criteria for classification of individual exposures in risk categories and calculation of total risk weighted assets for credit risk shall be prescribed by the Central Bank regulation.

## **The Use of External Rating Agencies and Institutions**

### **Article 60**

A bank may use, with the approval of the Central Bank, external ratings of the debtor established by independent specialized institutions and agencies (hereinafter referred to as the external institutions and export credit agencies) for the classification of individual

exposures in risk categories applying the methodology specified in article 59 paragraph 7 of this Law.

The Central Bank shall grant the approval for the use of rating determined by the external institution or export credit agency if the criteria of fairness of assessment of the methodology, institutional independence, transparency of findings and access to information are met, as well as adequacy of resources and credibility of external institution or export credit agency.

The conditions for granting the approval referred to in paragraph 1 above shall be prescribed in more details by the Central Bank regulation.

### **Internal Ratings Based Approach**

#### **Article 61**

Banks may use, with the approval of the Central Bank, internal ratings based approach for the calculation of the capital requirements for credit risk instead of the methodology referred to in article 59 paragraph 7 of this Law.

The conditions under which banks may use internal ratings based approach for the calculation of capital requirements for credit risk shall be prescribed by the regulation of the Central Bank.

### **Market Risks**

#### **Article 62**

Market risk shall be the probability of incurring losses in bank balance sheet and off-balance sheet financial instruments arising from changes in interest rates, foreign exchange rates, prices, indices and/or other market factors impacting the value of financial instruments, as well as the risks related with the marketability of financial instruments.

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The minimum standards for market risk management shall be prescribed by the regulation of the Central Bank.

### **Capital Requirements for Market Risks**

#### **Article 63**

Bank shall measure its exposure to market risks and determine total capital against such risks according to the standardized methodology prescribed by the Central Bank.

Bank may use, with the approval of the Central Bank, internal models for the calculation of the capital requirement for market risks instead of the methodology referred to in

paragraph 1 above or in combination with the methodology referred to in paragraph 1 under the conditions prescribed by the regulation of the Central Bank.

## **Operational Risk**

### **Article 64**

Operational risk shall be the risk of incurring losses in the bank's operation, as a result of inadequate internal systems, processes and controls, including also inadequate information technology due to outsourcing, weaknesses and errors in performance, illegal actions and external events that may expose a bank to loss, including legal risk as well.

In case of outsourcing provided through an outsourcing agreement or otherwise, a bank shall enable the Central Bank, in the process of operational risk examination, review of quality of the services rendered, including the direct review with such service provider.

The minimum standards for operational risk management shall be prescribed by the regulation of the Central Bank.

## **Capital Requirements for Operational Risk**

### **Article 65**

A bank shall measure its exposure to operational risk and calculate capital requirements for operational risk in accordance with the methodologies prescribed by the Central Bank.

## **Country Risk**

### **Article 66**

Country risk shall represent the possibility of incurring losses by a bank, due to inability to collect receivables from the entities outside of Montenegro, which results from political, social and economical environment of the country in which debtor has its head office or residence (hereinafter referred to as: debtor's country).

Country risk shall include:

- 1) political and economical risk, which means the probability of incurring losses arising from inability to collect bank's receivables due to limits established by rules and procedures of government and other entities of the debtor's country, as well as from economic and systemic conditions in the country;
- 2) transfer risk, which means the probability of incurring losses due to inability to collect receivables in currency other than the official currency of the debtor's country, arising from limits of payment of obligations to creditors from other countries in particular currency, established by rules and procedures of government and other entities of the debtor's country.



A bank shall measure its exposure to country risk and determine total capital requirements for country risk in accordance with the methodologies prescribed by the Central Bank.

### **Interest Rate Risk Not Resulting From Bank Trading Activities**

#### **Article 67**

Interest rate risk not resulting from bank trading activities shall be the risk of incurring losses in bank's operations due to the interest rate changes for balance sheet and off balance sheet items that are not intended for trade.

A bank shall identify assets, which are not intended for trade and record them in its business books separately from the assets intended for trade in accordance with International Accounting Standards.

The minimum standards for management of interest rate risk not resulting from bank trading activities shall be prescribed by the regulation of the Central Bank.

## **2. Capital Adequacy**

### **Determining Capital Adequacy**

#### **Article 68**

A bank shall determine capital adequacy on the basis of own funds as absolute, and solvency ratio as relative indicators of bank's capital adequacy.

### **Bank Own Funds**

#### **Article 69**

Own funds of a bank shall represent the sum of paid in share capital and other core and supplementary elements of own funds reduced by deductible items.

The Central Bank shall prescribe core and supplementary elements of own funds and deductible items.

Bank own funds must always be at the level equal to or higher than:

- 1) minimum financial portion of the founding capital specified in this Law; and
- 2) Total amount of capital required for all risks.

### **Solvency Ratio**

#### **Article 70**

A bank shall maintain the level of solvency ratio and other capital adequacy ratios as a minimum at the level determined by this Law and Central Bank regulation.

The solvency ratio maintained by a bank on a solo or consolidated basis shall not be less than 10% or less than the level prescribed by article 71 of this Law.

The solvency ratio shall be the percentage ratio of own funds to the sum of:

- 1) total amount of risk weighted assets for credit risk, calculated in accordance with article 59 of this Law;
- 2) risk weighted assets for market risks, calculated as the amount of capital requirement for market risks determined in accordance with article 63 of this Law multiplied by 10;
- 3) risk weighted assets for operational risk calculated as the amount of capital requirement determined in accordance with article 65 of this Law multiplied by 10; and
- 4) risk weighted assets for other risks.

The Central Bank shall prescribe in its regulation other capital adequacy indicators and the method for their calculation.

### **Additional Requirements for Capital Adequacy**

#### **Article 71**

A bank shall maintain higher level of own funds, higher solvency ratio and/or higher other capital adequacy ratios than the prescribed, if:

- 1) Risk management in a bank is not adequate in relation to the level of assumed risk, the size of the bank and complexity of the products and services it offers;
- 2) The volume and/or composition of risk assumed are such as it is not effectively covered by the existing level of own funds, particularly when there is:
  - Significant exposure to the risks due to the concentrations of loans and other assets or high volume of problem assets;
  - Risks arising from new activities;
  - Significant interest rate risk not resulting from bank trading activities;
  - Insufficient level of liquid funds and/or deficient liquidity risk management;
  - Significant exposure due to reputation risk;
- 3) The existence of circumstances that could lead to material losses not provided for by the existing level of own funds;
- 4) Bank shareholders' ability to provide support to a bank is unsatisfactory;
- 5) The bank's capital levels and assumed risks are significantly unfavorable when measured against comparable banks;
- 6) The bank is receiving special supervisory attention by the Central Bank due to its risk profile;
- 7) The bank has, or is expected to have, losses resulting in capital inadequacy;
- 8) The bank's assets and/or level of risk is growing rapidly;
- 9) The bank may be adversely affected by the activities of its parent, and other members of banking group.

### **3. Internal Controls System and Internal Audit**

#### **Internal Controls System**

##### **Article 72**

The bank shall establish, maintain and enhance effective internal controls system, which corresponds to the size of a bank and complexity of its business activities and which, as a minimum, includes clear principles of delegation of authorities and responsibilities, delegation of duties, accounting of assets and liabilities, compliance of accounting data, insurance of bank's funds and provision of independent internal audit and compliance function for implementation and compliance with positive laws and regulations.

The basics of the internal controls system in banks shall be prescribed by the regulation of the Central Bank.

#### **Internal Audit**

##### **Article 73**

A bank shall organize the internal audit as an independent function in the bank, which shall provide:

- 1) evaluation of adequacy and effectiveness of the internal control system;
- 2) identification of key risk areas in the bank's operations and evaluation of the application and effectiveness of the procedures and methodologies for risk assessment;
- 3) evaluation of quality and reliability of the information system;
- 4) review of accuracy, timeliness and reliability of accounting and financial statements and records;
- 5) evaluation of compliance with the amount of capital and risk in bank's operations;
- 6) the testing of transactions and the functioning of specific internal control procedures;
- 7) evaluation of monitoring of compliance of the bank's rules and operations with the law, regulations and the defined policies and procedures;
- 8) the giving of appropriate recommendations for the removal of disclosed irregularities and improvement of current procedures and manner of work.

#### **Internal Auditor**

##### **Article 74**

Internal auditor or special organizational part of a bank shall perform the internal audit function depending on the volume and complexity of bank operations.

Exceptionally, a bank may engage a party that is not employed by the bank for the performance of internal audit with the prior approval of the Central Bank.

A person that performs internal audit operations may not perform other operations in the bank.

Internal auditor or a person that manages organizational part for internal audit must have at least a university degree and at least three-year work experience in the accounting or auditing operations in the financial sector.

Restrictions referred to in article 31 of this Law, which are prescribed for the appointment of the members of Board of Directors, shall be applied to the election of internal auditor.

## **Internal Audit Plan**

### **Article 75**

A bank shall adopt annual internal audit plans based on risk assessment, which as a minimum define the following:

- 1) internal audit goals and objectives;
- 2) business areas in which the risks are particularly shown;
- 3) business areas that will be subject to the audit;
- 4) internal audit scope and details for particular business areas of the bank;
- 5) audit procedures for the most important areas of bank activities;
- 6) timeframes for the execution of projected activities;
- 7) dynamics of reporting on internal audit findings.

## **Internal Audit Organization Standards**

### **Article 76**

The bank shall organize the internal audit in such a way as to provide permanence in the performance of internal audit, audit access to all operations in the bank, independence, fairness and impartiality in the work of internal auditor, adequate organization in the performance of internal audit function and timely reporting of internal audit findings.

The Central Bank shall prescribe in more details the principles of organizing and functioning of internal audit in banks.

## **4. Limits and Restrictions in Bank Operations**

### **Restriction of Violation of Competition**

#### **Article 77**

A bank shall not conduct undesirable concentration at banking market.

Undesirable concentration at banking market, in the context of this Law, shall be bank restructuring through amalgamation or other actions, if such restructuring or actions materially prevent, limit or violate competition at banking market.

Undesirable concentration shall be determined through the application of the following criteria:

- 1) share of total balance sheet assets of individual bank in total balance sheet assets of all banks in Montenegro;
- 2) share of bank assets of in total assets of banks in Montenegro;
- 3) share of a bank in market coverage with individual products and services;
- 4) the concentration of bank's credit activities to certain target groups;
- 5) other criteria important for determining undesirable concentration at the financial market.

A bank shall submit the request to the Central Bank for the approval of the accomplishment of concentration at market prior to the submission of the request to the Central Bank for approval of restructuring through amalgamation of banks.

The approval for accomplishment of the concentration at financial market shall be the precondition for submission of the request for approval of bank restructuring through amalgamations.

## **Operations with Bank Related Parties**

### **Article 78**

When the bank provides or uses the services of bank related parties, it shall not provide them with services under more favorable conditions than the conditions under which it provides such services to other parties, or it shall not use the services of bank related parties under the conditions which are less favorable than the conditions under which other parties would provide such services to a bank.

A bank shall establish procedures to identify and record on a regular basis all bank related parties and all operations, activities or transactions with bank related parties.

Members of Board of Directors, executive directors and other employees of the bank cannot participate in the decision-making process in relation to the providing or using of the services of parties related to them.

The Central Bank shall, in its regulation, prescribe in more details operations with bank related parties.

## **Purchase of Elements of Own Funds of a Bank**

### **Article 79**

Purchase of elements of own funds of a bank with funds which are directly or indirectly obtained from loans or other legal operations signed with that bank shall be null and void.

## **Acquisition of Elements of Own Funds of Bank**

### **Article 80**

Total amount of own shares and other elements of own funds acquired by the bank may not exceed 5% of the bank's own funds.

The bank shall alienate its own shares acquired within six months after the day of their acquisition.

If the bank fails to do that in the timeframe prescribed in paragraph 2 above, it shall cancel such shares.

## **Restriction of Taking as Pledge Bank's Own Shares**

### **Article 81**

A bank must not take as pledge its own shares or other elements of own shares of that bank.

## **Acquiring Real Estates and Fixed Assets**

### **Article 82**

Investments of a bank in real estates and fixed assets shall not exceed the level which provides required technical qualification of a bank for carrying out business activities.

The minimum standards for bank investments in real estates and fixed assets shall be prescribed by the Central Bank regulation.

## **Restrictions and Limitations of Payment of Dividends**

### **Article 83**

A bank may perform payment of dividends in financial amount above the amount of net profit for the year in which payment of dividends is performed only with the prior approval of the Central Bank.

The Central Bank shall deny the approval referred to in paragraph 1 above if the condition of the bank is such that payment of dividends would pose adverse impact on capital adequacy or financial condition of the bank.

The Central Bank may restrict or limit payment of dividends to shareholders or interest on other elements of own funds, if payment of dividends jeopardizes or would jeopardize capital adequacy, liquidity or bank's operations.

## **5. Banking Secret**

### **Definition of Banking Secret**

#### **Article 84**

The banking secret shall be:

- 1) information about the account holders and their account numbers opened in a bank;
- 2) information on individual deposit accounts and transactions at the individual accounts of legal persons and natural persons opened in a bank;
- 3) other information on a client which the bank has on the basis of providing services to bank's client.

The banking secret shall represent business secret.

### **Liability of Keeping Banking Secret**

#### **Article 85**

Members of the Board of Directors, shareholders, all bank employees and other persons that, during their operations with the bank or on behalf of the bank, have obtained information and data established by this law as banking secret, shall be obliged to keep those information and data while working in the bank and after separation from the bank and they may not use them to their personal advantage, nor reveal them any third parties.

Notwithstanding paragraph 1 of this article,

- 1) the information that represents banking secret shall be disclosed to the following institutions:
  - the Central Bank,
  - to the competent judicial authority;
  - other parties, based on explicit written approval of a client.
- 2) The information in accordance with the law governing prevention of money laundering and terrorism financing may be disclosed to the competent authority for prevention of money laundering and terrorism financing;
- 3) The information pursuant to the law governing deposit protection may be disclosed to the Deposit Protection Fund;
- 4) the information on the account number of a legal person and a natural person performing the registered activity may be disclosed to the taxation authority, as well as the creditor of the bank's client who presents the bank with an executive court decision or another executive document determined by the law;

- 5) The information on credit capacity and credit borrowings of a client with a bank may be disclosed to another bank or a member of a banking group for the purpose of credit risk management.
- 6) Information on a client's borrowing from this bank and regularity of repayment of the loan granted shall be made available to persons having contingent liability toward the bank due to being the loan endorsers, guarantors and the like.

## **Handling Information Representing Banking Secret**

### **Article 86**

Parties that have obtained information that represents banking secret in accordance with article 85 paragraphs 2 and 3 of this law shall use such information exclusively for the purpose for which they have been obtained and shall not make it available to third parties except in cases prescribed by the law.

## **6. Protection of Clients**

### **Liabilities of Informing Client**

#### **Article 87**

A bank shall inform the client, upon his request, on condition of the loan or deposit account and provide him with the access to other information that may be available to the client in accordance with this law.

### **Disclosing General Operating Conditions**

#### **Article 88**

A bank shall post in its business premises on a visible location general operating conditions and their amendments as well.

General operating conditions, in the meaning of this law, shall be each document that contains standard operating conditions that may be applied to all clients of the bank, general conditions that refer to the relationship between the clients and bank, communication between the clients and bank and the general conditions of performing transactions between the clients and the bank.

The client may require from the bank additional explanations and instructions that refer to the implementation of general operating conditions.

## **Calculation and Reporting of Effective Interest Rate**

### **Article 89**



A bank shall calculate and report lending effective interest rate on loans granted and effective deposit rate on deposits taken and inform clients and public on the amount of effective interest rates in the manner specified in the regulation of the Central Bank.

## **Conditioning a Client**

### **Article 90**

A bank may not condition its credit granting by the use of its other services or the services of any of the bank related parties, which are not in relation with the main business.

## **Procedure in Case of Client's Objection**

### **Article 91**

A client that deems that the bank does not meet obligations from the signed contract may submit an objection to the competent organizational unit or other body of the bank authorized for decision making upon clients' objections.

A bank shall respond to the complainant referred to in paragraph 1 of this article in a reasonable timeframe and not later than 30 days as of the day of submission of objection.

## **Banking Ombudsman**

### **Article 92**

A client of a bank or micro-credit financial institution and credit union that is not satisfied by any document, action or omission to act by the bank or micro-credit financial institution and credit union may appeal to the protector of client's rights (hereinafter referred to as the banking ombudsman), as an independent party which participates in out-of-court settlement in resolution of disputed issues between the clients and banks and/or micro-credit financial institutions and credit unions.

The banking ombudsman shall be elected by the Parliament of Montenegro upon the proposal of the board competent for finances.

Banking ombudsman shall be appointed for a five-year term of office and may be re-elected only once.

A party, which is not connected with banks and/or micro-credit financial institutions and credit unions, which has significant experience in the area of banking operations and in which fairness may not be doubted may be elected as banking ombudsman.

The banking ombudsman shall exercise labour rights and labour-related rights in the Central Bank.

The banking ombudsman shall:

- 1) review clients' objections and propose to disputed parties a settlement or other way of completion of a dispute;
- 2) give recommendations to banks and micro-credit financial institutions and credit unions for the improvement of their relationships with clients;
- 3) advise clients with respect to the further conduction of the dispute;
- 4) perform other operations contributing to accomplishment of protecting the rights of clients.

The banking ombudsman shall adhere, in its operations, to the principles of fairness, independence, justice, equity, availability, consistency and informality.

A client of the bank may appeal to the banking ombudsman only if it has previously used all legal possibilities of protection of its rights in the proceedings against the bank and/or micro-credit financial institution and credit union.

The proceedings before the banking ombudsman shall not prevent the client from commencing the lawsuit under the same matter before the competent court.

The Central Bank shall prescribe in more details in its regulations, the conditions that the banking ombudsman should meet, the principles on which the operations of the banking ombudsman are based, the manner of provision of material and technical conditions for its operations, and the procedure of the protection of clients' rights before the banking ombudsman.

## **VI. ACCOUNTING, AUDITING AND REPORTING**

### **1. Accounting**

#### **Maintaining Business Books**

##### **Article 93**

The bank shall maintain business books, draw up accounting statements, evaluate assets and liabilities and prepare financial statements in accordance with this Law, regulations issued on the basis of this Law, International Accounting Standards and International Financial Reporting Standards.

The bank shall maintain business books in accordance with the bank chart of accounts prescribed by the Central Bank.

### **2. External Audit**

## **Obligatory External Audit**

### **Article 94**

The annual financial statements of banks and annual consolidated financial statements of banking groups shall be subject to obligatory external audit.

## **Requirements for External Auditor**

### **Article 95**

An audit of annual financial statements of banks or banking groups shall be performed in accordance with the special regulations governing audit area in Montenegro.

An auditor or the audit firm may be elected to perform the audit of annual financial statements of banks or banking groups, subject to the approval of the Central Bank.

The Central Bank shall deny the approval referred to in paragraph 1 above if:

- 1) the auditor, or a person leading the audit, does not have three years of experience as bank auditor;
- 2) the auditor, the audit firm, or a person hired by the audit firm, is a party related to the bank or member of the banking group;
- 3) the auditor, the audit firm, or a person hired by the audit firm has a direct or indirect financial interest in the bank or member of the banking group deriving from the business relationship with the bank;
- 4) the auditor, the audit firm, or a person hired by the audit firm has provided consulting services to the bank in the audited year;
- 5) the auditor, the audit firm, or a person hired by the audit firm has performed the audit of financial statements of that bank for the last three consecutive years;
- 6) information available to the Central Bank indicates that the auditor or the audit firm have not audited the bank's financial statements in a satisfactory manner.

## **Audit Report**

### **Article 96**

The auditor shall draw up a report and give opinion on:

- 1) compliance of annual financial statements of a bank with this Law, International Financial Reporting Standards and/or International Accounting Standards, the law governing accounting and auditing and other regulations, and whether the financial statements reflect fairly and objectively the bank's financial position, operating results and cash flows for that year in all material matters;
- 2) compliance with the regulations governing risk management in a bank;
- 3) the quality of the information system in a bank.

## **Audit in Case of Bank Restructuring**

### **Article 97**

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

The bank referred to in paragraph 1 above shall supply the Central Bank, within 60 days after registering the status change with the CRCC, the auditor's report on the fairness and objectiveness of its opening balance as on the date of amalgamation, merger, de-merger or division.

### **Auditor's Cooperation with Central Bank and Bank's Board of Directors**

#### **Article 98**

The auditor shall notify the bank's Board of Directors and the Central Bank, as soon as it comes to his or her knowledge, of any fact that represents:

- 1) a violation of the laws and regulations issued by the Central Bank;
- 2) a material change of the financial results shown in non audited annual financial statements;
- 3) a violation of internal procedures or acts of the bank or the banking group to which the bank belongs;
- 4) a circumstance that could lead to material loss to the bank or member of the banking group or could threaten their operations.

### **Notification of Auditor Dismissal**

#### **Article 99**

In case of dismissing or otherwise terminating the employment of the auditor, a bank or a superior company in the banking group shall notify the Central Bank of reasons for the termination of employment of that auditor in writing within not later than 15 days.

### **Audit Report Submission and Disclosure**

#### **Article 100**

The bank shall submit to the Central Bank annual financial statements, with the external auditor's report and opinion, within 150 days after the end of the business year that the report refers to.

The superior company in the banking group shall submit to the Central Bank annual consolidated financial statements of the banking group, with the external auditor's report and opinion, within 180 days after the end of the business year that the report refers to.

The bank, or the superior company in the banking group, shall publish a shorter version of the external auditor's report in at least one of daily newspapers distributed on the territory of the Republic.

### **Hiring Another Auditor**

#### **Article 101**

If the Central Bank finds that the audit of annual financial statements of a bank or banking group has not been conducted in accordance with the current regulations from audit area, the Central Bank shall not accept such audit report and shall require that another auditor repeat the audit at the Central Bank's expense.

### **Special Audit**

#### **Article 102**

The Central Bank may require a special audit of a bank or member of a banking group if their statements are incorrect or they have entered into transactions that may inflict or have inflicted a major damage to the bank.

The Central Bank may appoint an auditor for the purpose of special audit of a bank or member of a banking group.

A bank or member of a banking group shall make available to such auditor all data and documents needed for the audit.

The expenses of the special audit shall be covered by the bank or member of a banking group.

## **3. Reporting**

### **Reporting to Central Bank**

#### **Article 103**

The banks, foreign bank branches and micro credit financial institutions and credit unions and other parties licensed by the Central Bank shall prepare and submit to the Central Bank, in a timely manner, correct reports and other data on their financial condition and operations.

The Central bank shall prescribe in its regulation types, the form and the contents of information and data referred to in paragraph 1 above and the timeframes for their submission to the Central Bank.

## **Public Disclosure**

### **Article 104**

The bank shall disclose qualitative and quantitative data that are relevant to making the public aware of its financial position and performance, and as a minimum, it shall disclose:

- 1) scope of application of internationally accepted documents on risk management in banks and determining capital adequacy;
- 2) level and adequacy of capital;
- 3) exposure to risks in operations and the manner of managing those risks.

Data referred to in paragraph 1 above shall be all data which non disclosure or incorrect disclosure may adversely impact the user of such data when deciding to establish or continue its business relationship with the bank.

The bank shall determine in its acts, depending on the size, scope and complexity of its activities, level of assumed risk and its financial position the following:

- 1) type of data to be disclosed;
- 2) timeframes and method of disclosure.

The Central Bank may prescribe minimum information, manner and minimum timeframes for the disclosure referred to in paragraph 1 above.

## **VII. SUPERVISION OF BANKS AND OTHER PARTIES**

### **Entities Subject to Supervision**

#### **Article 105**

In the performance of its supervisory role, the Central Bank shall supervise:

- 1) banks;
- 2) foreign bank branches;
- 3) micro-credit financial institutions and credit unions and other parties licensed by the Central Bank, and
- 4) parties involved in credit and guarantee operations

#### **1. Supervision of Banks**

##### **Responsibilities for Performing Supervision**

### **Article 106**

The Central Bank shall perform the supervision of the banks' operations, in accordance with the law and internationally accepted standards of efficient bank supervision, with a view to establishing and maintaining a sound banking system and protecting depositors and other creditors of banks, by evaluating their capacity to manage risks and compliance of their operations with the law and the Central Bank's regulations.

The members of the Council of the Central Bank, authorized examiners and other employees in the Central Bank as well as agents, interim administrators, external auditors and any party retained by the Central Bank in connection with the exercise of its functions under this law shall not be held liable for damage that might incur during the performance of duties in accordance with the law and regulations enacted on the basis of the law, unless it has been proved that the particular action has been performed deliberately or by negligence.

The expenses of the court protection of the persons referred to in paragraph 2 above shall be covered by the Central Bank for all disputes arising from the execution of duties referred to in paragraph 1 above.

## **Cooperation with Other Institutions**

### **Article 107**

In performing its supervisory function, the Central Bank shall cooperate with representatives of foreign institutions responsible for bank supervision and with domestic authorities and institutions responsible for the supervision of financial operations, with which it has concluded appropriate cooperation and confidentiality agreements regarding the exchange of information.

The exchange of information referred to in paragraph 1 above shall not be considered as revealing a secret.

## **Communication with Banks**

### **Article 108**

As part of its ongoing supervision process, the Central Bank shall maintain communication with banks, reflecting primarily in:

- 1) consultative meetings, as needed, with the bank management, before starting an onsite examination;
- 2) meetings with the bank board of directors and management after drawing up an onsite examination report;
- 2a) issuing preventive warnings aimed at ensuring the bank's compliance with the applicable regulations;
- 3) presence of authorized representatives of the Central Bank at meetings of the bank board of directors;
- 4) correspondence related to the monitoring of the imposed rehabilitation measures;

- 5) meetings and correspondence related to regulatory issues, best practices of risk management in banking operations and other banking issues.

## **Methods of Supervision**

### **Article 109**

The Central Bank shall perform the supervision referred to in Article 105 above by:

- 1) analyzing the reports, information and data that the banks deliver to the Central Bank in accordance with the law and the Central Bank regulations, information and data that the banks deliver at the Central Bank's request and other data on banks' operations available to the Central Bank;
- 2) direct review of business books, accounting and other documentation in banks and their counterparts in the supervised transactions.

## **Authorized Examiners**

### **Article 110**

The bank supervision shall be performed by employees of the Central Bank, authorized for the conduct of such duties by the Central Bank.

Notwithstanding paragraph 1 above, the Central Bank may also hire non-employees of the Central Bank to perform individual duties in the process of bank supervision.

## **Examination Notice**

### **Article 111**

The Central Bank shall inform a bank of a planned direct – on site examination, as a rule, ten working days before the examination commences.

Notwithstanding paragraph 1 above, if the reports and information held by the Central Bank indicate that there are irregularities that may be relevant to the safe and sound operations of the bank, an on-site examination may start without a prior notice.

## **Bank's Obligations during Examination Procedure**

### **Article 112**

The bank shall enable the Central Bank's authorized examiners a free insight in business books, other business documentation and records, insight in the functioning of information technology and computer database, and it shall provide, upon the request of authorized examiners, copies of business books, other business documentation and records, in hard and/or electronic copy.



## **Examination Report**

### **Article 113**

Reports shall be made on the completed examinations.

The examination reports shall be confidential and shall not be disclosed either partly or wholly without approval of the Central Bank.

## **Procedure for Raising Objections to Examination Report**

### **Article 114**

The bank may submit its objections to the Central Bank within eight working days after the day of receiving the examination report.

The Central Bank may directly check the bank's remarks contained in its objections to the report and, in that case, the Central Bank shall make an addition to the report, and the bank may submit its objections to this addition within three working days after the day of its receipt by the bank.

The Central Bank shall consider the received objections and notify the bank of accepting or non-accepting those within eight days of the day of receiving objections to the examination report or objections to its addition to the examination report.

## **Process of Imposing Measures against Bank**

### **Article 115**

If a bank fails to submit objections to the examination report within the prescribed time frame or fails to provide reasonable grounds for its objections to the report or addition to the report that states irregularities in the bank's operations, the Central Bank shall impose measures for removal of the irregularities against that bank.

The irregularities in a bank's operations, within the meaning of this Law, shall be considered:

- 1) inadequate managing of risks to which the bank is exposed in its operations;
- 2) bank's action and/or failure to act which is not in accordance with the law and regulations passed on the basis of the law;
- 3) applying unsafe or unsound banking practices.

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

Notwithstanding paragraph 1 above, the Central Bank may impose measures for the removal of the found irregularities during an on-site examination, if:

- 1) the bank has been found to violate the law or other regulations to the extent that necessitates urgent removal of those irregularities;
- 2) the bank's financial condition is assessed as threatening the bank's further existence.

## **Types of Measures**

### **Article 116**

If the Central Bank establishes irregularities in the bank's operations, it may take one of the following measures:"

- 1) warn the bank in writing about the irregularities found and request the bank to undertake one or more activities to remove the irregularities;
- 2) conclude a written agreement with the bank making the bank bound to remove the irregularities found within a specified time;
- 3) issue an order imposing one or more of the following measures:
  - order the bank to remove the irregularities found in its operations and/or undertake other activities to improve the condition in the bank;
  - order the bank to scale down or cease one or more of the activities that, as the Central Bank has established, caused losses for the bank or are contrary to best banking practices;
  - order the bank to establish stricter limits in operations than prescribed by the Central Bank or the bank's policies;
  - order a bank classification of assets based on the exposure to credit risk in riskier group,
  - order a bank to establish adequate reserves for losses based on country risk;
  - order the bank to increase the amount of own funds, ensure higher solvency ratio and/or other capital adequacy indicators than those prescribed if one or more conditions under Article 71 above are met;
  - order a bank to discharge a member of the Board of Directors, an executive director or an official with special powers and responsibilities and set the timeframe for conducting the procedure of their relieving of duty and, as a rule, prohibit these persons to further perform their functions until the completion of the ordered procedure;
  - revoke the previously granted approval to a board of directors member;
  - order the bank to prepare capital restoration plan acceptable to the Central Bank, within 60 days;
  - order the bank to reduce overhead expenses, including the imposing of restrictions to salaries and other benefits of the bank's executive directors and other officials with special powers and responsibilities;
  - order that all deposit interest rates do not exceed market prevailing interest rates for comparable amounts and maturities;
  - order the bank to require from its subsidiary to reduce the intensity of or cease the activity which is deemed by the Central Bank to have caused significant losses for the bank or to represent a large risk to the bank;
  - prohibit or restrict the growth of the bank's assets;

- order the bank to sell a part of its assets;
  - prohibit further investments in other legal persons;
  - order the bank to terminate an outsourcing agreement that poses a high operational risk to the bank.
  - temporarily prohibit the performance of certain or all activities
  - temporarily prohibit or restrict the opening of new organisational units or the introduction of new products,
  - temporarily prohibit the acceptance of new deposits and other repayable funds,
  - temporarily prohibit dividend or any other profit payment,
  - order the bank to discontinue applying unsafe or unsound banking practices,
  - order the bank to conduct measures aimed at ensuring safe and efficient payment system, including the prohibition of disposing of funds in an account and measures of prohibiting crediting or debiting the account;
  - order the bank to pass and enforce measures for: improving the procedure of collection of due claims, proper evaluation of balance sheet and off-balance sheet items, improve its accounting and information system and/or improve the system of internal controls and internal audit.”
- 4) pass a decision ordering the bank to prepare a plan to improve the condition of the bank, which must contain detailed measures and activities taken by the bank to provide adequate management of risks the bank is exposed to in its operations and/or to remove the identified irregularities, as well as timeframes for their implementation.”
- 5) institute interim administration in the bank in accordance with Article 120 of this Law.
- 6) revoke the bank’s license.

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

In the course of the procedure of granting the approval under paragraph 2 above, the Central Bank may require the bank to make amendments to the plan.

If the bank’s own funds, solvency ratio and/or other indicators of the bank’s capital adequacy are below the prescribed levels, the Central Bank may, before taking other measures provided in this law, prohibit the bank, by way of an order, to engage in one or more activities specified in the respective bank licence or approval issued by the Central Bank.

The provisions of Article 114 above shall not apply in the procedure of imposing measures referred to in paragraph 4 above.

## **Assumptions for Choosing Measures against Banks**

### **Article 117**

In deciding which measures will be undertaken towards a bank, the following shall be considered:

- 1) the assessment of impact of the found irregularities on:
  - the current and future financial position of the bank;
  - the bank's exposure to individual types of risks;
- 2) number and degree of difficulty of the found irregularities, and number, frequency and duration of irregularities found in previous operations of the bank;
- 3) the assessment of readiness and capability of the bank's bodies and management to remove the found irregularities based on the evaluation of:
  - the capability of the bank's bodies and management to manage risks in the bank's operations;
  - efficiency of internal control systems in the bank;
  - efficiency of the bank's bodies and management in the removal of earlier irregularities found in the bank's operations;
  - degree of cooperation of the bank's management with authorized examiners during the bank's examination;
- 4) the assessment of the degree of impact of the found irregularities on the financial discipline, safety and stability of the banking system.

### **Order Imposing Measures**

#### **Article 118**

The order referred to in Article 116, paragraph 1 point 3) above shall specify:

- 1) the dates for the removal of the found irregularities;
- 2) the time frame in which the bank shall notify the Central Bank on the measures undertaken to eliminate the found irregularities;
- 3) the amount of funds that the bank will be bound to pay to the Deposit Protection Fund, given that such amount may range from 0.1% to 1% of bank's own funds.

The order referred to in Article 116, paragraph 1 point 3) above may also indicate:

- 1) the amount of funds that the bank executive directors and members of the Board of Directors will be bound to pay to the Deposit Protection Fund, given that individual amount of such funds may range from twofold to tenfold average net salary of the bank employees;
- 2) an authorized person for onsite monitoring of the implementation of the imposed measures in the bank.

The order referred to in Article 116, paragraph 1 point 3) above shall be final.

The administrative proceedings may be carried out against the order specified in Article 116 paragraph 1 point 3) above.

The order referred to in Article 116, paragraph 1 point 3) above shall represent an enforceable instrument with respect to the contents set forth in paragraph 1, point 3 and paragraph 2, point 1 above.

### **Authorized person of the Central Bank**

### **Article 118a**

Once the Central Bank takes the measures against the bank set forth in Article 116 of this law, or determines that the enhanced supervisory activities for monitoring the financial condition and activities of the bank are necessary, it may pass a decision on appointing a person to be authorized for monitoring the implementation of measures imposed against the bank or a person to be authorized for monitoring the state of affairs in the bank (hereinafter: the authorized person).

The decision referred to in paragraph 1 of this Article shall specify the period for which the authorized person is engaged to fulfil the obligations referred to in paragraph 3 of this Article.

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

During the monitoring of implementation of measures or situation in the bank, the authorized person shall have the right to directly monitor the implementation of imposed measures and/or situation in the bank, including the right to attend meetings of the General Meeting, the Board of Directors, the Audit Committee and bodies of the Board of Directors and participate in their work, but without the voting right.

The authorized person shall have the right to convene a meeting of the Board of Directors.

The bank shall be obliged to enable the authorized person to exercise the rights under paragraph 4 and 5 above, to have unlimited access to banking books, other business documents and records, as well as insight into the bank's IT functioning and computer database.

### **Procedure after Imposing Measures**

#### **Article 119**

Once the found irregularities have been removed, and not later than upon the expiry of the dates for the removal of the irregularities found, the bank shall submit to the Central Bank the report on the removed irregularities, supported by appropriate evidence.

The Central Bank shall issue a resolution with the conclusion that the bank has removed the irregularities in its operations once, on the basis of the report referred to in paragraph 1 above or on-site examination, it determines that the bank has removed all the irregularities found in its operations.

If the bank fails to remove the found irregularities within the time stipulated in paragraph 1 above, the Central Bank shall undertake, on the basis of available evidence or, as needed on the basis of on-site examination, measures allowed by the law against the bank.

## **Conditions for Introducing Interim Administration**

### **Article 120**

The Central Bank shall pass a decision on imposing interim administration in the bank if:

- 1) the bank's own funds and/or solvency ratio are below a half of the prescribed level;
- 2) the bank that was imposed one or more measures under Article 116 paragraph 1 point 3) of this Law has failed to fully implement the measures within the determined timeframes, whereby this failure may jeopardize the bank's liquidity and/or solvency,
- 3) the bank was imposed the measure under Article 116 paragraph 1 point 4) hereof but it has failed to submit the plan for improving the condition in the bank within the prescribed timeframe, or the bank has failed to meet the obligations set out in such a plan within the specified timeframe or the Central Bank has not approved the submitted plan,

The Central Bank may issue a decision on imposing interim administration in the bank if:

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

The resolution on imposing interim administration shall appoint the Interim Administrator and specify the period of interim administration.

The resolution referred to in paragraph 1 above shall be final.

The administrative proceedings may be brought against the resolution referred to in paragraph 1 above.

The resolution on imposing interim administration shall be published in the "Official Gazette of Montenegro" and shall be forwarded to a competent court.

## **Requirements for the Appointment of Interim Administrator**

### **Article 121**

Interim Administrator may be a person who:

- 1) has extensive experience in banking industry,
- 2) is not a bank related party;
- 3) has not been convicted for an act that makes him/her unworthy of performing this duty.

## **Fee and Bonus for Interim Administrator**

### **Article 122**

The Interim Administrator shall be entitled to a fee equal to the amount of an average salary of Executive Directors in the bank in the month preceding the introduction of interim administration in the bank.

The Interim Administrator may be awarded a special bonus, in proportion to the achieved results, and no more than fivefold the average salary of the bank's executive directors received in the month preceding the introduction of interim administration in the bank.

The fee referred to in paragraph 1 above and the bonus referred to in paragraph 2 above, shall be determined by the Central Bank, to be charged to the bank.

## **Assumption of Powers of Bank Management Bodies**

### **Article 123**

On the day of appointing the Interim Administrator, all powers of the General Meeting, the executive directors, governance bodies, and the bank's agents shall be transferred to the Interim Administrator.

The respective term of office of members of the Board of Directors and duties of the executive directors shall be terminated on the day of passing the decision on the introduction of interim administration.

Previous members of the Board of Directors, executive directors and other officials with special powers and responsibilities and other employees in the bank shall enable the Interim Administrator access to all business and other documentation of the banks and shall draw up the takeover reports.

## **Recall of Interim Administrator**

### **Article 124**

Interim Administrator may be recalled before the completion of the interim administration if:

- 1) s/he fails to perform the duties specified herein in a satisfactory manner;
- 2) upon the personal request.

In case that the Interim Administrator is recalled before the completion of the interim administration, the Central Bank shall appoint a new Interim Administrator within seven (7) days after such recall.

The released Interim Administrator shall hand over to the newly appointed Interim Administrator the responsibilities and all the information and documents related to his/her work, which shall be evidenced in takeover minutes, to be signed by both the administrators.

On the occasion of handing over the duties and responsibilities to the newly appointed administrator, the recalled Interim Administrator shall prepare the balance sheet and income statement of the bank as of the date of the recall.

## **Responsibilities of the Central Bank**

### **Article 125**

The Central Bank may issue obligatory instructions for managing the bank's operation during the interim administration to the Interim Administrator.

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

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

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

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

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

During the period of moratorium:



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

### **Responsibilities of the Interim Administrator**

#### **Article 126**

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

- 1) the removal of irregularities identified in the bank's operations;
- 2) the collection of the bank's receivables, especially non-performing loans;
- 3) the restriction of the growth of the bank's assets and off-balance sheet commitments;
- 4) the decrease in the bank's operational costs;

Immediately upon the appointment, the Interim Administrator shall secure the bank's property and documents, including their physical protection.

The Interim Administrator shall, within 30 business days following the imposing of the interim administration against the bank, submit to the Central Bank the following:

- 1) Report on the financial and operating conditions of the bank containing at least:
  - data on bank's property upon the completed inventory;
  - balance sheet and income statements of the bank on the day of the appointment of the interim administrator;
  - review of all claims and liabilities of the bank per individual borrowers and/or creditors of the bank;
  - evaluation of the possibility for the bank continuity, including the assessment of capability and willingness of the bank shareholders to recapitalize the bank;
- 2) a plan of activities to be implemented by the Interim Administrator during his administration, which shall contain a proposal for the bank resolution with a detailed explanation of advantages and weaknesses of the proposed activities in relation to other possible solutions for the bank resolution.

The proposal for the bank resolution may include the following measures and activities:

- 1) the compliance of the bank's operations with this law and other regulations, and which may include the following:
  - monthly timeline for the collection of claims and settlement of liabilities;
  - rationalization of bank's operational costs;
  - a proposal of changes in the bank's internal organization and job position scheme;
  - a sale of the bank's assets;
  - the bank recapitalization;
  - other measures and activities in accordance with the law.

- 2) transfer of the bank's assets and liabilities to another bank, in line with Article 127c of this Law;
- 3) the bank restructuring;
- 4) the revocation of the bank licence.

Upon the request of the Interim Administrator, the Central Bank may extend the deadline referred to in paragraph 3 of this Article for additional 30 business days, if it estimates that it is necessary due to the complexity and the size of activities involved in the determining the situation in the bank.

The Interim Administrator shall obtain the necessary approval from the Central Bank before carrying out the bank recapitalization, the transfer of assets and liabilities to another bank and the bank restructuring.

The Interim Administrator shall submit to the Central Bank monthly reports on its activities and accomplishment of the Activity plan under paragraph 3 point 2) above.

If the Central Bank deems necessary that emergency measures are required for the resolution of the bank under interim administration in order to maintain the banking system stability, the plan of activities of the Interim Administrator need not contain a detailed explanation of advantages and weaknesses of the proposed activities in relation to other possible solutions for the bank resolution referred to in paragraph 3 point 2) above.

## **Recapitalization of the bank under interim administration**

### **Article 126a**

Before initiating recapitalization of the bank under interim administration, the Interim Administrator shall:

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

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

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

- 1) Total nominal value of the existing shares of the bank shall be increased by the amount of issue premiums reported in the bank's balance sheet, and the obtained amount is then increased or decreased by the amount of profit or loss reported in the bank's balance sheet;

- 2) The amount calculated in accordance with point 1) above shall be divided by total number of the existing shares of the bank, and the obtained amount shall represent the price at which the issued shares shall be sold.

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

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

If the existing shareholders fail to recapitalize the bank in line with paragraph 4 above, the Interim Administrator shall pass a decision on the issue of bank shares to be sold to persons other than the existing shareholders of the bank (hereinafter: new shareholders).

In the case under paragraph 5 above, the existing shareholders shall not have the pre-emptive right or the right to purchase additionally issued shares.

Shares issued during recapitalization of the bank under interim administration may be purchased only by persons who have previously obtained the Central Bank's approval for the acquiring of qualified participation in the bank, unless the purchase of such shares provides them with qualified participation in the bank or these persons already have the appropriate approval of the Central Bank.

By way of exception from Article 10a hereof, the Central Bank shall decide on the request for approval under paragraph 7 of this Article within five working days following the receipt of the request.

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

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

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

**Sale of shares of bank's shareholders, with mandatory recapitalisation  
General Meeting**

**Article 127**

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

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

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

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

### **Article 127a**

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

The buyer of shares of the existing bank shareholders during the interim administration may only be a person who shall acquire qualified participation in the bank with such a purchase and who has obtained prior approval of the Central Bank for acquiring qualified participation in the bank in accordance with this law.

The Central Bank shall decide on the request for acquiring qualified participation referred to in paragraph 2 of this Article within 10 business days following the day of submitting the request.

The Interim Administrator shall instruct the authorized participant in the securities market to sell the shares of the existing bank shareholders at the stock exchange, to include the information on the initial price of the shares and the duration of the sale, and instruct the sale of these shares only to the persons under paragraph 2 above.

The offer for the sale of shares at the initial price shall last two business days, reducing by 10% every subsequent day, provided that total price reduction may not exceed 70% of the initial price of shares.

In addition to the sale laid down in paragraph 4 above, shares of the existing bank shareholders may be sold as a packet of shares, in line with the law.

After the clearing and netting of the sold shares of the existing bank shareholders, the CDA shall transfer them to the securities accounts of the new buyers and proceeds from the sale shall be paid to the special transaction account at the CDA and remain in these accounts until the buyers have performed the required bank recapitalisation, i.e. until the expiration of the deadline for the payment of funds for the purchase of new shares of the bank.

### **Mandatory recapitalisation of the bank**

#### **Article 127b**

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

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

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

When the issue of bank shares under paragraph 1 above is successful, the CDA shall transfer the shares from the transaction account under Article 127a paragraph 7 hereof and the new purchased shares to the securities account of the buyers of the bank shares, simultaneously transferring the funds from the transaction account to the accounts of previous bank shareholders, and proceeds from the sale of shares of the new issue to the bank account.

In case the issue of shares has failed, the CDA shall return the shares of the existing bank shareholders to the accounts of previous owners of the bank shares and funds in the transaction account referred to in article 127a paragraph 7 shall be returned to buyers who failed to perform the required bank recapitalization.

## **Transfer of assets and liabilities to another bank**

### **Article 127c**

The Interim Administrator may transfer a part or total assets and/or liabilities to another bank or banks by way of contract (hereinafter: the other bank).

The transfer under paragraph 1 above shall be performed without approval of depositors and other creditors as well as without the approval of the debtors of the bank.

Taxes, contributions, duties and other levies stipulated in the law shall not be paid for the transfer under paragraph 1 above.

Assets encumbered with mortgage or other rights of realty may also be transferred in accordance with the contract on the transfer of a bank's assets and liabilities to the other bank.

Assets subject to the execution judgment or assets under the prohibition of disposal may not be transferred.

The value of assets and/or liabilities to be transferred to the other bank shall be determined in the contract on transfer of assets and/or liabilities of the bank to other bank.

The Central Bank shall approve the transfer of assets and/or liabilities of the bank to the other bank in the form of approval to the contract referred to in paragraph 6 above.

The Central Bank may grant the approval under paragraph 7 above if the other bank, after the transfer of assets and/or liabilities, continues its operations in the manner which does not jeopardize the bank's financial condition and compliance of its business with this law.

The Interim Administrator shall, within five business days following the transfer, inform depositors, other creditors and debtors of the bank on the transfer of assets and/or liabilities completed in accordance with this Article.

If the transfer of assets and/or liabilities is to be performed along with the payment of the premium by the other bank, the premium shall be paid to the bank under interim administration.

### **Completion of Interim Administration**

## **Article 128**

Interim administration may last up to six months, and may be extended for additional three months if the Central Bank estimates that in the following six months the bank may attain the required level of own funds or solvency ratio and meet the due obligations on a regular basis.

Upon the completion of interim administration of the bank, the Central Bank shall:

- 1) return the bank under the control of its shareholders;
- 2) commence bankruptcy proceedings over the bank.

Interim administration of the bank shall be completed before the expiry of the time limit referred to in paragraph 1 above if:

- 1) the Central Bank evaluates that the bank rehabilitation measures have given satisfactory results;
- 2) bankruptcy proceedings is commenced for the bank.

In case the bank is returned under the control of its shareholders, the Central Bank shall order the Interim Administrator to prepare, within 45 days at the latest, all the required documentation and acts and convene and hold a meeting of the General Meeting of the bank.

The powers transferred to the Interim Administrator in line with Article 123 paragraph 1 hereof shall be returned to the General Meeting on the day of holding the General Meeting convened in line with paragraph 4 above, provided that the function of the Board of Directors and duties of the executive directors shall be exercised by the Interim administrator until the appointment of a new board of directors and executive directors.

## **Revoking a Bank License**

### **Article 129**

The Central Bank shall revoke a bank license when:

- 1) application for registration in the CRCC has not been submitted within the prescribed time limit or the bank has not commenced banking operations within 60 days as of the day of registration;
- 2) the license was issued on the basis of incorrect data;
- 3) the bank no longer fulfils the conditions under which the license was granted;
- 4) the bank ceased to engage in deposit taking and lending operations for more than six months, unless it has been ordered by the Central Bank;
- 5) the bank acted two or more times or continuously against the Law, other regulations or standards of prudential operation, thus jeopardizing deposits safety;
- 6) the competent authority of the bank has ordered a decision on the bank liquidation;
- 7) the solvency ratio is below one quarter of the prescribed level,
- 8) the bank has not paid its due cash liabilities for five consecutive days;
- 9) the bank's liabilities exceed its assets.

The Central Bank may revoke a bank license if:

- 1) it determines that the banks is critically undercapitalized;
- 2) the bank has a critically low level of liquidity;
- 3) the bank committed one or more serious violations of the provisions of this law or any other law;
- 4) the bank does not meet its obligations with respect to deposit protection;
- 5) the activities of the bank are related to money laundering and/or terrorist financing or with the performance of other activities sanctioned by the criminal law;
- 6) operations of deposit taking and lending are performed in a scope which is considerably disproportional to the previous or planned volume of such activities;
- 7) the bank does not implement measures ordered by the Central Bank;
- 8) measures taken for the bank rehabilitation have not lead to the improvement of situation in the bank;
- 9) the Central Bank had ordered the bank to relieve of duty a member of the Board of Directors, an Executive Director or a person with special powers and prohibit those persons to perform their functions until the finality of the relieving of duty procedure, and the bank has failed to implement the imposed measures within the specified deadline;
- 10) the bank has repeatedly violated the obligation of timely reporting or correct reporting to the Central Bank,
- 11) the bank has repeatedly prevented the performing the supervision of the Central Bank.

The resolution of revocation of license shall be published in the “Official Gazette of Montenegro” and shall be forwarded to CRCC.

Upon the issuing of the resolution referred to in paragraph 3 above, the issued approvals for the performance of other services shall also cease to be valid.

When the Central Bank revokes the licence to a bank, it shall immediately make either a resolution on opening bankruptcy proceedings against the bank or a resolution on the bank liquidation.

The Central Bank shall pass a resolution on the opening of bankruptcy proceedings against the bank when the bank’s liabilities exceed its assets, while the resolution on the bank liquidation shall be made when the conditions for performing bankruptcy proceedings have not been met.

The resolution referred to in paragraph 5 above shall be published in the “Official Gazette of Montenegro” and in at least two daily printed media distributed in the territory of Montenegro and it shall be forwarded to the CRCC.

The resolutions under paragraphs 3 and 5 above shall be final.

An administrative dispute may be taken against the resolutions referred in paragraphs 3 and 5 of this Article.



## **2. Supervision on a Consolidated Basis**

### **The Manner of Performing Supervision**

#### **Article 130**

The Central Bank shall supervise the banking groups on a consolidated basis.

The Central Bank shall perform consolidated supervision through:

- 1) analysis of consolidated financial reports of banking groups and consolidated financial statements of the parties referred to in article 135 below,
- 2) direct – on site examination of the accuracy of data from consolidated financial reports and risks to which banks have been exposed as members of banking groups, and
- 3) evaluation of the condition of the banking group by using applicable international methodologies for evaluating the condition of the banking group.

### **Subject of Supervision**

#### **Article 131**

Bank supervision on a consolidated basis shall encompass the consolidated financial reports of:

- 1) banking groups with a superior bank,
- 2) banking groups with a superior financial holding,
- 3) banking groups with a superior mixed holding and
- 4) parties referred to in Article 135 below.

The Central Bank may perform an onsite examination of the accuracy of data from consolidated financial reports of all bank group members.

### **Consolidation of Groups with a Superior Mixed Holding**

#### **Article 132**

The bank that is subordinate to a mixed holding is obliged to provide the Central Bank with information on all the parties subordinate to the mixed holding.

Based on the information referred to in paragraph 1 above, the Central Bank shall assess whether there is a need for consolidated reporting for the group with the mixed superior holding.

In case it is determined that consolidated financial reports must be prepared for the group of parties with the mixed superior holding, the Central Bank shall at the same time

decide which subordinate parties from the group should be included in consolidated financial reports and which method and scope of consolidation shall be applied.

The banking group with a mixed superior holding shall be, in the meaning of this law, the group of parties with a mixed superior holding that the Central Bank decides is subject to the obligation of preparing consolidated financial reports.

## **Party Obligated to Prepare Consolidated Reports**

### **Article 133**

Consolidated financial reports of a banking group with a superior bank shall be prepared by the superior bank.

Consolidated financial reports for a banking group with a financial or mixed superior holding shall be prepared by the bank that is controlled by that holding and has its head-office in Montenegro.

Members of a banking group shall submit all information necessary for consolidation purposes to the party obliged to prepare consolidated reports in a timely manner.

## **Exclusions from Consolidation**

### **Article 134**

Consolidated financial reports of the banking group shall not include subordinate members of the bank group the balance sheets of which are less than 1% of the balance sheet of the superior member of the group.

If several subordinate members of the banking group meet the condition referred to in paragraph 1 above, the Central Bank may order that these members of the banking group be included in consolidated financial reports, if the sum of their balance sheets is relevant to the determination of the financial condition of the banking group.

The superior bank may exclude from consolidated financial reports, subject to the prior approval of the Central Bank, information on a subordinate member of the banking group:

- 1) the head office of which is located in the country where there are legal impediments for the submission to the superior bank of data and information necessary for the preparation of consolidated financial reports;
- 2) the inclusion of which in the consolidated financial reports would not be relevant to the determination of the financial condition of the banking group;
- 3) the inclusion of which in the consolidated financial reports would be misleading with respect to the financial condition of the bank group;
- 4) in other events specified in International Accounting Standards.

The superior bank shall submit the application for obtaining the approval referred to in paragraph 3 above, with explanation, to the Central Bank not later than 30 days before the expiry of the reporting period.

### **Consolidation in Other Cases**

#### **Article 135**

The Central Bank may order a bank that has subordinated non-financial parties to consolidate individual operations, groups of operations, or perform full consolidation of the financial condition and operations of these parties, regardless of their business, if it is necessary for the purpose of full and fair presentation of the financial condition and operations of the bank.

The parties referred to in paragraph 1 above shall have the duty to supply the bank with all the information required for the preparation of consolidated financial reports.

### **Consolidation Methods**

#### **Article 136**

Consolidation methods to be applied by banks in the preparation of consolidated financial reports shall be specified in a Central Bank's regulation.

### **Obligation to Comply with Prescribed Restrictions**

#### **Article 137**

The superior bank shall provide that the following operating indicators of the banking group, reported on the consolidated basis, do not exceed the limits required from banks by the law and regulations of the Central Bank:

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

## **3. Supervision Fee**

### **Determining the Fees**

#### **Article 138**

The Central Bank shall charge a fee for the performance of the supervisory functions.

The fee referred to in paragraph 1 above shall consist of:

- 1) a fee for granting licenses to banks and micro-credit financial institutions and credit unions;
- 2) a fee for granting approvals under this law;
- 3) a fee for the supervision of banks, foreign bank branches and micro-credit financial institutions and credit unions.

The total annual amount of the fee referred to in paragraph 2 above shall not exceed 0.5% of total amount of banks' assets in Montenegro at the end of the year that precedes the year for which the fee is charged.

The amount of the total annual fee referred to in paragraph 2 above and amounts of individual fees shall be determined by a special regulation of the Central Bank.

## **VIII. OPERATIONS OF FOREIGN BANKS IN MONTENEGRO**

### **Branches of Foreign Banks**

#### **Article 139**

A foreign bank may operate in Montenegro through its branch with prior issuance of the approval of the Central Bank for branch operations.

The approval referred to in paragraph 1 above shall specify operations which a branch of the foreign bank may perform in Montenegro.

### **Request for Granting Approval for Branch Operations**

#### **Article 140**

Request for granting the approval for branch operations shall be submitted to the Central Bank.

The following documents shall be submitted with the request referred to in paragraph 1 above:

- 1) statement from appropriate register of a country in which head office of a foreign bank is located, which cannot be older than 30 days;
- 2) bylaws or other appropriate documents of a foreign bank;
- 3) policies and procedures of the foreign bank on risk management;
- 4) information on members of board of directors and other foreign bank bodies;
- 5) financial statements of a foreign bank for the last three years with external auditor's opinion;
- 6) evidence on long-term credit rating of a foreign bank, determined by an internationally recognized rating agency;
- 7) description of operations that a branch will conduct and a business plan for the following three years of operations;

- 8) information on foreign bank owners;
- 9) documents and information on foreign bank shareholders, legal entities owning more than 5% of voting stock, which specifically contain a statement of registration or other appropriate statement from public register, bank related parties and their connected interest;
- 10) documents, data and information on foreign bank shareholders, natural persons owning more than 5% of voting stock, which specifically contain their names and addresses of permanent or temporary place of residence and other identification data, bank related parties and their connected interest;
- 11) evidence that a foreign bank is included in a deposit protection system and information on the amount of protected deposit, as well as an evidence that a branch will be included in the deposit protection system in the country of a foreign bank to the level and extent of coverage prescribed for banks operating in Montenegro, but it will not exceed such level;
- 12) document of supervisory authority of a country in which head office of a foreign bank is located, which gives approval to a foreign bank to start with operations in Montenegro through a branch or appropriate document of such authority that such approval is not required pursuant to the regulations of that country;
- 13) data and information on persons who will conduct branch operations;
- 14) documentation on business premise and technical capabilities for branch operation.

The Central Bank may request a foreign bank to submit additional data and information in the procedure of issuing the approval referred to in paragraph 1 above.

### **Deciding Upon Request**

#### **Article 141**

The Central Bank shall decide on the request referred to in Article 140 above within 6 months after the request has been orderly submitted.

The Council of the Central Bank shall issue a decision on the request referred to in Article 140 above.

The decision specified in paragraph 2 above shall be final.

The administrative proceedings may be carried out against the decision specified in paragraph 2 above.

### **Denial of Request**

#### **Article 142**

The Central Bank shall deny the approval for branch operation if:

- 1) prescribed or requested documentation and data has not been submitted with approval, or the submitted documentation contains untrue data;

- 2) long-term credit rating of a foreign bank determined by Standard & Poor's is lower than A, or it is lower than the rating determined by other internationally recognized rating agency equivalent to the rating A;
- 3) the branch business plan does not contain prescribed elements, and projected balance sheet and income statement are not based on realistic assumptions;
- 4) deposit protection system in a country where head office of a foreign bank is located does not provide deposit protection of at least an equivalent level of deposit protection in Montenegro;

## **Registration and Start of Branch Operations**

### **Article 143**

Granting of the approval for branch operations shall be the condition for registration in the CRCC.

A branch shall be registered within 60 days after the delivery of the approval.

The branch shall start to perform its operations no later than 60 days as of the day of its registration.

## **Limitations in Operations of Branches**

### **Article 144**

A branch of a foreign bank shall operate in a way to have towards the parent bank at all times payables above receivables.

## **Imposing the Measures**

### **Article 145**

If the branch does not have adequate liquidity risk management, the Central Bank may require the branch to:

- 1) remove the maturity mismatch of assets and liabilities;
- 2) place a deposit with the Central Bank equivalent to at least 4% of the branch liabilities to other parties in Montenegro;
- 3) maintain its performing assets in Montenegro at a level equivalent to at least the amount of liabilities to depositors - natural persons in Montenegro;
- 4) obtain from parent bank appropriate guarantee for meeting the obligations of the branch, until the correction of irregularities in liquidity risk management has been corrected.

The request referred to in paragraph 1 above shall determine the timeframes for branch compliance with the request.

The request referred to in paragraph 1 above shall be submitted to the institution authorized for supervision of the parent bank of such branch.

## **Revoking the Approval**

### **Article 146**

The Central Bank shall revoke the approval to a branch if:

- 1) supervisory authority of a foreign bank revokes license or approval for operations to a foreign bank;
- 2) the approval has been issued on the basis of false and incorrect data;
- 3) the branch is not registered within 60 days after the issuance of the approval;
- 4) the branch does not start with operations within 60 days after the registration in CRCC;
- 5) the branch cannot meet its obligations.

The Central Bank may revoke the approval to a branch if:

- 1) the branch does not operate in Montenegro in accordance with the law and regulations;
- 2) the branch does not comply with the written request of the Central Bank referred to in article 145 above;
- 3) the rating of a foreign bank established by an internationally recognized Bank rating agency significantly deteriorates in relation to the rating obtained when granting the approval to the branch;
- 4) the interim administration or other measure of intensified supervision has been introduced in a foreign bank.

## **Representative Office of Foreign Bank**

### **Article 147**

A foreign bank may found its representative office in Montenegro with the prior approval of the Central Bank.

The representative office of a foreign bank shall present the interests of that bank and may not perform bank operations.

## **Operations and Supervision of Branch Operations**

### **Article 148**

The provisions of this law governing banking secret (articles 84 through 86), protection of clients (articles 87 through 92) and the manner and procedure of bank supervision (articles 108 through 114) shall also apply to foreign bank branches.

## **IX. MICRO CREDIT FINANCIAL INSTITUTIONS AND CREDIT UNIONS AND PARTIES INVOLVED IN CREDIT AND GUARANTEE OPERATIONS**

### **Articles 149 to 164**

These Articles shall be deleted. (Law on Financial Leasing, Factoring, Purchase of Receivables, Micro-Lending and Credit-Guarantee Operations, OGM 73/17).

## **X PENALTY PROVISIONS**

### **Article 165**

A fine ranging from EUR 5,000 to EUR 15,000 shall be imposed against a bank or other legal person if:

- 1) it is engaged in banking operations without required approval of the Central Bank (Article 4);
- 2) it uses in its name or in the name of its product or service the word “bank” or any derivative of the word “bank”, except when that word is used in accordance with the provisions of this Law (Article 5);
- 3) it acquires or increases qualified participation in a bank without appropriate approval of the Central Bank (Article 9);
- 4) it founds bank parts in foreign countries without approval of the Central Bank (Article 42 paragraph 2);
- 5) it fails to establish a system for risk management (Article 48);
- 6) it exceeds prescribed exposure limits (Article 58);
- 7) it fails to perform asset classification or fails to evaluate the amount of losses that result from credit risk (Article 59);
- 8) it provides or uses the services of bank related parties under more favorable conditions than the conditions under which it provides such services to other parties, or it uses the services of bank related parties under the conditions which are less favorable than the conditions under which other parties would provide such services to a bank (Article 78);
- 9) it acquires bank shares or other elements of own capital above the allowed amount or fails to dispose of acquired own shares in a prescribed timeframe (Article 80);
- 10) it has investments in real estates and fixed assets above the level prescribed by the Central Bank regulation (Article 82);
- 11) it conditions its credit granting by the use of its other services or the services of any of the bank related parties, which are not in relation with the main business (Article 90);
- 12) it fails to maintain business books under the prescribed chart of accounts or fails to prepare reports in accordance with International Accounting Standards, International Financial Reporting Standards and special regulations (Article 93);
- 13) it appoints external auditor or audit firm without the approval of the Central Bank (Article 95);



14) it submits incorrect reports and other data on its financial condition and operations to the Central Bank, or it fails to submit them in a timely manner (Article 103);

14a) if it does not enable the authorized person to attend meetings of the General Meeting, the Board of Directors, the Audit Committee and bodies of the Board of Directors or if, upon his request, it does not convene a meeting of the Board of Directors or does not allow free insight into banking books, other business documents and records, or insight into bank's IT functioning and computer database (Article 118a);

15) it fails to submit, in a timely manner, to the obligor of reporting on consolidated basis its financial reports and other information required for preparation of consolidated financial reports (Article 133 paragraph 3).

For the offence specified in paragraph 1 above, a responsible person in the bank and in other legal person shall be also imposed a fine ranging from EUR 500 to EUR 1,000.

For the offence specified in paragraph 1, items 1) and 3), a natural person shall be imposed a fine ranging from EUR 500 to EUR 1,000.

A fine ranging from EUR 1,000 to EUR 6,000 shall be imposed against an entrepreneur for the offence under paragraph 1 above.

## **XI TRANSITIONAL AND FINAL PROVISIONS**

### **Adoption and Application of Regulations**

#### **Article 166**

The Central Bank shall issue regulations that it has been authorized to issue under this Law within not longer than six months after the effective date of this Law.

Until the regulations referred to in paragraph 1 above have been adopted, the regulations adopted under the Law on Banks ("Official Gazette of the Republic of Montenegro", Nos. 52/00 and 32/02) shall be applied, unless they are contrary to this law.

### **Compliance Timeframe**

#### **Article 167**

The banks shall:

- 1) bring acts and corporate governance into compliance with the provisions of this Law no later than six months from the day this Law comes into force;
- 2) Bring their operations into compliance with the provisions of this Law and enabling regulations issued on the basis of this Law no later than one year from the day this Law comes into force.

The Central Bank shall undertake measures foreseen under this Law against any bank that has not met the requirements referred to in paragraph 1 above.

Provisions of paragraphs 1 and 2 above shall also apply to bank affiliates that have their head offices outside of Montenegro.

## **Licenses**

### **Article 168**

Licenses of banks and foreign bank affiliates that have their head offices outside of Montenegro issued before the day this Law comes into force shall remain valid.

## **Non Government Organizations**

### **Article 169**

Non government organizations that have the approval of the Central Bank for the performance of operations referred to in article 8 of the Decision on Micro Credit Financial Institutions (“Official Gazette of the Republic of Montenegro”, no. 01/03), may perform such operations no longer than one year from the day this Law comes into force.

The granted approval referred to in paragraph 1 above shall cease to be valid after the expiration of the timeframe set forth in paragraph 1 above.

## **Parties with Qualified Participation**

### **Article 170**

Parties that have participation in capital or voting rights in a bank that represents a qualified participation under the provisions of this Law as of day this Law comes into force, and for which they do not hold appropriate approval, shall submit to the Central Bank a request for granting the approval for acquisition of qualified participation within three months from the day this Law becomes effective.

## **Election of Banking Ombudsman**

### **Article 171**

The Parliament of Montenegro shall elect banking ombudsman within one year from the day this Law comes into force.

## **Repeal**

**Article 172**

The Law on Banks (“Official Gazette of the Republic of Montenegro”, no. 52/00 and 32/02) shall be repealed with effect from the date of entry into force of this Law.

**Coming into Effect**

**Article 173**

This Law shall become effective on the eighth day following its publication in the “Official Gazette of Montenegro”.

**NOTE:**

The consolidated version does not contain provisions under Articles 40 and 41 of the Law Amending the Banking Law (OGM 44/10 as of 30 July 2010) that read:

**“Article 40**

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

**Article 41**

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