

09 Annex - Financial services

34. DEPOSIT PROTECTION LAW

Pursuant to Article 88 of the Item 2 of the Constitution of the Republic of Montenegro I hereby issue the

DECREE

PROMULGATING THE DEPOSIT PROTECTION LAW

(Official Gazette of the Republic of Montenegro 40/03 of 3 July 2003,
65/05 of 3 November 2005)

I hereby promulgate the Deposit Insurance Law passed by the Parliament of the Republic of Montenegro at the second sitting of the first ordinary session in 2003 on 1 July 2003.

Number: 01-389/2

Podgorica, 2 July 2003

President of the Republic of Montenegro

Filip Vujanovic

DEPOSIT PROTECTION LAW

I GENERAL PROVISIONS

Subject matter

Article 1

This Law regulates deposit protection with banks.

The Deposit Protection Fund (hereinafter referred to as the Fund) is hereby established and its status, responsibilities, management and financing are regulated.

Deposit protection principle

Article 2 (Official Gazette of Montenegro 65/05)

The banks licensed by the Central Bank of Montenegro shall ensure the protection of deposits under the conditions and in the manner provided for in this Law.

The Fund shall protect bank deposits and shall be obliged to pay the guaranteed deposits in the case when an even requiring payment of guaranteed deposits pursuant to this Law (hereinafter referred to as protected event) occurs.

Deposit protection, pursuant to this Law, shall cover the deposits held with a bank prior to or as on the day of occurrence of a protected event.

Definitions

Article 3 (Official Gazette of Montenegro 65/05)

Individual terms used in this Law have the following meaning:

- **deposit** - is any active (credit) balance arising from funds left in an account or from temporary balances arising from ordinary banking transactions and which the bank shall pay in accordance with regulations or contracted conditions including also any debt evidenced by a certificate issued by that bank,
- **protected deposit** - is the total deposit of a depositor held with a bank decreased by the deposits that are excluded in compliance with Article 5 of this Law,
- **guaranteed deposit** - is the protected deposit, or a part of the protected deposit of a depositor at a bank, the payment of which is made by the Fund in case of an occurrence of a protected event up to the amount specified in Article 7 of this Law,

- **joint account** - is the account opened in the name of two or more persons where these persons have the right to dispose with these funds based on authorized signatures,
- **depositor** - is a natural or legal person holding a deposit with a bank,
- **payment day** - is the day when the Fund lodges the funds into the depositor's account held with the bank determined for payment of the guaranteed deposit.

II DEPOSIT PROTECTION

Occurrence of a protected event

Article 4 (Official Gazette of Montenegro 65/05)

A protected event occurs on the day when the resolution on commencing of the bankruptcy proceedings over a bank is passed.

Excluded deposits

Article 5 (Official Gazette of Montenegro 65/05)

The deposit protection under this Law shall not cover the following:

- 1) deposits of legal persons engaged in insurance,
- 2) deposits of the Budget of the Republic of Montenegro and budgets of local self- government units,
- 3) deposits of extra budgetary funds in terms of the law governing the Budget of the Republic of Montenegro (hereinafter referred to as the Republic),
- 4) deposits of pension funds,
- 5) deposits of collective investment schemes founded pursuant to the law (privatization funds, investment funds etc.),
- 6) deleted,
- 7) deposits of banks,
- 8) deposits of persons for whom the bank, on their behalf and for their account, acting under their instructions, performs the operations for which the provider of the funds bears the risk,
- 9) deposits of persons holding a bank's shares bearing more than 5% of voting rights at the bank shareholders' meeting,
- 10) deposits of general director of the bank, members of bank management board, members of management board standing committees, director, deputy directors and chiefs of departments and other organizational units in the bank, legal persons in which such persons own 10% or more of capital or voting shares, as well as deposits of their spouses and relatives in the straight or lateral lines of kinship, up to the second degree of kinship,
- 11) deposits of persons responsible for audit of the bank's financial statements,
- 12) deleted,
- 13) deleted.

In addition to the deposits referred to in paragraph 1 of this Article, deposit protection shall not cover the deposits for which:

1) it has been established in the examination reports of the Central Bank of Montenegro (hereinafter referred to as the Central Bank) that they belong to a depositor who has contributed to the deterioration of the bank's financial position and who, as an account holder, obtained from the bank interest rates or financial concessions related to loans and other banking services, particularly related to:

- obtaining loans that, due to the type of transaction, level of risk, borrower credit capacity or

type of collateral, would not have been granted to any other party,

- paying of lower interest rates on loans than those charged from other bank depositors,
- obtaining higher interest rates on deposits than those paid to other bank depositors,

2) Legal proceedings have been initiated in order to establish if they are connected to the transactions or actions that represent money laundering or terrorism financing.

Determination of protected deposit

Article 6 (Official Gazette of Montenegro 65/05)

The total amount of the protected deposit of a depositor shall be determined by a bank by adding up all protected deposits of such depositor, including the accrued interest on such deposits up to the date of the occurrence of a protected event.

The amount referred to in paragraph 1 of this Article shall be reduced by the total amount of obligations of such depositor towards the bank.

In the case of a joint account, the shares of all depositors shall be calculated equally among the account holders, unless the account holders submit evidence that their shares are not equal.

If the depositor has acted as an agent on behalf of a third party, the limitation of payment of the guaranteed deposit referred to in Article 7 of this Law shall apply to the third party.

The depositor who has deposited funds on behalf of a third party shall be entitled to claim payment from the Fund, unless otherwise established in the contract.

Guaranteed deposits

Article 7 (Official Gazette of Montenegro 65/05)

The Fund shall pay a guaranteed deposit up to the amount of EUR 5,000 per depositor, regardless of the number and amount of deposits held by that depositor with a bank.

Premiums

Article 8

Banks shall be obliged to pay premium to the Fund for the protection of deposits under the conditions and in the manner as stipulated by this Law.

Bank membership in the Fund

Article 9 (Official Gazette of Montenegro 65/05)

A bank acquires its membership in the Fund as of the day of its registration with the Central Register of the Commercial Court.

The membership of a bank in the Fund shall cease:

- 1) as of the day of the deletion of the bank from the Central Register of the Commercial Court;
- 2) upon the fulfilment of obligations towards the holders of protected deposits, at least in the amount of the guaranteed deposit.

The Central Bank shall inform the Fund in a timely manner, and no later than three days, about the issuance of a license to a bank, or on passing the resolution on the closure of bankruptcy or liquidation proceedings.

Logo and promotional material

Article 10 (Official Gazette of Montenegro 65/05)

The Fund shall have its own logo and promotional material related to the protection of deposits.

The bank shall disclose in general operating conditions, in individual contracts and shall post in a visible place in the business premises the Fund's logo with an information sign that reads: "The Bank is a member of the Deposit Protection Fund and the bank clients' deposits are protected in accordance with the Deposit Protection Law up to the amount of EUR 5 000".

The appearance of the Fund's logo, detailed manner of its use and the manner of informing depositors on deposit protection system, as well as prohibition of advertising shall be established by the Fund.

A bank may not use its participation in the deposit protection system for its own promotion.

III DEPOSIT PROTECTION FUND

Establishment and status of the Fund

Article 11 (Official Gazette of Montenegro 65/05)

The Fund is a legal person with its head office in Podgorica.

The Fund shall open an account and deposit its funds with the Central Bank in the manner and under the conditions set forth by a contract.

The Fund is exempt from paying taxes, fees and duties in carrying out deposit protection business, in accordance with law.

Responsibilities of the Fund

Article 12 (Official Gazette of Montenegro 65/05)

The Fund shall:

- 1) collect premiums;
- 2) set premium rate;
- 3) invest its funds;
- 4) make payments to the depositors pursuant to the provisions of this Law;
- 5) pass regulations and perform other activities pursuant to the law.

By-Laws of the Fund

Article 13 (Official Gazette of Montenegro 65/05)

By-laws of the Fund regulate:

- 1) internal organization and the manner of functioning of the Fund;
- 2) authorization for representing the Fund;
- 3) rights, obligations and responsibilities of persons performing duties and tasks with special powers and responsibilities;
- 4) ethical code of conduct for members of the management board and employees of the Fund;
- 5) other issues related to the business operations of the Fund.

Fund Management Board

Article 14

The Fund is managed by the Management Board of the Fund (hereinafter referred to as the Management Board).

Composition and decision-making of the Management Board

Article 15 (Official Gazette of Montenegro 65/05)

The Management Board consists of five members, as follows: President of the Management Board and four members. The Management Board shall be appointed by the Central Bank.

One member of the Management Board may be the representative of a donor, the donation of which is not less than 5% of average amount of guaranteed deposits for the last quarter in the year that precedes the year in which the appointment is made and not more than three members may be the employees of the Central Bank.

Member of the Management Board shall be person with at least a university degree who has vast knowledge and experience in banking and monetary area and who possesses moral qualities for the performance of assigned duties.

The following may not be the members of the Management Board:

- 1) member of the bank management whose deposits are excluded from deposit protection under Article 5 paragraph 1 item 10 of this Law;
- 2) a person owning more than 5% of shares of the bank;
- 3) person who was a member of the management board or manager of a bank on the day of bankruptcy proceedings initiation or in the period of three years prior to the day of the bankruptcy proceedings initiation;
- 4) a person that was convicted to an unconditional prison sentence or convicted for acts that make him unworthy for the position of a member of the management board;
- 5) a person that is spouse or relative in the straight or lateral lines of kinship, up to the third degree of kinship, with another member of the Management Board.

The President of the Management Board of the Fund shall perform his/her assignment professionally and be the employee of the Fund, receive salary for his/her work and may not be professionally engaged in other activities, except for scientific, research and lecturing activities.

Members of the Management Board shall receive monthly reimbursements for their work, in the amount which may not exceed six minimal labour prices in the Republic of Montenegro.

Management Board of the Fund shall make decisions at meetings held at least once a month, and decisions shall be made by majority votes of all members.

Term of office of the Management Board members

Article 16

The term of office of the members of the Management Board shall last 4 years. Notwithstanding paragraph 1 of this Article, the term of office of the president and one member of the Management Board appointed in accordance with Article 35 of this Law shall last 6 years.

The member of the Management Board with 6-year term of office shall be designated by the Central Bank when appointing the Management Board pursuant to Article 35 of this Law.

Members of the Management Board may be re-elected only for two consecutive terms. Term of office of the Management Board member may be terminated before the expiry of the mandate by releasing from duty when it has been determined that:

- 1) circumstances referred to in paragraph 4 of Article 15 of this Law have occurred;

- 2) a member has permanently lost his/her capabilities for carrying out his/her duty;
- 3) a member has performed his/her duties unprofessionally and unconscientiously;
- 4) a member has been absent from three or more consecutive meetings of the Management Board without the approval of that Board;
- 5) a member has violated the ethical code of conduct established in the Fund By-laws.

Term of office of a member of the Management Board may be terminated before the expiry of the mandate upon his own request.

The Central Bank shall determine the existence of the circumstances referred to in paragraph 5 of this Article, and it shall make a decision on the release of a member of the Management Board from duty. Together with the release of a member from duty, new member of the Management Board shall be appointed and his/her term of office shall last until the expiry of the term of office of the member he/she is replacing.

Management Board powers and responsibilities

Article 17 (Official Gazette of Montenegro 65/05)

The Management Board shall:

- 1) adopt By-laws of the Fund;
- 2) decide on the level of annual premium;
- 3) decide on the conditions, manner and procedure of guaranteed deposit disbursement;
- 4) adopt the financial plan of the Fund that must separately state planned operating expenses of the Fund;
- 5) adopt annual financial statements and discuss the opinion of independent external auditor;
- 6) establish the investment policy of funds, to protect the stability and continuous liquidity of the Fund;
- 7) adopt other acts from the competence of the Fund;
- 8) appoint independent internationally recognized external auditor;
- 9) adopt the annual operating report of the Fund;
- 10) perform other duties pursuant to the law and Fund By-laws.

By-laws of the Fund and other internal regulations shall be published in the Official Gazette of the Republic of Montenegro.

The Management Board may demand from the Central Bank to perform the targeted examination in banks and to present the results of such examination to the Fund.

Fund operating reporting

Article 18 (Official Gazette of Montenegro 65/05)

The Management Board shall submit the operating report of the Fund and the report on its own operating to the Central Bank at least annually and no later than 31 March of the current year for the previous year.

The report referred to in paragraph 1 of this Article shall be submitted to the Government of the Republic of Montenegro for information purposes.

The Management Board of the Fund shall be obliged to submit annual financial statements with the opinion of an independent external auditor to the Central Bank no later than 30 June of the current year for the previous year.

**Powers and responsibilities of the President of
the Management Board**

Article 19 (Official Gazette of Montenegro 65/05)

The President of the Management Board shall:

- 1) represent and act for the Fund, manage the work and be held responsible for the legality of operations of the Fund;
- 2) propose to the Management Board the Fund By-laws and other general regulations of the Fund;
- 3) propose to the Management Board the decision on the amount of annual premium;
- 4) propose to the Management Board the decision on the conditions and procedure of disbursement of guaranteed deposits;
- 5) propose to the Management Board the financial plan of the Fund;
- 6) propose to the Management Board annual operating report of the Fund and annual financial statements with the opinion of an independent external auditor;
- 7) propose to the Management Board the investment policy for the funds of the Fund, and, in accordance with the determined policy and requirements for safety and on-going liquidity, invest the funds of the Fund;
- 8) deleted
- 9) execute the policies and decisions of the Management Board;
- 10) decide on initiating and terminating the employment and exercising the rights and responsibilities of the Fund employees;
- 11) perform other assignments established by this Law and the Fund's By-laws.

Conflict of interest

Article 20

Members of the Management Board who have financial interest or are in any way connected to the subject of decision-making or are directly or indirectly interested in that subject shall disclose such interest at the beginning of the Board meeting and, unless otherwise decided by the Board, shall not participate in the consideration, discussion and voting on any issue related to the subject matter concerned.

The President of the Management Board may not be employed with a bank within the period of one year after ceasing the employment with the Fund without prior approval of the Management Board.

Business secret

Article 21

Members of the Management Board, the employees of the Fund as well as other persons engaged by the Fund to provide professional or technical services are obliged to keep the information they obtain during the performance of their assignment as a business secret.

Notwithstanding paragraph 1 of this Article, members of the Management Board, employees in the Fund and other persons engaged by the Fund to provide professional or technical services may disclose information considered as business secret to competent authorities in accordance with the law.

Funds of the Fund

Article 22 ((Official Gazette of Montenegro 65/05)

The funds of the Fund shall be provided from:

- 1) initial premiums;
- 2) annual premiums
- 2a) extraordinary premiums;
- 3) revenues from investment of the funds of the Fund;
- 4) donations;
- 5) other sources in accordance with the Law. The Fund may issue securities.

Initial premiums

Article 23 (Official Gazette of Montenegro 65/05)

The banks shall be obliged to pay into the Fund's account the initial premium in the amount of 0.3% of the total deposits but no less than EUR 10,000.

Newly founded banks shall be obliged to pay initial premium in the fixed amount of EUR 10,000 within 60 days from the day of registering with the Central Register of Commercial Court.

Annual premiums

Article 24 (Official Gazette of Montenegro 65/05)

The banks shall be obliged to pay to the Fund annual premiums for deposit protection in quarterly instalments, starting from the first quarter after the payment of the initial premium.

The banks shall make the payment of premiums from the 1st through the 20th in the first month of the quarter for the current quarter, as per the invoice submitted by the Fund, with the quarters being calculated from the first day of January, April, July and October.

The base for calculation of the instalments of annual premium shall be the average amount of total deposits as of the last day of each month in the previous quarter.

The forms, timeframes and the manner in which the banks shall submit the data referred to in paragraph 3 of this Article shall be established by the Fund's general regulation.

Management Board may establish, in its decision on determining the amount of annual premium, different levels of premium depending on the assessment of the rating and degree of risk in operation of individual banks (differential premiums).

The Central Bank shall submit to the Fund data on the assessment of a bank's rating and the degree of risk of its operations.

The Fund shall be obliged to keep the data referred to in paragraph 6 of this Article as a business secret.

Non-recovery of paid premiums

Article 25

The premiums paid by the banks for deposit protection may not be recovered.

Fund financing in case of insufficient funds

Article 26 (Official Gazette of Montenegro 65/05)

In case the funds of the Fund are not sufficient to cover the liabilities related to deposit protection, the

Management Board may decide to provide the shortage funds from the following sources:

- 1) charging of extraordinary premium, provided that the total sum of the annual and extraordinary premium may not exceed the amount of 1.5% of the total deposits of banks;
- 2) borrowings from domestic or foreign banks;
- 3) borrowings from the Budget of the Republic;
- 4) issuing securities.

The Management Board shall determine, in the decision on introduction of extraordinary premium, the amount of shortage funds, the base and rate for calculation of extraordinary premium and payment timeframes if the shortage funds referred to in paragraph 1 of this Article are provided by charging extraordinary premium.

The Decision referred to in paragraph 2 of this Article shall be published in the Official Gazette of the Republic of Montenegro.

Annual premium reduction

Article 27 (Official Gazette of Montenegro 65/05)

When the funds of the Fund referred to in Article 22 paragraph 1 items 1, 2 and 3 reach the level of 3% of protected deposits, the Management Board shall, taking into account the amount of protected deposits and the amount of the Fund's funds, consider on quarterly basis the possibility of decreasing the annual premium, or temporary discontinuation of the premium payment.

Providing information

Article 28

Upon the request of the Management Board of the Fund, the banks shall be obliged to provide and submit to the Fund the information necessary for performance of activities from its competences.

Banks shall be responsible for the accuracy of the provided information referred to in the paragraph 1 of this Article.

The Management Board may also request the Central Bank in writing to submit to the Fund information on the financial condition of banks for the purpose of risk assessment that follows the implementation of the deposit guarantee system.

The Management Board may publish the information on the Fund's activities that is not confidential.

Use of the funds of the Fund

Article 29 (Official Gazette of Montenegro 65/05)

The funds of the Fund shall be used for:

- 1) payment of the guaranteed deposits in cases prescribed in this Law;
- 2) repayment of the principal and interest of the loans and borrowings used by Fund;
- 3) Fund's operating costs.

The funds of the Fund may be invested, in accordance with the investment policy in:

- 1) securities issued or guaranteed by the Republic;
- 2) securities issued by a bank, financial institution or state with high rating, established by an internationally recognized rating agency;
- 3) deposits in banks with high rating established by an internationally recognized rating agency.

IV PAYMENT OF GUARANTEED DEPOSITS

Fund's obligations and rights in respect of payments to depositors

Article 30 (Official Gazette of Montenegro 65/05)

The obligation of the Fund to make the payment of the guaranteed deposits shall run as of the occurrence of the protected event.

As of the payment day, the Fund shall acquire the right to be reimbursed from the bankruptcy pool of assets, up to the amount of the guaranteed deposits paid, taking the position in the priority line of other creditors' claims determined in accordance with the law regulating bank bankruptcy and liquidation.

Terms and procedures for payment of guaranteed deposits

Article 31 (Official Gazette of Montenegro 65/05)

When the protected event occurs, the Fund shall pay guaranteed deposits through one or more banks, in the procedure specified in more details in the regulation referred to in Article 17 paragraph 1 item 4 of this Law.

The Bankruptcy Administrator of the bank shall, within 15 days from the day of his/her appointment, submit to the Fund data and documentation on deposits of that bank.

Payments from the Fund's funds shall start no later than 60 days and shall be completed no later than 90 days from the day of the occurrence of the protected event.

For the deposits that are not denominated in EUR, the equivalent amount in EUR shall be paid at the exchange rate as of the day when the protected event occurs.

In the period from the occurrence of the protected event until the payment day, no interest shall be accrued on guaranteed deposits.

Obligations of the bank towards its depositors shall be reduced by the amounts paid to the depositors from the Fund's funds, provided that the depositor shall retain the place in priority schedule established by the law that regulates bank bankruptcy and liquidation as if there were no payments of the guaranteed deposits.

Special procedure for exclusion of specific deposits

Article 32 (Official Gazette of Montenegro 65/05)

The Fund shall pass individual decisions on the exclusion of the deposits referred to in Article 5 of this Law.

The decision referred to in paragraph 1 of this Article shall be final.

A lawsuit may be brought before a competent court against the final decision referred to in paragraph 1 of this Article.

V PENALTY PROVISIONS

Offences

Article 33

A pecuniary fine in the amount of 50-fold to 300-fold of the minimum wage in the

Republic shall be imposed for an offence on a bank that:

- 1) fails to expose the logo of the Fund with the prescribed inscription at the visible spot in its business premises (Article 10 paragraph 2),
- 2) uses the participation in the deposit protection system for its own promotion (Article 10 paragraph 4),

3) fails to provide information or provides inaccurate information to the Fund necessary for performing the Fund's activities (Article 28 paragraphs 1 and 2).

A pecuniary fine in the amount of 10-fold to 20-fold official minimum wage in the Republic shall also be imposed for an offence referred to in paragraph 1 of this Article on a responsible person of the bank.

Article 34

Deleted. (Official Gazette of Montenegro, 65/05)

VI TRANSITIONAL AND FINAL PROVISIONS

Article 35

The Fund shall start to operate once members of its Management Boards have been appointed.

The Central Bank shall appoint members of the Management Board within eight months from the day this Law enters into force.

Article 36

Management Board shall adopt By-laws of the Fund no later than 30 days from the day of its appointment.

Article 37 (Official Gazette of Montenegro 65/05)

Banks shall be obliged to pay the initial premium within 15 days of the effective day of this Law, unless such bank has been under rehabilitation measures imposed in accordance with the law.

The bank that is under rehabilitation measures in accordance with the law shall be obliged to pay the initial premium no later than within 15 days from the date when the Central Bank assesses that the introduced measures have resulted in the bank rehabilitation or passes the decision on termination of the measures.

Article 38 (Official Gazette of Montenegro 65/05)

The Fund's obligation to pay guaranteed deposits in accordance with this Law shall not relate to a protected event that occurs prior to 1 January 2006.

Article 38a (Official Gazette of Montenegro 65/05)

The Central Bank shall appoint the Management Board of the Fund in accordance with the provisions of this Law no later than within one month after this Law enters into force.

Until the appointment of the Management Board referred to in paragraph 1 of this Article the existing Management Board shall continue to work.

Article 38b (Official Gazette of Montenegro 65/05)

Banks registered with the Central Register of the Commercial Court shall become the members of the Fund on the day this Law enters into force.

The bank under the rehabilitation measures shall become the member of the Fund on the day when the Central Bank assesses that introduced measures have resulted in the bank's rehabilitation or passes the decision on termination of the measures.

Article 38c (Official Gazette of Montenegro 65/05)

The Fund may exercise the establishment of annual premium at different rates (differential premiums) pursuant to Article 24 paragraph 5 of this Law starting from 1 January 2007.

Article 39

This Law shall enter into force eight days after its publication in the Official Gazette of the Republic of Montenegro.

PUBLISHER'S NOTE:

The consolidated text of the Law does not include the provisions of Articles 29 and 30 of the Law on Amendments to the deposit protection law (OGRM 65/05) that read:

Article 29

Legislative Committee of the Parliament of the Republic of Montenegro shall be authorized to draw up the consolidated text of this Law.

Article 30

This Law shall enter into force eight days after its publication in the Official Gazette of the Republic of Montenegro.