17 Annex - Economic and monetary policy

135. LAW ON FOREIGN CURRENT AND CAPITAL TRANSACTIONS

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

DECREE PROMULGATING THE LAW ON FOREIGN CURRENT AND CAPITAL TRANSACTIONS

(Official Gazette of Montenegro 45/05 of 28 July 2005)

I hereby promulgate the Law on Foreign Current and Capital Transactions passed by the Parliament of the Republic of Montenegro at the fourth sitting of the first ordinary session in 2005 on 21 July 2005.

No 01-763/2 Podgorica, 25 July 2005 The President of the Republic of Montenegro Filip Vujanović

LAW

ON FOREIGN CURRENT AND CAPITAL TRANSACTIONS I BASIC PROVISIONS

Subject matter

Article 1

This Law regulates the performance of payment operations between residents and nonresidents in euro and currency other than euro, as well as the manner for transfer of property to and out of Montenegro (hereinafter referred to as Montenegro), and the right of residents to have ownership over the means of payment denominated in a currency other than euro.

General principle of freedom of business operations in the foreign currency regime of Montenegro

Article 2

Current and capital operations, including transfers of property from and to Montenegro, shall be performed freely, unless otherwise prescribed by law.

Residents and nonresidents are free to have ownership and dispose with means of payment denominated in a currency other than euro and perform business and payment operations in a currency other than euro in accordance with law.

State authorities' measures shall not be undertaken for discriminatory restrictions of free capital movement and turnover referred to in paragraphs 1 and 2 of this Article.

Definitions

Article 3

For the purpose of this Law the following terms mean as follows:

1) residents are:

- business organizations and other legal entities (hereinafter referred to as legal entities) registered in Montenegro, with the exception of their representative offices outside of Montenegro;
- foreign company branches registered with the register of the competent authority in Montenegro;
- entrepreneurs physical persons with permanent or temporary residence in Montenegro, conducting a business activity for its own account for the purpose of gaining profit, who are also registered with the competent authority in Montenegro;
- physical persons citizens of Montenegro residing in Montenegro for 183 days or more in a given calendar year;
- physical persons foreign citizens, who based on the residence permit or business visa, reside in Montenegro for 183 days or more in a given calendar year;
- diplomatic, consular and other representative offices of Montenegro in foreign countries, employees in these representative offices, and the members of their families who are not citizens of foreign countries.
- 2) **nonresidents** are the persons not defined as residents;
- provider of foreign payment transaction service is any legal person authorized by the Central Bank of Montenegro to perform payment transactions between Montenegro and abroad;
- 4) means of payment is cash and payment instruments;
- 5) cash is banknotes and coins:
- 6) **payment instruments** are payment orders executed by providers of payment operation services, letters of credit, remittances, bills of exchange, promissory notes, payment cards, travelers' and banking cheques and other similar negotiable instruments;
- 7) **securities** are deeds granting the rights to their holders in relation to the issuer pursuant to the law defining securities;
- 8) **domestic securities** are securities issued by a resident pursuant to the law regulating securities:
- 9) **foreign securities** are securities issued by nonresidents;
- 10) **exchange operations** are the operations of selling and buying of the means of payment in various currencies;
- 11) **capital operations** are transfers of capital between residents and nonresidents and one-side transfers of property for the purpose of transfer of capital other than current transfers. Capital operations shall be:
 - direct investments including all investments of residents abroad and nonresidents within the country, which the investor makes for the purpose of establishing permanent economic relations and making significant impact on legal entity management;
 - investments in real estate including investments of nonresidents in real estate within the country and residents' investments in real estate abroad;
 - operations in securities traded on the stock exchange, including transactions in securities in the stock exchange, as well as their quotation. Securities transactions in the stock exchange comprise obtaining of domestic or foreign securities in a stock exchange by nonresidents or residents. The quotation of securities on the stock of exchange comprises the quotation of domestic securities in a foreign stock exchange, as well as trading in foreign securities on a domestic stock exchange;

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- operations in money market instruments. Transactions in securities on the money market include obtaining of securities and instruments from domestic money market by nonresidents, as well as obtaining securities and instruments from foreign money market by residents. The quotation of securities and other instruments in the money market includes the quotation of domestic securities in a foreign money market, as well as the quotation of foreign securities and instruments in a domestic money market;
- operations in units of collective investment schemes;
- activities in the current and deposit accounts with financial institutions covering transactions between non-residents and domestic financial institutions, as well as transactions between residents and foreign financial institutions;
- credit operations or credits for provision of services in which a resident participates include short-term (up to one year), mid-term (up to five years) and long-term (five years and more) credits, as well as credits that nonresidents approve to residents and credits that residents approve to nonresidents;
- financial loans and credits which include short-term, mid-term and long-term loans and credits, loans and credits that nonresidents approve to residents, as well as loans and credits that residents approve to nonresidents;
- securities, other guarantees and rights of pledge which include securities, other guarantees and rights of pledge which nonresidents approve to residents and securities, other guarantees and rights of pledge which residents approve to nonresidents;
- transfers related to the implementation of insurance contracts include premiums and any other payments in respect of life and credit insurance;
- personal transfers of means of payment out of and to Montenegro which include gifts, aid, inheritance, annuities, settlement of immigrant's debt in the mother country and transfer of immigrant's funds abroad;
- physical import and export of financial assets which include securities and other means of payment out of and to Montenegro;
- other capital movements, which include compensations, death allowances, refunds, copyrights (patents, designs, trade marks and inventions), transfers of funds for provided services;
- 12) **current operations** are operations concluded between residents and nonresidents, the purpose of which is not to transfer capital.

II FOREIGN PAYMENT OPERATIONS

Foreign payment operations

Article 4

Foreign payment operations shall be performed through the Central Bank of Montenegro (hereinafter referred to as the Central Bank), banks and other payment service providers that are issued approval by the Central Bank to perform foreign payment operations.

Deadlines for execution of orders in foreign payment operations

Article 5

A bank shall be obliged to execute a proper outgoing order for foreign payment immediately and no later than the end of the next business day from the date of receiving the order, if the order issuer has money in the account.

In case where the beneficiary account is stated on the outgoing payment order, and transfer of funds requires no further instruction, the bank shall be obliged to credit beneficiary account with funds received from abroad, no later than the end of the business day after the day of receiving the advice on funds received from abroad.

In case where further instruction is required for transfer of funds, the bank shall be obliged to advise the recipient on the funds received from abroad on the same working day when it receives the advice on receipt of funds from abroad, and transfer the received funds to the account in accordance with the received instruction, no later than the following business day after the day of receiving the given instruction.

Reporting obligation of banks, other payment service providers and residents performing foreign payment operations

Article 6

The projection of the balance of payments of Montenegro is an annual act, encompassing foreign current and capital transactions between residents and non-residents, in particular the value and collection of exported goods and services and other invisible earnings, value and payment of imported goods and services and other invisible earnings, financial transactions with abroad.

The Central Bank shall monitor the movements referred to in paragraph 1 of the Article and shall, on the basis of available data, prepare for the Government the projection of Montenegro's balance of payments for the following year.

The Central Bank shall be obliged to submit the projection referred to in paragraph 2 of this Article within the deadline determined by the Government, in line with the dynamics of economic policy drawing up.

Article 6a

The client of a bank or other provider of foreign payment operations shall be obliged to state the purpose of the payment for every payment made in foreign payment operations that exceeds the amount prescribed by the Central Bank.

The bank or other provider of foreign payment operations shall be obliged to submit to the Central Bank statistical data on every payment and collection made in payment operations with foreign countries, all in line with the manner and deadlines prescribed by the Central Bank.

The resident - legal person shall be obliged to keep special records on the foreign current and capital operations, all in line with the manner prescribed by the Central Bank and shall, upon the Central Bank's request, provide the relevant data from the records kept.

The resident shall be responsible for the accuracy of the data referred to in paragraph 3 of this Article.

Supervising authority

Article 7

Supervision over the foreign payment operations and application of international standards shall be performed by the Central Bank.

III EXCHANGE OPERATIONS

Exchange operations

Article 8

Exchange operations may be performed by legal entities and entrepreneurs that have a contract with a bank, and are registered for performing exchange operations.

The Central Bank shall prescribe more detailed terms and the manner of performing exchange operations.

Publication of exchange rate list

Article 9

The Central Bank shall accept from the European Central Bank and each working day publish the exchange rate parity of Euro versus other convertible currencies (exchange rate list).

IV PHYSICAL IMPORT AND EXPORT OF FINANCIAL MEANS Reporting on physical import and export of financial means

Article 10

For the purpose of monitoring of the Projection of the Balance of Payments of Montenegro and control of money laundering and terrorism financing, residents and non-residents are obliged to declare physical import or export of means of payment at the point of entry or departure to or out of Montenegro.

The declaration referred to in paragraph 1 of this Article shall be submitted to administration body competent for customs affairs at the border crossing point.

The administration body referred to in paragraph 2 of this Article shall perform the control over physical import and export of means of payment.

The Central Bank shall prescribe the amount of cash which residents or nonresidents may import in Montenegro or export out of Montenegro without declaring it to the body referred to in paragraph 2 of this Article.

Administration body competent for customs affairs shall keep records on performed controls.

The Ministry of Finance shall determine more specific contents of the records referred to in paragraph 5 of this Article.

V PROTECTIVE MEASURES

Short-term protective measures

Article 11

If the movement of capital seriously jeopardizes or threatens to jeopardize the monetary policy or the financial position of Montenegro, the Central Bank may introduce protective measures.

The protective measures referred to in paragraph 1 of this Article are:

- 1) limiting payments in respect of current and capital operations;
- 2) prohibition of taking and giving loans, guarantees or warranties;
- 3) limiting the means of payment to be taken abroad or brought from abroad;
- 4) limiting of payments and collections via payment cards, traveller's and banking cheques, and securities;
- 5) limiting of buying and selling certain foreign money;

The Central Bank may introduce the protective measures referred to in paragraph 2 of this Article only with the consent of the Government.

The protective measures referred to in paragraph 2 of this Article shall be applied as long as the disruptions causing them continue to exist, but no longer than six months after being introduced.

VI PENALTY PROVISIONS

Article 12

A pecuniary fine in the amount of 50 fold to 300 fold of the minimum labor price in Montenegro shall be imposed for an offence on legal entity if fails to inform the Central Bank on statistical data referred to in Article 6 paragraph 4 of this Law.

A pecuniary fine in the amount of 10 fold to 20 fold of the minimum labor price in Montenegro shall also be imposed on a responsible person in the legal entity for the offence referred to in paragraph 1 of this Article.

Article 13

A pecuniary fine in the amount of 50 fold to 100 fold of the minimum labor price in Montenegro shall be imposed for an offence on legal entity and entrepreneur if they fail to provide the Central Bank with additional data or provide incorrect data referred to in Article 6 paragraphs 5 and 6 of this Law.

A pecuniary fine in the amount of 10 fold to 20 fold of the minimum labor price in Montenegro shall also be imposed on a responsible person in the legal entity for the offence referred to in paragraph 1 of this Article.

A pecuniary fine in the amount of 10 fold to 20 fold of the minimum labor price in Montenegro shall be imposed on a physical person for the offence referred to in paragraph 1 of this Article.

Article 14

A pecuniary fine in the amount of 50 fold to 300 fold of the minimum labor price in Montenegro shall be imposed on a legal entity and entrepreneur who fail to declare physical import or export of the means of payment referred to in Article 10 paragraph 1 of this Law.

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A pecuniary fine in the amount of 10 fold to 20 fold of the minimum labor price in Montenegro shall be imposed on a responsible person in the legal entity for the offence referred to in paragraph 1 of this Article.

A pecuniary fine in the amount of 10 fold to 20 fold of the minimum labor price in Montenegro shall be imposed on a physical person for the offence referred to in paragraph 1 of this Article.

VII TRANSITIONAL AND FINAL PROVISIONS Deadline for adoption of secondary regulations

Article 15

Detailed regulations for implementation of this Law shall be adopted no later than 90 days from the date this Law enters into force.

Entering into force

Article 16

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