

17 Annex - Economic and monetary policy

141. SECURITIES LAW

DECREE PROMULGATING THE SECURITIES LAW

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The Securities Law is hereby promulgated, which has been adopted by the Parliament of the Republic of Montenegro at the second sitting of the second ordinary session in 2000, on 22 December 2000.

Number: 01-2913/2

Podgorica, 26 December 2000

President of the Republic of Montenegro

Milo Đukanović, m.p.

SECURITIES LAW

I. GENERAL PROVISIONS

Scope and Purpose of the Law

Article 1

This Law regulates the types of securities, the issue of securities and trade in those securities, the rights and obligations of entities on the securities market, and the organisation, scope of work and responsibilities of the Securities and Exchange Commission of the Republic of Montenegro.

Definition of Securities

Article 2

Securities shall mean documents granting rights to its owners in relation to the issuers in accordance with Law and under the terms of issuance.

According to the granted rights, securities shall be divided into equity and debt securities.

Equity securities shall mean shares denominated as a share of capital of a joint-stock company and collective investment schemes units, issued in accordance with a special law, as well as securities that grant the acquisition right for these securities (convertible bonds, options, futures, and similar).

Debt securities shall mean securities issued in series that grant to the holder the right to a payment of nominated value, with or without interest, as well as other rights in accordance with regulations and decision on the issue.

Debt securities, in the meaning of this Law, shall be:

- 1) bonds, by which issuer is obliged to pay the bondholder the nominal value of the bonds and the agreed-upon interest at maturity;
- 2) certificates of deposit by which issuer is obliged to pay to the holder of the certificate the value of the deposited funds and the related interest by a specified date;
- 3) Treasury bills issued by the Republic of Montenegro (hereinafter referred to as the Republic);

4) other financial instruments prescribed by regulations of the Securities and Exchange Commission of the Republic of Montenegro (hereinafter referred to as the Commission) as securities, but not including:

- checks and bills of exchange;
- commercial papers (trade order, letter of credit, goods order, bill of lading, warehouse receipt);
- and other instrument prescribed by the Commission not to be securities for the purpose of this Law.

Debt securities shall be divided into short-term and long-term as follows: debt securities shall be considered as short-term when their maturity date is shorter than a year as of the day of their issuance, whereas debt securities shall be considered as long-term when their maturity date exceeds the period of a year as of the day of their issuance.

Dematerialization of Securities

Article 3

Securities are issued, transferred and kept in dematerialized form.

Essential Elements of Securities

Article 4

Essential elements of dematerialized securities are:

- 1) identification of securities' type;
- 2) identification of a category and serial number;
- 3) name (title), head office and full address of the issuer and its identification in the Registry of issuers maintained by the Commission;
- 4) issuer's liabilities as well as rights and responsibilities of security owner including the manner of their fulfilment;
- 5) place and date of issuance;
- 6) names of the persons authorized to represent the issuer;

Other elements shall be stipulated by the rules of the Commission.

Registration of Securities

Article 5

Securities issued in accordance with this Law must be registered at the Central Depository Agency that is established and operates in accordance with this Law.

The rights and obligations related to the securities shall start upon registration at the Central Depository Agency.

Issuers of Securities

Article 6

The issuer of securities may be the Republic of Montenegro, a municipality, business organization and any other legal person registered with the Central Registry of the Commercial Court.

II. SECURITIES AND EXCHANGE COMMISSION

Establishment and Status

Article 7

The Commission is an organization of the Republic of Montenegro, with the status of a legal person, established for the purpose of regulating and supervising the issue of and trade in securities.

The headquarters of the Commission shall be in Podgorica.

The Commission shall be independent and autonomous in the conduct of its activities as specified in the law and shall report to the Parliament of the Republic of Montenegro (hereinafter referred to as the Parliament).

Commission Responsibilities

Article 8

The Commission shall have the following responsibilities:

- 1) to make Rules with respect to implementation of this Law, when authorised therefore;
- 2) to ensure that this Law and any Rules made under this Law are complied with;
- 3) to approve public offers of securities and keep records of issues of securities which are not sold by public offer;
- 4) to supervise public offers of securities;
- 5) to license and approve relevant acts of securities markets, authorised market participants and Central Depository Agency;
- 6) to authorise and regulate collective investment schemes established in accordance with a separate Law and approve adequate acts;
- 7) to approve nomination of executive directors of the persons licensed by the Commission;
- 8) keep records and registers in accordance with provisions of this Law that are freely available to the interested persons for inspection;
- 9) to set general requirements to be met by natural persons professionally engaged in trade in securities;
- 10) to promote and encourage high standards of investor protection and integrity among licensees;
- 11) to monitor and enforce Rules for the conduct of business by licensees including the suspension and revocation of licenses;
- 12) to undertake measure and support the operation of an orderly, fair and properly informed securities market;
- 13) to regulate the manner and scope of trading on a securities market;
- 13a) to determine highest value of commissions and other fees collected by the stock exchange for its services, when it determines that their amount discourages development of securities market;
- 13b) to regulate issuance and trade in short-term securities in more details.
- 14) deleted;
- 15) to take all steps to safeguard the interests of persons who invest in securities and to suppress illegal, dishonourable and improper practices in relation to dealings in securities;
- 16) to take actions and perform control and examination to prevent any frauds on the securities market;
- 17) to co-operate with other related authorities in Montenegro or elsewhere; and
- 18) to take other actions and perform other duties under the law.

Commission Rules and Other Acts

Article 9

Without limitation to specific provisions in this Law enabling the Commission to make Rules, the Commission may make Rules for or with respect to:

- 1) applications for licenses, the issue of licenses and incidental matters;
- 2) the display of licenses and the issue of duplicates;
- 3) the qualifications, experience and training required of natural person that are to be licensees, the examinations that applicants for licenses may be required to take, and the circumstances in which they may be excused from such requirements;

- 4) the making of annual or other periodic reports to the Commission by licensees;
- 5) the conditions subject to which securities may be listed and the circumstances in which dealings in listed securities shall be suspended;
- 6) the particulars to be recorded in relation to accounts to be kept for the purposes of this Law, and the particulars to be recorded in profit and loss accounts and balance sheets;
- 7) the information to be contained in auditors' reports required to be filed under this Law;
- 8) deleted;
- 9) the form and content of advertisements relating to securities business, and possible restrictions upon the entities who may issue advertisements;
- 10) transactions with securities purchased in compliance with resale agreements and securities sold in compliance with repurchase agreements (REPOs);
- 11) executing custody operations.

The Commission shall be obliged to publish draft rules on its website, at the latest 14 days before their adoption, soliciting comments, proposals or suggestions from interested parties.

The Commission may determine a shorter deadline than the deadline referred to in paragraph 2 of this Article, if proposed rules prescribe activities requesting urgent action.

Rules issued by the Commission that have the character of general acts shall be published in the Official Gazette of Montenegro.

The Commission may issue instructions, bulletins, advice or other regulatory statements, as it may consider necessary or desirable for the administration of this Law.

Decision of Commission

Article 10

The provisions of the law regulating general administrative procedure shall apply to the procedures before the Commission, unless otherwise determined by this Law.

Decisions by the Commission related to matters set forth in Article 8, paragraph 1, points 3, 4, 5, 6, 7, 11 and 16, of this Law, shall be made in the form of resolutions.

The Commission shall make a decision on an application within 30 days from the date of receiving the properly made application, i.e., from the date when the submitted documents are considered complete by the Commission.

Decisions specified in paragraph 1 above are final.

A party may initiate an administrative dispute before the competent court against decisions of the Commission.

Decisions on approving or revoking public offers of securities and issuing, suspending or revoking licenses shall be published in the Official Gazette of Montenegro.

Membership and Nomination of the Commission Members

Article 11

The Commission shall consist of 5 members: the chairman, the deputy chairman, and three members.

The Commission shall be appointed by the Parliament from persons nominated by the Government of the Republic of Montenegro (hereinafter: the Government).

The persons with university education and professional experience of more than 5 years in the areas of law, monetary, economic or financial systems and with a recognized standing eligible for this position may be nominated as a member of the Commission.

The following persons shall not be eligible for appointment as members of the Commission:

- 1) the persons elected, nominated or employed in government bodies;
- 2) members of governing and managing boards, executive bodies and secretaries of the securities issuers,
- 3) shareholders and employees of Stock Exchanges, licensees, Central Depository Agency; and
- 4) persons in matrimony with each other or in kinship either in an ascendant line, or in a collateral line, or in-laws up to the third degree.

The chairman, the deputy chairman and at least one of the members of the Commission shall be full-time paid members exclusively engaged in the business of the Commission, and shall not carry out any other paid job, except for activities in the fields of science, research and lecturing.

The chairman of the Commission shall manage and act for and represent the Commission.

If the office of chairman of the Commission is vacant, or if the chairman of the Commission is unable to act as chairman due to illness or other incapacity, the deputy chairman shall act as chairman in his place.

The members of the Commission must behave so as not to detract from their own reputation or the prestige of the Commission and so as not to jeopardize their independence and impartiality in making decisions and the independence of the Commission.

The members of the Commission must not use their work in the Commission and the prestige of the Commission in pursuit of their own interests.

Term of Office

Article 12

A member of the Commission shall be appointed for the term of five years and may be re-appointed.

The office of a member shall be vacated:

- 1) if he is performing his duties as a member of the Commission in a negligent and inefficient manner;
- 2) if he becomes permanently incapable of performing his duties as a member;
- 3) if he is convicted with an unconditional custodial sentence or of an offence that makes him unworthy of the position of a member;
- 4) if he is absent from three consecutive meetings of the Commission without the Commission's permission.

A member may resign his office by letter sent to the Parliament.

Meetings of the Commission

Article 13

Meetings of the Commission shall be held as often as may be necessary for the performance of its functions and in any event not less than once every month and such meetings shall be held at such places, times and days as the Commission may determine.

The quorum for a meeting of the Commission is minimum 3 members.

The decisions shall be made by majority votes of all members of the Commission.

The Statute of the Commission

Article 14

The Commission shall have its Statute.

The Statute shall be published in the Official Gazette of the Republic of Montenegro.

The Commission shall have a stamp with a title: "Securities and Exchange Commission of the Republic of Montenegro, Podgorica" and the coat of arms of the Republic of Montenegro.

Conflict of Interest

Article 15

Members of the Commission and employees of the expert body of the Commission shall be obliged to comply with the highest professional standards and act in accordance with the Code of Ethics to be established by the Commission, in order to avoid a possible conflict of interest

If the chairman, deputy chairman or a member of the Commission have been connected in any way with the subject matter of deciding or have been directly or indirectly interested in such subject matter, they shall as soon as practicable after the commencement of the meeting, disclose the interest and shall not, unless the Commission otherwise directs, take part in any consideration or discussion of, or vote on, any question touching that matter.

Acting in accordance with paragraph 2 of this Article and acting contrary to the Commission Code of Ethics shall be separately recorded, and such record shall be available to the interested persons for inspection.

Professional Service of the Commission

Article 16

The Commission shall organize professional service of the Commission for the discharge of professional, administrative and material and financial duties.

The Commission shall appoint a Secretary who will manage the professional service the Commission.

General labour relations regulations shall apply on the employees of the Commission.

Acting of employees of the professional service of the Commission contrary to the Code of Ethics shall be separately recorded by the Commission, and those records shall be made available to the interested parties.

Immunity

Article 17

Ceased by the Decision of the Constitutional Court of the Republic of Montenegro (Official Gazette of the Republic of Montenegro of 21 July 2005)

Confidentiality

Article 18

Members or former members, and employees or former employees of the Commission, shall be obliged to keep information obtained during their work in the Commission, or otherwise, that are considered, in accordance with regulations, as business secret.

Prohibition referred to in paragraph 1 of this Article shall cease to be valid once the denotation business secret is removed from the information, in accordance with criteria established by a legal document of the Commission.

Persons referred to in paragraph 1 of this Article must not give advice related to investment in securities or give opinion on favourable and unfavourable purchase or sale of securities.

Prohibition referred to in paragraph 3 of this Article shall cease to be valid after termination of the performance of function or operations in the Commission.

Persons referred to in paragraph 1 of this Article shall be obliged to keep privileged information until the information loses its privileged capacity-

Cooperation of the Commission with other Regulatory Authorities

Article 18a

At the request of competent state body or foreign body competent for supervision of trade in securities, the Commission shall be obliged to submit necessary data and information.

Exchange of data and information referred to in paragraph 1 of this Article shall not be considered as disclosure of business secret.

Funding

Article 19

The Commission shall be funded from:

- 1) the fees and charges paid along with applications submitted to the Commission;
- 2) the fees and charges paid with respect to registration and transfer of securities with the competent registration authority.

The amount of the fees and charges mentioned in paragraph 1 above shall be prescribed by the Commission.

The Commission may also be funded from other sources.

Financial Year

Article 20

The financial year of the Commission shall be the period of twelve months ending on 31 December in each year, and its first financial year shall begin on the date of enforcement of this Law and end on 31 December of that year.

The Commission may use any revenues exceeding the expenditures exclusively for meeting the legal obligations regarding the performance of the function of regulatory and supervisory body in the area of securities

Registers and Other Documents of Commission

Article 21

The Commission shall keep registers and other records.

The Commission shall keep the registers of issuers of securities; granted and withdrawn approvals of public offers of securities; refused applications for approval of public offer; granted, suspended and revoked licenses; refused applications for licenses; natural persons professionally engaged in transactions with securities; and other registers as needed.

Audit

Article 22

The accounts, records and financial statements of the Commission shall be audited by an internationally recognized independent auditor appointed by the Commission.

The auditors shall prepare in accordance with International Auditing Standards an audit report and send it to the Commission.

The auditors shall include in their report:

- 1) an evaluation, as well as their opinion, on whether the income and expenses account for the financial year gives a true and fair view of the Commission's income and expenses;
- 2) An evaluation, as well as their opinion on whether the balance sheet for the financial year gives a true and fair view of the Commission's financial affairs at the end of that financial year.

The auditors shall have a right of access to the registers, accounts, and other records of the Commission and are entitled to require from officers of the Commission such information and explanation as they consider necessary for the performance of their duties as auditors.

Annual Report

Article 23

The Commission shall, not later than six months after the end of each financial year, prepare a report on its activities and situation at the securities market and shall submit it to the Parliament and to the Government.

The Commission shall submit financial statements for the previous year with the auditor's report, together with the report referred to in paragraph 1 of this Article.

III ISSUE OF EQUITY AND LONG-TERM DEBT SECURITIES

The Issuance Procedure

Article 24

The securities issuance procedure includes:

- 1) decision-making regarding the issue;
- 2) submission of an issuance approval or issuance registration request to the Commission;
- 3) contract arrangement between the issuer and the Central Depository Agency;
- 4) publishing of a prospectus and public invitation for subscription and payment regarding securities, as well as publishing of results of public sale in accordance with this Law;
- 5) Entering securities in the Registry of issuers with the Commission and buyers' accounts with the Central Depository Agency

Decision on Issue

Article 25

The decision on securities issue should contain the:

- 1) full name and address of the issuer;
- 2) registration number of the issuer from the Registry of issuers maintained by the Commission;
- 3) title of competent authority responsible for making a decision on issuance;
- 4) place and date as of which the decision on issuance was made;
- 5) identification of securities type and category;
- 6) serial number of the issuance and total number of issued securities;

- 7) number and initial, or nominal value of securities if determined;
- 8) rights incorporated in the security;
- 9) the manner of securities sale;
- 10) opening and closing time for subscription procedure and list of locations where subscription and payments in terms of securities are taking place;
- 11) indication whether the issuer retained the right to terminate subscription and payment for securities before expiration of determined deadline;
- 12) full name and position of persons authorized by the issuer to conduct the issuance of securities;
- 13) other elements in accordance with the rules of the Commission.

The contract on founding a Joint Stock Company represents the decision on the first issue of shares.

The decision on issuance cannot restrict the rights to buy securities to any party, unless such right has been restricted by law, and cannot give preference to any buyer.

Registration Statement of the Issuer

Article 26

A Company which proposes to issue securities to the public shall register with the Commission as a reporting issuer and file a registration statement in the form and within the period specified by the Commission.

No shares shall be traded on a licensed security market other than shares issued by a reporting issuer.

Continuing Disclosure Obligations of Issuers

Article 27

Every issuer of securities that are offered publicly shall keep the Commission, members of the issuer, other holders of its securities and the general public informed of any information, that:

- 1) is necessary to enable them to appraise the financial position of the issuer and of its subsidiaries;
- 2) may lead to establishing of false disloyal trading in its securities; or
- 3) might reasonably affect market activity in the price of its securities.

In addition to the requirements of paragraph 1, the issuer shall also furnish such other information as may be prescribed by the Commission.

Annual Reports

Article 28

A reporting issuer shall

- 1) file with the Commission a copy of its year-end account upon its adoption at the general meeting of shareholders, and a copy of the auditor's report in accordance with law; and
- 2) forward to each holder of its securities appropriate financial statements, if required by the Commission.

A reporting issuer shall file with the Commission such other reports and information as the Commission may specify.

Remedy in Cases of Unfair Prejudice

Article 29

If it appears to the Commission from any report, record or other document obtained under this Law, that the affairs of a listed company are being or have been conducted in a manner unfairly prejudicial to the interests of its members generally or of some part of the members, the Commission may:

- 1) make an order restraining the carrying out of the detrimental act;
- 2) order that the issuer shall pay appropriate damages within the specified time;
- 3) make any other order it thinks fit, whether for regulating the conduct of the issuer's affairs in future, or for the purchase of the shares of issuer by other members of the owner or by the issuer, or otherwise.

Obligation to Report Changes of Ownership

Article 30

When natural or legal persons, acquire or release securities, acquire or relinquish voting rights in a shareholders' meeting of a joint stock company, and when as a consequence of that acquisition or relinquishment the proportion of votes that person possesses exceeds or falls below one of the following thresholds: 10%, 20%, 33%, 50% the Central Depository Agency is obliged to notify the issuer and the Commission within seven days.

The period referred to in paragraph 1 of this article shall begin on the day of the acquisition of ownership rights on shares.

The notice referred to in paragraph 1 of this article must contain information on the class and series of shares acquired or released, the number of votes possessed in absolute and relative terms, and the full name and address (for natural person) or corporate name and domicile (for legal person).

The Commission shall prescribe more detailed criteria for mandatory publication of the data on ownership.

Stock and Reverse Stock Split

Article 31

The general meeting of an issuer may decide to divide the issuer's shares so that each shareholder will be issued two or more shares for one.

The general meeting of an issuer may decide to do reverse splitting of shares of the issuer by issuing each shareholder one share instead of two or more.

The rights of shareholders whose shares go through a reverse split shall not be reduced by that reverse split.

Shareholders who do not have enough shares for replacement in the reverse split procedure must be given an opportunity by the issuer to acquire shares up to the number necessary for the reverse split at the same price or the issuer must purchase shares from them for monetary funds within three months from the date when they receive notice of the reverse split.

If the issuer does not purchase the shares in accordance with paragraph 4 of this Article, a shareholder may submit the request for obtaining his right before the competent court within 30 days upon the expiration of the deadline referred to in paragraph 4 of this Article

Notice of Split and Reverse Split of Stocks

Article 32

Within eight days from the date when the general meeting of the joint stock company adopted a decision on a split or reverse split of stock, the issuer shall give notice to all shareholders.

The notice referred to in paragraph 1 of this article must contain very detailed information on the conditions and procedure for the replacement of shares in the split or reverse split.

The issuer shall bear the costs of the split or reverse split.

IV OFFER OF EQUITIES AND LONG-TERM DEBT SECURITIES

Definition of Public Offer

Article 33

Equity and long term debt securities shall be issued by way of a public offering except in the cases determined by this Law.

A public offering of securities is a sale based on a public invitation to subscribe and pay for securities.

The issuance of securities through a public offering shall require prior approval by the Commission.

Prospectus

Article 34

The prospectus shall be a public invitation to subscribe for and pay securities, which must contain all the information necessary for the investor to form a realistic picture of the property and obligations, profit and loss, financial position, and prospects of the issuer and concerning the rights contained in the securities to which the prospectus pertains.

The required contents of a prospectus shall be prescribed by the Commission.

When an issuer in the same calendar year issues several securities issues through the public offering, he shall be obliged to submit to the Commission a prospectus for the first issue, prepared in accordance with the regulations (complete prospectus), whereas for any subsequent issues in the same year, he shall be obliged to submit the prospectus containing only differences that have occurred from the day of publishing the complete prospectus and that can probably have an impact on the value of securities (supplement to the prospectus), provided that the complete prospectus is attached to

Changes in Circumstances

Article 35

Every new important fact or inaccuracy in the prospectus which could affect assessment of the security and which arises or which has come to light between publication of the prospectus and expiration of the period for subscription to and payment for securities, must be mentioned or corrected in a supplement to the prospectus, which must be accessible to the public in the same manner as the prospectus.

In the case referred to in paragraph 1 of this Article, a person who subscribed and paid for securities prior to publishing of the supplement to the prospectus may relinquish the subscription for securities and ask for return of the payment.

The issuer shall be obliged to return the funds referred to in paragraph 2 of this Article at the latest within 8 days as of the day of receiving the notice of relinquishing the subscription for securities.

Approval of Prospectus

Article 36

The prospectus must be approved by the Commission.

By approving the prospectus, the Commission confirms that the prospectus contains all the data required by this law.

If the Commission does not make a decision on the approval of the prospectus within the prescribed period it shall be assumed that the prospectus has been approved. In the case of proving that a prospectus has not been duly approved, the burden of proof shall fall on the Commission.

During the procedure of a public offer of securities the issuer shall provide that the prospectus is made available to the public, free of charge, at a specified address, from the time the securities are first offered until the end of the period during which the offer remains open.

The prospectus must not be published before the decision is made to approve the prospectus or before expiration of the period prescribed for making such decision.

The main details from the prospectus shall be published in the form of public invitation for the subscription and payment of securities.

A public invitation for the subscription and payment of securities shall not be published before the prospectus has been approved and before the location where it can be reviewed has been specified.

The prospectus shall be made available to the public no later than simultaneously with the publication of the public invitation for the subscription and payment of the securities to which it pertains.

Compensation for False or Misleading Prospectus

Article 37

Every offeror, issuer, director of an offeror or issuer, and any other person who is responsible for a prospectus, shall alone be accountable for the accuracy and completeness of the information the prospectus contains.

Every person specified in paragraph 1 above shall be liable to pay compensation to any person who has acquired any of the securities, in reliance upon the prospectus, to which the prospectus relates and suffers loss in respect of them as a result of any untrue or misleading statement in the prospectus or the omission from it of any matter required to be included by or under Article 34 above.

Natural persons referred to in paragraph 1 of this Article shall not be liable if they prove they knew nothing or could not have known about inaccuracy or incompleteness of the information from the prospectus, provided that they have acted with the diligence of prudent businessman.

Subscription of Securities

Article 38

The subscription of securities on the basis of public offer shall last for no longer than three months from the date of publishing a public invitation for the subscription and payment of the securities.

Notwithstanding paragraph 1 above, in certain cases the Commission can approve a longer period of time for subscription than prescribed.

Notification on Subscription and Payment

Article 39

A bank or other legal person through which securities are subscribed and paid for must within 8 days after expiration of the period for subscription and payment for securities inform the Commission of the number of securities subscribed and paid for.

Restriction of Disposal of the Unsubscribed and Unpaid Securities

Article 40

Upon expiration of the period for subscription and payment for securities, the issuer may not dispose in any manner of the securities which have not been subscribed and paid for.

Successfulness of Public Issue of Shares

Article 41

The issue of shares shall be considered as successful if a number of shares determined by the prospectus was subscribed and paid on the basis of the public offering, within the deadline from Article 38 of this Law.

If the public offer is not successful, the issuer must ensure the refund of the amount received within 8 days of the close of the subscription and payment period.

An issuer may desist from his issue if unforeseen circumstances occur disabling the issue or the achievement of the objectives of the issue, not later than 30 days upon receiving the Commission's approval for that issue.

Supervision of a Public Offer

Article 42

The supervision of a public offer is performed by the Commission.

If the Commission establishes any kind of irregularities in the process of public offering during the supervision, it will instruct the issuer to provide remedies.

The issuer has an obligation to correct the found irregularities and inform the Commission in writing on the actions taken. The issuer's response shall be accompanied with the documents and other evidence showing that the found irregularities have been corrected.

Suspension of the Subscription and Payment Process

Article 43

Upon receiving the order from the Commission to provide the remedies the issuer has to stop the process of subscription and payment and wait until the Commission allows him to proceed. The sale of the securities under the public offer shall be suspended during that period.

Approval Annulment

Article 44

If the issuer does not comply with the Commission's order, the Commission will annul its approval.

The more detailed Rules for the supervision and procedure of Public Offer shall be issued by the Commission.

Concept of Closed Offering

Article 44a

Closed offering shall mean the offer for the purchase of equity and long-term debt securities not based on a public invitation for subscription and payment of such securities.

The issue of equity and long-term debt securities may be done through the closed offering only in the cases when the issuer offers securities for sale to:

- 1) the existing shareholders on the basis of the pre-emptive right to purchase;
- 2) founders, in the case of simultaneous establishment of a joint stock company;
- 3) professional investors that are, under this Law, the following: investment funds, pension funds, authorized participants performing dealer activities, banks and insurance companies;
- 4) at the most 30 persons determined beforehand who have committed themselves to buy the entire issue, who are conversant with investment risks and business results of the issuer; or
- 5) in the scope not greater than EUR 40,000.

Issuer that issues long-term securities through closed offering shall prepare an abbreviated prospectus, whose detailed contents shall be established by the Commission.

The issuer shall not be obliged to publish a prospectus in the case of issuance of long-term securities through the closed offering.

Issues to Already Known Acquirers

Article 44b

The issuer may issue equities and long-term debt securities to already known acquirers in the following cases:

- 1) restructuring of joint stock company;
- 2) transformation of the gain into the share capital ;
- 3) transformation of the reserves into share capital:
- 4) debt to equity swap;
- 5) non-monetary contribution in a joint stock company;
- 6) sale of shares in the procedures prescribed by the law regulating business organisation insolvency;
- 7) reverse split and split of equity securities;
- 8) exchange of securities;
- 9) in other cases determined by the Commission.

Recording the Issue of Securities

Article 44c

The issue of long-term debt securities when the issuer of securities is the Republic shall be recorded in the Commission.

Issues of securities done in accordance with the provisions of Articles 44a and 44b of this Law shall be also recorded in the Commission.

The Commission shall prescribe more detailed manner and procedure for recording the issues referred to in paragraphs 1 and 2 of this Article.

Iva. ISSUE OF SHORT-TERM DEBT SECURITIES

Article 44d

Provisions of Articles 3, 4, 5, 24, 25, and 26 of this Law shall apply to the issue of short-term debt securities.

The Commission shall prescribe more detailed requirements for the issue, registration and trade in short-term debt securities.

The issues of short-term debt securities shall be registered in a special registry of the Commission.

Notwithstanding paragraph 1 of this Article, the procedure of issuing treasury bills and manner of selling treasury bills by issuers shall be regulated by a regulation of the Ministry of Finance.

V. SECURITIES MARKETS

Definition of Securities Markets

Article 45

The trade of securities is conducted on the securities markets that are established for the purpose of creating the conditions for matching the demand and offer of securities.

Stock Exchanges conduct securities market business.

Notwithstanding paragraph 1 of this Article, trading in securities shall not be carried out on securities markets in the following cases:

- 1) when securities, in accordance with Articles 44a and 44b of this Law, are offered through the closed offering;
- 2) in the case of implementation of the public offering for taking over a joint stock company in accordance with special regulations;
- 3) in the case of implementation of trade in block securities, in accordance with special regulations; and
- 4) when the Commission allows by its rules trade in short-term debt securities

Restriction on Establishment of Stock Exchanges

Article 46

No legal person shall establish or operate a Stock Exchange except under and in accordance with a license granted by the Commission, nor shall it use the word stock exchange/securities market in its name.

Stock Exchange

Article 47

The Stock Exchange shall be established as a joint stock company in accordance with the provisions of the Law of Companies and the provisions of this Law.

Stock Exchange must operate in the manner that provides for efficient connection of supply and demand for securities and public dissemination of information on the securities market, and in the manner that prevents creation of unfair competition or introduce unjustifiable barriers for entering the market.

Exchanges must have the organization, equipment and technical conditions so that all participants in trade on the exchange:

- 1) can simultaneously, equally and under equal conditions make and accept offers for the purchase and sale of securities, and
- 2) shall at the same moment have equal access to market information on securities being traded, and all may sell or purchase securities under equal conditions.

Specialized Stock Exchanges

Article 48

The Stock Exchange may be specialized in that only certain classes of securities are traded on it. The class and form of securities in which the exchange is specialized must be stated in the corporate name of the exchange.

Unbiasedness

Article 49

The exchange may not engage in trade in securities nor issue advice on trade in securities and on investment in securities nor issue opinions on the advantages or disadvantages of buying or selling securities.

Establishment of an Exchange

Article 50

An exchange may be established by a group of at least 8 founders and must at all times have at least that number of shareholders in order to operate.

The shareholders of the exchange may be members in the exchange and other persons.

Initial Capital of the Exchange and Shares

Article 51

The initial capital of the exchange must amount to at least EUR 100 000.

Stock Exchanges may only issue registered common shares.

Issuing Stock Exchange License

Article 52

A Stock Exchange license shall be issued by the Commission, on the basis of the submitted application.

An application under paragraph 1 shall be made in the form and manner prescribed by the Commission and shall be accompanied by the prescribed fee.

The applicant is obliged to meet the following conditions:

- 1) provide minimum prescribed initial capital;
- 2) determine in its Statute performance of operations on a securities market as its only activity;
- 3) provide technical equipment to perform operations on a securities market;
- 4) state at least 3 members who are engaged in the business of dealing in securities;
- 5) propose the rules and procedures that ensure the performance of operations in an orderly manner and so as to afford proper protection to investors;
- 6) propose the activities with respect to :
 - the clearing and settlement of dealings in securities to ensure the performance of transactions effected on the securities market, and for the recording and publication of such transactions;
 - market surveillance;
 - the effective monitoring and enforcement of compliance with its rules, this Law and Rules made under this Law; and

- investigating objections and complaints in respect of business transacted by any of its members;
- 7) the applicant must propose rules which, where a member of the exchange appears to be unable to meet his obligations in respect of one or more market contracts, enable action to be taken to resolve such situations.

The Commission may issue a Stock Exchange license if it is satisfied that the interests of the public will be served by the grant of a license; and the applicant satisfies the conditions specified.

Registration with the Court

Article 53

A Stock Exchange shall be registered with the Commercial Court in order to acquire the status of a legal person.

The Stock Exchange has to apply for the registration within 30 days upon receiving a license.

The Stock Exchange is obliged to start its operation in the next 30 days following the date of registration.

Statute and Management of Stock Exchange

Article 54

The Stock Exchange shall have its Statute that will govern the organization and management of the exchange.

The affairs of a Stock Exchange shall be managed by a Board of Directors whose members shall be elected or appointed in accordance with its Statute.

The Commission shall approve the founding agreement, statute and decision on nomination of executive director of Stock Exchange.

Duties of Stock Exchange

Article 55

The Stock Exchange shall ensure an orderly and fair dealing in the securities.

In performing its duties under paragraph 1 above, the Stock Exchange shall:

- 1) act in the best interests of the investing public;
- 2) ensure that such interests prevail where they conflict with any other interests the issuer is required to serve under any other law.

The Stock Exchange shall accept as its member any licensee who meets the membership criteria within two months from the date of application submitted by such licensee.

The Stock Exchange shall notify the Commission immediately if it becomes aware:

- 1) that a member is unable to comply with any financial resource requirement; or
- 2) of a financial difficulty which in the opinion of the Stock Exchange indicates that the financial standing or integrity of a member is in question, or that a member may not be able to meet his legal obligations.

Notification to the Commission

Article 56

The Stock Exchange shall inform the Commission on:

- 1) realized trade on the Stock Exchange;
- 2) submitted applications for acceptance in and termination of the Stock Exchange membership;
- 3) submitted applications for entrance on the Stock Exchange list and acceptance or withdrawal of securities from the list;

The Commission may prescribe other facts significant for securities market operation that should be notified by the Stock Exchange.

Stock Exchange Rules and Regulations

Article 57

The trading of securities and the proper functioning of Stock Exchange shall be determined by the Stock Exchange Rules and other regulations enacted by the Exchange.

The Stock Exchange rules should enable accurate and efficient regulation and control of securities market.

The Stock Exchange Rules shall specify in particular: the membership, listing, range of price changes, capital adequacy, information and periodical reports, transaction notification.

The criteria for making different lists for securities trading shall be prescribed by the Stock Exchange Rules.

The requirements for quotation on the Stock Exchange lists shall be regulated by special quotation rules.

The Stock Exchange Rules and the Rulebook on Stock Exchange quotation and amendments thereto shall be subject to the approval of the Commission.

Power of Commission to Issue Instructions to the Stock Exchange

Article 58

The Commission may issue instructions to the Stock Exchange for the purpose of protecting the investors and proper regulation of securities market:

- 1) with respect to trading in securities on the Stock Exchange generally or with respect to the trading of a particular security on that exchange;
- 2) with respect to the manner in which the exchange carries on any aspect of its business, including the manner of reporting trades by members; or
- 3) with respect to any other matter that the Commission considers necessary

Power of Commission to Require Amendments to Rules

Article 59

Where the Commission considers it necessary for the protection of investors, it may by notice in writing require the Stock Exchange to make or to amend any rule, specifying the amendments and the dates those amendments shall have force and effect.

Closure of Stock Exchange in Emergency

Article 60

The Commission may direct it to close the Stock Exchange for a period not exceeding 5 trading days if it is of the opinion that the orderly transaction of business on the securities market needs to be stopped because:

- 1) of an impending emergency or natural disaster; or
- 2) there exists an economic or financial crisis, whether in Montenegro or elsewhere,
- 3) or there are any other circumstances, which require interruption of orderly trading on the Stock Exchange.

In exceptional cases, the Commission may extend the prohibition direction for further periods as it deems necessary.

Suspension and Revocation of Stock Exchange License

Article 61

The Commission may suspend a Stock Exchange license granted if the Stock Exchange

- 1) temporarily ceases to operate a securities market;
- 2) contravenes a provision of its Rules ;
- 3) fails to provide the Commission with information lawfully required; or
- 4) fails to comply with the instructions and orders of the Commission.

The Commission may revoke a Stock Exchange license granted if the Stock Exchange

- 1) permanently ceases to operate a securities market;
- 2) is being wound up;
- 3) fails to continue to comply with the conditions specified in this Law ; or
- 4) fails to comply with the licensing requirements.

Before suspension or revocation, the Commission may perform a fact finding review together with the Stock Exchange.

The revocation decision made by the Commission shall establish the closing date for the Stock Exchange.

The Commission shall submit the revocation decision to a competent Court.

VI. LICENSED MARKET PARTICIPANTS

Securities Business

Article 62

For the purposes of this Law, "securities business" means carrying on the following activities

- 1) brokerage in purchase and sale of securities upon the order of the client (on its own behalf and for the client's account) in exchange for the commission ("broker");
- 2) securities trade on its own behalf and for its own account in order to make a profit ("dealer");
- 3) managing the portfolio of securities belonging to another person("investment manager")
- 4) undertaking of newly issued securities for the purpose of public resale on behalf of the issuer, or the guaranteeing to an issuer that the unsold residue of the issuer's public issue or sale will be taken up ("underwriting");

- 5) giving, to investors or potential investors advice on the merits of the purchasing, selling, subscribing for or underwriting securities ("investment adviser"); and
- 6) any other activity that the Commission deems to constitute securities business.

Licensees

Article 63

Securities business can be carried out only by licensed participants on the securities market (hereinafter referred to as the licensees) as their only business under their licenses.

Licensees shall be established as Joint Stock Companies in accordance with provisions of the law on business organisations and this law.

Notwithstanding paragraph 2 above, an investment adviser's license may be granted to a natural person or to a legal person organized as a limited liability company.

The Ownership

Article 64

The same person cannot, either directly or indirectly, own shares of more than one licensee.

Licensees cannot, either directly or indirectly, own shares of other licensees.

Natural persons cannot, at the same time, be employed by more than one licensee, nor be a member of neither the governance nor managing bodies in several licensees.

Licensing Requirement

Article 65

No person may carry on securities business unless he is licensed to do so by the Commission under this Law.

A license granted under this Law shall specify the securities business activity or activities that the licensee is permitted to undertake.

Eligibility for Licensing

Article 66

A broker's license may only be granted to a legal person which shall at all times employ at least 2 individuals who are licensed as broker's representatives under the rules of the Commission.

A dealer's license may only be granted to a legal person which shall at all times employ at least 2 individuals who are licensed as dealer's representatives under the rules of the Commission.

An investment manager license may only be granted to a legal person which shall at all times employ at least 2 individuals who are licensed as investment manager representatives under the rules of the Commission.

Broker, dealer and investment manager activities may be carried out only by persons who acquired adequate title for performance of such activities, in accordance with more detailed requirements determined by the Commission.

By the way of exception to article 63, paragraph 1 above, in the case of a bank a securities business license may be granted by the Commission only to a bank that obtained a license from the Central Bank of Montenegro and which has a special organisational part that is exclusively engaged in securities business.

Initial Capital Requirement

Article 67

Minimum amount of the monetary part of the initial capital shall be:

- 1) EUR 10 000 for investment advisor;
- 2) EUR 25 000 for broker;
- 3) EUR 125 000 for dealer and investment manager;
- 4) EUR 250 000 for an underwriter

In the case of an application for a license for any other type of securities business, the amount of minimum financial requirement for the initial capital shall be determined by the Commission.

Application for License

Article 68

An application for a securities business license shall be submitted in the form and manner determined by the Commission and shall be accompanied by the prescribed fee.

The application set forth in paragraph 1 above shall include the following information:

- 1) information about the services which the applicant intends to provide;
- 2) information about the business which the applicant proposes to carry on and to which the application relates, and about any person whom the applicant proposes to employ or with whom the applicant intends to be associated in the course of carrying on the business;
- 3) specific location of all premises at which the review of technical equipment for the business for which the application can be made.

In order to obtain the license, licensees - legal persons shall, in addition to the application, provide the Commission with the following:

- 1) a foundation chart (contract);
- 2) the statute;
- 3) a job description and the work plan for the following two years;
- 4) information on individuals with special powers and responsibilities;
- 5) information and evidence regarding the share capital and fulfilment of other conditions depending on the type of activity, personnel, technical, financial and organizational capability of the company applying for the license.

Grant of License

Article 69

The Commission may grant a license to a licensee subject to such conditions as prescribed by this law.

Where the applicant is a legal person, the Commission shall take into account any circumstances relating to its majority shareholder.

A majority shareholder shall mean a person having shares in a legal person whose number is equal or greater than 25% of the total number of shares with voting right.

Registration with the Court

Article 70

A licensee shall be registered with the Commercial Court in order to acquire the status of a legal person.

The licensee has to apply for the registration within 30 days upon receiving a license.

The licensee is obliged to start its operation within 30 days following registration at the Court Register.

Power of Commission

Article 71

The Founding Agreement, Statute and Rules of licensees are subject to approval of the Commission. The Commission shall also approve the appointment of executive director of licensees.

The Commission may, amend or cancel any condition attached to the license or impose further conditions to a licensee.

Notification to Commission

Article 72

Authorized participants shall be obligated to submit to the Commission:

- 1) periodic reports on operations in accordance with rules of the Commission;
- 2) annual reports on operations, financial reports prepared in compliance with the law regulating accounting and auditing and independent auditor's report, within four months from the end of financial year; and
- 3) other data, information and reports determined by the Commission

The Code of Ethics

Article 73

Licensees shall not perform transactions which may jeopardise the stability of the market. This especially refers to:

- 1) providing investors with the false information regarding the price of securities;
- 2) the spreading of false information in order to influence the price of securities;
- 3) the handling of securities without the written permission of the owner.

Revocation and Suspension of Licenses

Article 74

The Commission may revoke a license granted to a licensee – legal person if:

- 1) it ceases, on a permanent basis, to carry on the business for which it is licensed;
- 2) the decision on bankruptcy or liquidation has been passed;
- 3) it fails to comply with any condition applicable in respect of the license;
- 4) it contravenes the provisions of this law.

The Commission may revoke a license granted to a licensee – natural person if such natural person:

- 1) becomes incapable of performing the activities to which the license relates;
- 2) ceases, on a permanent basis, to carry on the business for which he is licensed;
- 3) fails to comply with any condition applicable in respect of the license;
- 4) contravenes the provisions of this law;

5) is convicted with an unconditional custodial sentence or of an offence which disqualifies him from engaging in the business for which he has been licensed.

The Commission may, suspend the license for such specified period, to a licensee pending a hearing and determination by the Commission.

The revocation decision made by the Commission shall establish the date as of which the licensee shall stop its operations.

The Commission shall submit the revocation decision to a competent Court.

The suspension or revocation of a license does not influence on:

- 1) realisation of transactions with securities concluded by the person whose license has been suspended or revoked, where one party is a person with suspended or revoked license;
- 2) any right, obligation, or liability arising from such transactions.

Register of Licenses

Article 75

For each licensee the register shall record:

- 1) the name and address of the licensee;
- 2) the date on which the license was granted;
- 3) the type of securities business permitted by the license;
- 4) any conditions attached to the license;
- 5) the name and address of every executive manager and officer;
- 6) the location of the premises at which the records or other documents of the licensed business are kept;
- 7) any order of revocation or suspension;
- 8) the names and respective shareholdings of substantial shareholders; and
- 9) such other particulars as may be prescribed.

The register shall be opened to inspection by members of the public, except for those data that are supposed to be secret according to the application for the license.

Notification of Change in Particulars

Article 76

Where a licensee ceases to carry on the business to which the license relates; or a change occurs in any particulars which are required to be entered in the register of licensees, the licensee shall within 7 days give to the Commission notice in writing of the event concerned.

Self Regulatory Organisations

Article 77

Licensees may establish their organisations, for the purpose of standardisation and maintenance of international standards of conducting activities in securities trading, protection of securities owners and other users of their services and efficient securities trading (hereinafter: Self Regulatory Organisations).

Self-Regulatory Organisations may, for their members:

- 1) determine rules for conducting operations of professional intermediaries;
- 2) determine standards for conducting securities trading;
- 3) collect and disclose information and research results;
- 4) determine the type and level of professional qualification for employees with licensees and organise their training.

Self-Regulatory Organisations may pass rules and standards for the business operations of their members that relate to:

- 1) qualifications of employees;
- 2) the prevention of manipulation of securities prices;
- 3) the content and form of documentation and reports;
- 4) minimum capital and technical conditions needed for conducting activities;
- 5) admittance, withdrawal and exclusion from a Self-Regulatory Organisation;
- 6) sharing and the method of mutual payment of costs and commissions;
- 7) protection of service users interests including the procedures for submitting appeals or claims for compensation against members of a Self-Regulatory Organisation;
- 8) obligations toward service users and other persons on the basis of losses caused by mistakes, negligence and illegal operations of members of Self-Regulatory Organisations, their Management or officials.
- 9) supervision of the application of rules and standards, establishment of supervisory bodies and the procedure for reporting on findings;
- 10) imposing and application of measures for violation of the rules and standards.

A Self-Regulatory Organization shall be established as a legal person.

The Founding Agreement, Statute and Rules of a Self-Regulatory Organisation are subject to approval of the Commission.

Licensee Branch Offices Abroad

Article 77a

Licensee may establish a branch office abroad for the purpose of carrying out transactions with securities he is licensed for by the Commission in accordance with regulations of a country where he intends to operate.

Licensee shall be obliged to inform the Commission on his intent prior to the establishment of a branch office abroad.

At the latest within 8 days upon the establishment of a branch office abroad, the licensee shall be obliged to submit to the Commission an authenticated copy of the license to do business with securities and authenticated copy of the extract from the registry where the branch office is registered with, issued by a competent body of the state where the branch office is established, as well as the list of persons authorized to represent the licensee in operations of the branch office and persons performing transactions with securities in the branch office.

Branch Offices of Foreign Legal Persons Performing Transactions with Securities in the Republic

Article 77b

Foreign legal persons authorized by foreign authorities to carry out transactions with securities may, in compliance with regulation, establish a branch office in the Republic for performance of the

activities referred to in Article 62 of this Law and custody operations, on the basis of the license issued by the Commission.

Provisions of this Law regarding licensees shall apply to branch offices referred to in paragraph 1 of this Article, as well as provisions of the law regulating business organizations relating to foreign company branches.

The Commission shall prescribe more detailed requirements for obtaining licenses for work of branch offices of foreign legal persons performing transactions with securities in the Republic

VII. CONDUCT OF SECURITIES BUSINESS

Standards of Conduct

Article 78

In the conduct of securities business, a licensee shall at all times act according to the principles of best practice and in particular shall -

- 1) observe a high standard of integrity and fair dealing;
- 2) act with due skill, care and diligence;
- 3) observe high standards of market conduct;
- 4) seek from customers information about their circumstances and investment objectives which might reasonably be expected to be relevant in enabling the licensee to fulfil the licensee's responsibilities to the customer;
- 5) give every customer the licensee advises, in a comprehensible way, any information needed to enable the customer to make an investment decision;
- 6) avoid any conflict of interest with customers and, where such a conflict unavoidably arises, ensure fair treatment to the customer by complete disclosure or by declining to act;
- 7) ensure that the interests of the licensee should never be unfairly placed above those of the customer;
- 8) protect way of segregation and identification those customer assets for which the licensee is responsible;
- 9) maintain adequate financial resources to meet the securities business commitments of the licensee and withstand the risks to which the business is subject;
- 10) organise and control internal affairs in a responsible manner;
- 11) keep proper records;
- 12) have adequate arrangements to ensure that all staff employed are suitable, adequately trained and properly supervised, together with well-defined compliance procedures; and
- 13) deal with the Commission in an open and co-operative manner and keep the Commission informed of all the prescribed and required matters.

Financial Resources Rules

Article 79

In order to protect the investors, the Commission may make Rules requiring licensee to have and maintain, in respect of the securities business for which they are licensed, such financial resources as may be prescribed by the Commission.

Accounts to Be Kept by Licensees

Article 80

Licensees shall maintain such accounts and other records on transactions made and their financial position, as may be prescribed by the Commission.

Contract Notes

Article 81

A licensee is obliged to immediately inform the Client about every transaction conducted upon the Client's order.

The Client cannot give up the reporting right.

The Client's Assets

Article 82

A licensee is obliged to keep the monetary assets, provided by the Client for payment of securities, on the separate account(s) "The Client's account", particularly opened with the authorized institutions for that purpose.

The assets from the Client's account may be used only for payments under the Client's orders.

The assets on the Client's account are property of the Client and not property of the licensee. These assets are neither a part of licensee's property nor a part of liquidation or bankruptcy estate, and they cannot be used for the settlement of Client's liabilities.

The licensee holding or controlling the securities on behalf and for account of the Client, may not assign, pledge, lend or place those securities as deposit for obtaining a loan or advance payment, except under the written consent of the Client.

The licensee must open a separate securities account for the customer in the Central Depository Agency in which it shall keep his securities for the purpose of conducting transactions.

Auditor to Be Appointed

Article 83

Within no later than one month after becoming licensed, a licensee shall appoint a licensed auditor.

A licensee shall, within 7 days of the appointment of an auditor, notify the Commission in writing of the name and address of the auditor.

Submission of the Audit Report to the Commission

Article 84

A licensee shall prepare, for each financial year, a profit and loss account, a balance sheet and other financial statements containing information as prescribed by the Commission.

The licensee shall file those documents with the Commission not later than 4 months after the end of the financial year, together with an auditor's report and opinion.

Auditor to Report to Commission in Certain Cases

Article 85

If an auditor becomes aware of any matter which in his opinion adversely affects the financial position of the licensee to a material extent; or discovers evidence of a contravention of Articles 79, 80 and 82 above, he shall, within 7 days, report it in writing to the Commission and to the licensee.

Power of Commission to Appoint Auditor

Article 86

The Commission may appoint an auditor if -

- 1) the licensee has failed to nominate an auditor
- 2) an auditor fails to file auditor's report ;
- 3) the Commission has not received the auditor's report from the licensee
- 4) there has been a contravention of Articles 79, 80 and 82 above.

The Commission may appoint an auditor to examine, audit, and report, either generally or in relation to any matter, on the books, accounts and records of the licensee.

The Commission may appoint auditor to perform an audit and submit the report of all or individual information from the books, accounts or registers of the licensee.

The costs of such auditing shall be born by the licensee.

VIII. CLEARING, SETTLEMENT AND REGISTRATION OF SECURITIES

Dematerialized Securities

Article 87

Dematerialized securities exist in electronic form in the computer system of the Central Depository Agency.

Securities Accounts

Article 88

An owner of securities shall open a securities account in the Central Depository Agency.

The owner of the securities account has the right of access to its account.

The Central Depository Agency shall be required to keep data on the balance of individual accounts confidential.

Central Depository Agency

Article 89

The Central Depository Agency shall be the agency that shall execute the deposit of dematerialized securities, execute clearing and settling securities transactions, and may execute other business associated with dematerialized securities.

The Central Depository Agency shall be a joint stock company established by or whose shareholders may only be: the Republic of Montenegro, licensees, Stock Exchanges, banks and other legal persons.

Any shareholder of the Agency is entitled to exercise or control the exercise of up to 35% of the voting power at any general meeting of the Agency.

Licensing of Central Depository Agency

Article 90

The Commission may license the Central Depository Agency based on the application submitted, where it is satisfied that the applicant has met the following requirements:

- 1) registration of dematerialized securities, clearing and settlement of security transactions and other related operations are the applicant's sole activity;
- 2) the applicant has a minimum financial portion of initial capital of EUR 250.000;
- 3) the applicant has adequate arrangements and resources for the effective monitoring and enforcement of its rules; and
- 4) the applicant is able to provide necessary technical facilities for the clearing, settlement and registration of dematerialized securities.

Power of Commission to Issue Directions

Article 91

The Commission may, for the purpose of protecting the investors, issue instructions with respect to the manner of operation of the Central Depository Agency.

Central Depository Agency Acts

Article 92

The Central Depository Agency shall have the Statute that shall regulate the organisation and management of the Agency.

The manner of operation and rights and obligations of members of the Central Depository Agency shall be determined in the Rules of the Agency.

The Central Depository Agency shall adopt special rules on default proceedings, occurring when a person using its services is not able to meet the obligations under one or more contracts on the clearing and settlement of security transactions.

The Founding Agreement, Statute and Rules of Central Depository Agency, as well as the appointment of executive director, shall be subject to approval of the Commission.

Central Depository Agency Members' Property

Article 93

Securities and monetary assets of members of the Central Depository Agency shall not enter into its assets or bankruptcy or liquidation estate and may not be the subject of a court order against the Central Depository Agency.

Managing Central Depository Agency

Article 94

The Central Depository Agency shall have a board of directors consisting of at least five members.

A person holding a university degree, having at least three years of working experience, and not convicted of a crime making him unworthy for performance of the function of member of the Board of Directors of the Central Depository Agency may be appointed as member of the Board of Directors of this Agency

Financing

Article 95

The Central Depository Agency shall be remunerated for executing business through the payment of fees and other charges as determined by the Agency and subject to approval of the Commission.

Annual operating report of the Central Depository Agency shall be forwarded to the Commission and all shareholders of the Agency.

Reporting on Changes in Beneficial Ownership

Article 96

The Central Depository Agency must deliver to the issuer of dematerialized securities, upon the issuer's request, information about the owners of the dematerialized securities immediately after confirming all changes in the beneficial ownership, in accordance with the rules of the Central Depository Agency.

Ban on Trading

Article 97

The Central Depository Agency may not trade in securities, may not furnish advice on trade in securities and investment in securities, nor furnish opinions on the favourability or unfavourability of acquiring or selling securities.

Guarantee fund

Article 98

The Central Depository Agency must create a guarantee fund.

The assets of the guarantee fund shall consist of obligatory payments made by members of the Central Depository Agency.

The rules for confirming the obligatory payment and the limit of the same shall be prescribed by the Central Depository Agency on the basis of a prior consent of the Commission.

Revocation and Suspension of License

Article 99

The Commission may at any time revoke or suspend the Central Depository Agency's license if the Agency

- 1) has ceased to operate the business for which it is licensed;
- 2) has failed to comply with any of the licensing requirements; or
- 3) is operating in contravention to the provisions of this law.

The Commission may suspend the license for a certain period or until the circumstances that led to the suspension have changed.

The Commission shall indicate in its revocation order the date as of which the Central Depository Agency shall cease its operation.

The Commission shall file the revocation order to a competent court.

Ownership of Dematerialized Securities

Article 100

The owner of the account in the Central Depository Agency in which the security is recorded shall be considered the owner of the dematerialized security.

The Central Depository Agency statement is the only legal proof of ownership of securities.

When a persons performing custody operations hold dematerialized securities for a third party, the owner of those securities is the party for whom the securities are held.

Persons performing custody operations shall be obliged to the dematerialized securities that are held for a third party on a separate account and specify that they keep them for a third party, in accordance with the rules of the Central Depository Agency.

Transfer of Ownership

Article 101

The ownership of dematerialized securities may be transferred by transfer to another account in the Central Depository Agency.

IX. MARKET ABUSES

Insider Dealing

Article 102

1) No person shall deal in the securities, either on his own behalf or on behalf of any other person, or counsel another person to deal, if he has any knowledge of: unpublished information that might lead to preference related to other participants in securities trade;

2) information that would, if it were published, materially affect the price of the securities (insider dealing).

The ban on insider dealing applies to -

1) any director, officer or employee of the issuer concerned;

2) any person associated in a professional capacity with that issuer; and

3) any person who obtains such information from any of the persons mentioned in indents 1 and 2 of this paragraph.

No dealing shall be void or voidable by reason only that it was entered into in contravention of this Article.

Market Manipulation

Article 103

No person shall create or cause to be created, or do anything with the intention of creating, a false or misleading appearance

1) of the volume of trading in any securities on any securities market;

2) of the market for, or the price of, any such securities.

Price Rigging

Article 104

No person shall, by means of the purchase or sale of any securities that does not involve a change in the beneficial ownership of those securities, or by any fictitious transaction or device, maintain, increase, reduce or cause fluctuations in the market price of any securities.

Use of False and Deceptive Statements

Article 105

No person shall induce or attempt to induce another person to invest in securities:

- 1) by making or publishing any statement, promise or forecast that he knows to be misleading, false or deceptive;
- 2) by publishing any false material facts.

False or Misleading Statement Inducing Securities Transactions

Article 106

No person shall, directly or indirectly, for the purpose of inducing the sale or purchase of the securities of any issuer, make with respect to those securities, or with respect to the operations or the past or future performance of the issuer:

- 1) any statement which is, at the time and in light of the circumstances in which it is made, false or misleading with respect to any material fact and which he knows or has reasonable grounds to believe to be false or misleading;
- 2) any statement which is, by reason of the omission of a material act, rendered false or misleading and which he knows or has reasonable grounds to believe is rendered false or misleading by reason of omission of that fact.

Liability to Pay Damages

Article 107

A person who has committed acts set forth in articles 102 through 106 above shall be liable to any person who has sustained a loss as a result of having purchased or sold securities at a price affected by any of the banned acts or transactions for damages in respect of the loss concerned.

X. INFORMATION, INSPECTION AND INVESTIGATION

Power of Commission to Call for Information

Article 108

The Commission may require, by notice in writing, licensees to furnish it with such information as it may reasonably require for the exercise of its functions under this Law within such reasonable time and verified in such manner as it may specify.

Information Relating to Transactions

Article 109

The Commission may require:

- 1) a person registered as the holder of securities;
- 2) a person whom the Commission has reasonable grounds to believe holds securities;
- 3) a person whom the Commission has reasonable grounds to believe has a beneficial interest in securities;
- 4) a person whom the Commission has reasonable grounds to believe has acquired or disposed of securities;

5) a licensee.

to disclose to the Commission the information related to acquisition, disposal or holding of securities.

The information related to acquisition, disposal or holding of securities contains:

- 1) the name, address, telephone number and occupation of the person, or other particulars that are capable of establishing the identify of the person, from, to or through whom, or on whose behalf, the securities were acquired, disposed of or held;
- 2) the quantity of securities so acquired, disposed of or held;
- 3) the instructions given to or by the person referred to in indent 1 of this paragraph in relation to the securities.

Where the Commission requires information related to acquisition, disposal or holding of securities, no person shall -

- 1) without reasonable excuse fail to disclose to the Commission information required to be disclosed under this Article and which is in his possession; or
- 2) furnish to the Commission in purported compliance with the requirement information which he knows to be false or misleading.

Power of Commission to Inspect

Article 110

For the purpose of ascertaining whether a person who is, or at any time has been, a licensee is complying or has complied with any provision of or requirement under this Law, Rules made under this Law or the terms and conditions of its license, the Commission may inspect the business to which the license applies without prior notice.

The Commission may appoint a person (hereinafter referred to as the “authorised person”) to exercise the powers of the Commission under this Article.

The person that is subject to inspection shall afford an authorised person access to the records or other documents as may be reasonably required for the inspection and ensure that his employees provide required information.

Power of Commission to Investigate

Article 111

The Commission may appoint a person - the investigator where the Commission has reason to believe that -

- 1) an offence under this Law or Rules made under this Law has been committed;
- 2) a person may have committed a breach of trust, fraud or misconduct:
 - in dealing in securities;
 - in the management of investment in securities; or
 - in giving advice as regards the acquisition, disposal, purchase or sale, or otherwise investing in, any security;
- 3) the manner in which a person has engaged or is engaging in any of the activities referred to in item 2 of this paragraph is not in the interest of the investing public.

The investigator is obliged to report the results to the Commission.

Any person who is reasonably believed or suspected by the investigator to have in his possession or under his control any document which contains, or which is likely to contain, information relevant to an investigation, shall -

- 1) produce to the investigator, within such time and at such place as he may reasonably require, any document specified by the investigator;
- 2) if so required by the investigator, give to him such explanation or further particulars in respect of a document required;
- 3) attend before the investigator at such time and place as he may require, and answer truthfully and to the best of his ability such questions relating to the matters under investigation as the investigator may put to him.

Destruction of Documents

Article 112

No person shall destroy, falsify, conceal or otherwise dispose of, or cause or permit the destruction, falsification, concealment or disposal of, any document, which is relevant to an inspection or an investigation.

Xa. CROSS BORDER TRANSACTIONS

Concept of Domestic and Foreign Securities

Article 112a

Domestic securities shall mean securities that are, pursuant to this Law, issued by issuers referred to in Article 6 of this Law (hereinafter referred to as residents).

Foreign securities shall mean securities issued by non-resident issuers (hereinafter referred to as non-residents).

Foreign securities may be nominated in EUR or another currency.

Cross Border Transactions

Article 112b

Cross border transactions shall mean the following:

- 1) issuance, listing in organized, regulated market and sale of domestic securities abroad;
- 2) issuance, listing on the Exchange and sale of foreign securities in the Republic;
- 3) investment of residents in securities abroad;
- 4) investment of non-residents in securities in the Republic.

Non-Resident Transactions with Securities

Article 112c

Non-residents may freely buy and sell domestic and foreign securities in the Republic in accordance with regulations governing transactions with securities.

Non-residents may freely issue securities in the Republic in the manner determined by regulations governing transactions with securities.

Resident Transactions with Securities

Article 112d

Residents may freely buy and sell domestic and foreign securities abroad.

Residents may freely buy and sell foreign securities in the Republic in the manner prescribed by regulations governing transactions with securities.

Residents may freely issue securities abroad, provided that the Commission is previously informed thereof, and they shall be obliged to submit to the Commission data on the number of subscribed and paid for securities abroad within 8 days as of the expiration of the deadline for subscription for and payment of securities.

Banks, investment funds, insurance companies, pension funds and other financial institutions, whose operations are regulated by separate laws, may buy securities in accordance with a special law.

Mutual Recognition of Prospectus

Article 112e

The Commission shall recognize prospectuses for public offering of securities approved by competent bodies of member states of the Organization for Economic Cooperation and Development – OECD and countries having bodies competent for supervision over transactions with securities the Commission has concluded contracts of cooperation with.

The Commission may request from the issuer to add special data of importance for the market of the Republic in the prospectus referred to in paragraph 1 of this Article.

Cross Border Transactions with Interests of the Investment Funds

Article 112f

Provisions of Articles 112c to 112e of this Law shall accordingly apply to cross border transactions with interests of the investment funds, unless otherwise determined by the Investment Fund Law.

PENALTY PROVISIONS

Breaches

Article 113

A fine of 50-fold to 300-fold amount of minimum wages in the Republic shall be imposed on a legal person in case that -

- 1) it is established or operates as a collective investment scheme which is not authorized (Article 8, item 6);
- 2) it fails to produce the prescribed information to the Commission, issuer's shareholders, other holders of those securities and general public (Article 27);
- 3) it fails to file annual report with Commission (Article 28, paragraph 1, item 1)
- 4) it makes a public offer of securities without a previously approved prospectus (Article 36, paragraph 1);
- 5) it publishes a prospectus which has not been approved (article 36, paragraph 5);
- 6) upon expiration of the period for subscription and payment for securities, it disposes of the securities which have not been subscribed and paid for (Article 40);
- 7) it is established or operates as a securities market without the Commission's license or uses the words "stock exchange/securities market" in its name (Article 46);
- 8) it fails to comply with a directions by the Commission to a Stock Exchange (Article 58);

- 9) it fails to comply with a direction by the Commission to close a Stock Exchange in an emergency (Article 60);
- 10) it is established or operates as a licensee without being licensed by the Commission (Article 63);
- 11) it fails to notify the Commission in writing of the cease of business licensed or of occurrence of any changes in particulars entered in the register (Article 76);
- 12) it fails to appoint an auditor within the prescribed time (Article 83);
- 13) it fails to file audited annual accounts with the Commission within the prescribed time (Article 84, paragraph 2);
- 14) it is established or operates as the Central Depository Agency without being licensed by the Commission (Article 90);
- 15) it fails to comply with a direction by the Commission to the Central Depository Agency (article 91);
- 16) in dealing with securities or in counselling other parties, it uses the unpublished information that might lead to preference related to other participants in securities trade and information that would, if it were published, materially affect the price of the securities (Article 102);
- 17) it creates or causes to be created, or does anything with the intention of creating, a false or misleading appearance of the volume of trading in any securities on any securities market; or of the market for, or the price of, any such securities (Article 103);
- 18) it, by means of the purchase or sale of any securities that does not involve a change in the beneficial ownership of those securities, or by any fictitious transaction or device, maintain, increase, reduce or cause fluctuations in the market price of any securities (Article 104);
- 19) it induces or attempts to induce another person to invest in securities by making or publishing any statement, promise or forecast that he knows to be misleading, false or deceptive or by publishing any false material facts (Article 105);
- 20) it, directly or indirectly, for the purpose of inducing the sale or purchase of the securities of any company, makes, with respect to those securities, or with respect to the operations or the past or future performance of the issuer, any statement which is, at the time and in light of the circumstances in which it is made, false or misleading (Article 106);
- 21) it fails to furnish to the Commission the information related to its operation under this law in the manner and at the time as prescribed by the Commission (Article 108);
- 22) it fails to disclose information or furnishes false or misleading information to the Commission with regard to an acquisition, disposal or holding of securities (Article 109);
- 23) it obstructs the Commission or the authorized person in the exercise of their power to inspect (Article 110);
- 24) it obstructs the Commission or the investigator in the exercise of its power to investigate (Article 111);
- 25) it destroys, falsifies, conceals or otherwise disposes of, or causes or permits the destruction, falsification, concealment or disposal of, any document, which is relevant to an inspection or an investigation (Article 112).

A responsible person of that legal person shall also be liable for the offence specified in paragraph 1 above to a fine ranging from a 10-fold to 20-fold amount of the minimum wage in the Republic.

The responsible person convicted for the offence stated in paragraph 2 above may be banned to deal with securities within the period of time from 6 months to 12 months.

XII. TRANSITIONAL AND FINAL PROVISIONS

Securities Issued before This Law Coming into Effect

Article 114

Securities issued before of this Law coming into effect are considered as securities issued through public offer in context of the provisions of this Law.

Shares Issued in Process of Privatisation

Article 115

Provisions of the Article 24 through Article 44 of this Law do not apply to shares issued in process of transformation and privatisation, in accordance with Law on Property and Management Transformation (Official Gazette of the Republic of Montenegro 2/92 and 27/94) and Law on Privatization of Economy (Official Gazette of the Republic of Montenegro 23/96 and 6/99).

After implementation of privatisation process, shares referred to in paragraph 1 of this Article are considered as shares issued through public offer and are subject to compliance of provisions of this Law.

Registered Issuers

Article 116

From the commencement of this Law, all issuers which have issued shares publicly will become reporting issuers and shall, within 90 days from that date, file with the Commission a registration statement in the form specified by the Commission.

Provisions of paragraph 1 above shall apply even to shares issued in process of privatisation.

Appointment of Members of the Commission

Article 117

The members of the Securities and Exchange Commission shall be nominated by the Government and appointed by the Parliament under this law before the end of terms of office of members of Commission appointed in accordance with Decision of Forming Commission for Securities and Financial Market of the Republic of Montenegro (Official Gazette of the Republic of Montenegro 38/2000).

Until appointment of members of the Securities and Exchange Commission under the provisions of paragraph 1, its business shall be conducted by the Commission for Securities and Financial Market of the Republic of Montenegro.

Bringing the Organisation of the Montenegro Stock Exchange into Conformity

Article 118

The Montenegro Stock Exchange shall comply, no later than two years after the commencement of this Law, its regulations, organisation and business performance with provisions of this law.

If the Montenegro Stock Exchange fails to take action in accordance with paragraph 1 above, the Montenegro Stock Exchange shall cease its operation upon the expiration of that period and shall be erased from court register.

Bringing the Organisation of Brokers and Dealers into Conformity

Article 119

Brokers and dealers which, to the day of this Law coming into effect, have performed activities in terms of securities are obliged to harmonise their regulations, organisation and business performance with provisions of this Law within the period of 1 year from the day of this Law becomes effective.

If the brokers and dealers fail to take action in accordance with paragraph 1 above, brokers and dealers shall cease its operation upon the expiration of that period and shall be erased from the court register.

Brokers

Article 120

The Commission shall, without special additional conditions, enter in the register of authorized brokers all persons who, up to the date when this Law comes into force, have passed the examination for authorized brokers in accordance with provisions of Rulebook of provision of terms for financial market functioning (Official Gazette of the Federal Republic of Yugoslavia 2/96, 8/98 and 63/98).

Bringing the Organisation of the Central Depository Agency into Conformity

Article 121

The Central Depository Agency Podgorica shall comply, no later than 90 days after the commencement of this Law, its regulations, organisation and business performance with provisions of this law.

If the Central Depository Agency fails to take action in accordance with paragraph 1 above, the Central Depository Agency a.d. shall cease its operation upon the expiration of that period and shall be erased from the court register.

Books and Registers of Securities

Article 122

All legal entities which are issuers of securities, which themselves keep books or registers of owners of securities which they have issued, or who have entrusted the keeping of such books to others, or are the owners of securities made out to bearer and which have not been entered in the corresponding books or registers, must supply data to the Central Depository Agency pertaining to the securities and their owners, not later than 90 days after coming into effect of this Law.

Unfinished Dealings

Article 123

The securities dealings that have commenced but have not been finished until the date of effectiveness of this law will be regulated by the previous laws prevailing at the time such dealings were commenced.

Secondary Legislation

Article 124

Regulations for implementation of this Law shall be passed within the period of 3 months from the day of entry into force of this Law.

Entry into Force

Article 125

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