

24 Annex - Justice, freedom and security

162. LAW ON CRIMINAL LIABILITY OF LEGAL PERSONS

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

DECREE
PROMUGLATING THE LAW ON CRIMINAL LIABILITY OF LEGAL PERSONS

I hereby promulgate the Law on Criminal Liability of Legal Persons passed by the Constituent Parliament of the Republic of Montenegro at the sixth sitting of the second ordinary session in 2006 on 27 December 2006.

No 01-1604/2

Podgorica

29 December 2006

The President of the Republic of Montenegro
Filip Vujanovic, m.p.

LAW ON CRIMINAL LIABILITY OF LEGAL PERSONS

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2/2007 of 11 January 2007 and 13/2007 of 6 March 2007*

I BASIC PROVISIONS

Scope of the Law

Article 1

This Law shall govern the conditions for criminal liability of legal persons, criminal sanctions applied against legal persons, as well as criminal procedure within which such sanctions shall be imposed.

Exclusion and Restriction of Liability

Article 2

(1) The Republic of Montenegro (hereinafter: Montenegro), state bodies and bodies of local self-government may not be liable for a criminal offence.

(2) The legal person vested with public authorities by law shall not be liable for a criminal offence committed while performing such authorities.

Criminal Offences for Which Legal Persons are Liable

Article 3

Legal persons may be held liable for criminal offences from the special section of the Criminal Code and for other criminal offences prescribed by special law, if the conditions for liability of a legal person prescribed by this Law have been fulfilled.

Definition of Terms Used in this Law

Article 4

Terms used in this Law shall have the following meaning:

(1) **The legal person** shall be a business organisation, foreign company and part of a foreign company, public utility company, public institution, domestic and foreign non-governmental organisation, investment fund, other fund (with exception of a fund exclusively performing public authorities), sports organisation, political party, as well as other association or organisation that within its operations regularly or occasionally gains or obtains funds and manages them.

(2) **The responsible person** shall be a natural person delegated with certain activities in the legal person, a person authorised to act in the name of the legal person, as well as a person who may reasonably be assumed to be authorised to act in the name of the legal person. A natural person acting in the name of the legal person as a shareholder shall also be deemed the responsible person.

(3) **Effective, necessary and reasonable measures** shall be measures undertaken by the legal person aimed at detecting and preventing criminal offences and encouraging employees to act in compliance with law, other regulations and good business practices, which attain that goal, and particularly:

- Adoption of standards and procedures aimed at detecting and preventing criminal offences;

- Adoption of a program for the purpose of implementing standards and procedures referred to in the first indent of this point, including provision of necessary financial and other resources, as well as the obligation of specific individuals in the legal person to continuously monitor the implementation of those standards and procedures and make periodic reports to a senior person in the legal person and managing bodies;

- Supervision performed by the managing bodies over the implementation of standards and procedures referred to in the first indent of this point;

- Prohibition that any person, for whom there is a reasonable doubt about him performing illegal activities, performs management function;

- Implementation of an effective training program for responsible persons on standards and procedures referred to in the first indent of this point;

- Taking appropriate actions aimed at ensuring compliance of all employees with standards and procedures referred to in the first indent of this point, such as periodic evaluation of effectiveness, provision of guidelines aimed at avoiding commission of criminal offences, introduction of mechanisms for anonymous and confidential reporting of criminal offences, monitoring implementation of standards and procedures, control of business books and other documents;

- Implementation of disciplinary procedure for violating the standards and procedures referred to in the first indent of this point, as well as rewarding for consistent application of those standards and procedures;

- Taking appropriate measures after a criminal offence is detected, including the conduct of a full internal investigation and, if necessary, reforming the program referred to in the second indent of this point to prevent future criminal offences.

II GENERAL PROVISIONS

1. Conditions for Liability of the Legal Person for a Criminal Offence

Ground for Liability of the Legal Person

Article 5

The legal person shall be liable for a criminal offence of a responsible person who, while acting within the scope of his/her authorities in the name of the legal person, and with intention of obtaining some benefit for that legal person, committed the criminal offence. The legal person shall be liable even if actions of that responsible person were contrary to the business policy or orders of the legal person.

Limits of Liability of the Legal Person for Criminal Offences

Article 6

(1) Under the conditions specified in Article 5 of this Law, the legal person shall be liable for a criminal offence even if the responsible person who committed the criminal offence has not been convicted of that criminal offence.

(2) The liability of the legal person shall not exclude criminal liability of the responsible person for the committed criminal offence.

(3) Subjective features of the criminal offence that exist only with the responsible person shall be taken into account for the legal person as well, if the grounds for liability referred to in Article 5 of this Law exist.

Liability in Case of Bankruptcy

Article 7

The business organisation under bankruptcy may be liable for a criminal offence regardless whether such offence was committed before the initiation or during the bankruptcy procedure, and in such a case no penalty shall be imposed but material benefit shall be confiscated or the safety measure of confiscating objects shall be applied.

Liability of the Legal Successor

Article 8

(1) If a legal person ceases to exist before the termination of a criminal procedure, a fine, safety measures and seizure of material benefit may be imposed on a legal person that is its legal successor.

(2) If a legal person ceases to exist upon the termination of a criminal procedure, by a final decision, a fine, safety measures and seizure of material benefit shall be exercised on its legal successor.

Attempt

Article 9

(1) The legal person shall also be liable for an attempted criminal offence under the conditions referred to in Article 5 of this Law, if law prescribes that attempt is punishable.

(2) The legal person shall be punished for an attempt of criminal offence with a penalty prescribed by this Law, or it may be punished more leniently.

(3) The legal person that voluntarily prevents completion of a criminal offence may be released from penalty.

Continuing Criminal Offence

Article 10

(1) If legal person is liable for several identical criminal offences or criminal offences of the same type and connected in time, committed by several responsible persons, which represent a whole due to existence of at least two of the following circumstances: sameness of the victim, sameness of object of the offence, use of same situation or same on-going relationship, and unity of place or area where the offence was committed, the legal person shall be liable as if a single criminal offence had been committed.

(2) For a continuing criminal offence, a more severe penalty may be imposed on the legal person, up to two-fold of the amount prescribed in Article 14 of this Law.

Co-offending Legal Persons

Article 11

(1) Two or more legal persons shall be held liable as co-offenders in the same criminal offence if the grounds for liability referred to in Article 5 of this Law exist.

(2) The legal persons referred to in paragraph 1 of this Article shall be punished with the penalty prescribed for the committed criminal offence.

2. Sanctions

Types of Sanctions

Article 12

Sanctions that may be imposed on a legal person for a criminal offence shall be as follows:

- 1) Penalty;
- 2) Suspended sentence;
- 3) Safety measures.

1) Penalties

Types of Penalties

Article 13

(1) The following penalties may be imposed on a legal person:

- 1) Fine;
- 2) Termination of a legal person.

(2) Fine and termination of a legal person may be imposed only as main penalties.

Fine

Article 14

(1) A fine shall be set depending on the amount of caused damage or acquired illegal material benefit, and if those amounts are different, the larger one shall be used as a basis for setting the fine.

(2) A fine may not be less than two-fold amount of the caused damage or acquired illegal material benefit or more than one-hundred-fold amount of the caused material damage or acquired illegal material benefit.

(3) If no damage was caused or no illegal material benefit was acquired by the criminal offence, or if it is difficult to set the amount of such the damage or material benefit within a reasonable period of time, given the nature of the committed criminal offence as well as other circumstances, the Court shall weigh the fine in a certain amount that may not be less than one thousand euro or more than ten million euro.

Amount of Fine

Article 15

A fine shall be imposed on the legal person in the following amount:

(1) From two fold to five-fold amount of the caused damage or acquired illegal material benefit or from one thousand to ten thousand euro for criminal offences for which a prison sentence of up to one year or fine is prescribed;

(2) From five-fold to ten-fold amount of the caused damage or acquired illegal material benefit or from ten thousand to twenty thousand euro for criminal offences for which a prison sentence of up to three years is prescribed;

(3) From ten-fold to fifteen-fold amount of the caused damage or acquired illegal material benefit or from twenty thousand to fifty thousand euro for criminal offences for which a prison sentence of up to five years is prescribed;

(4) From fifteen-fold to twenty-fold amount of the caused damage or acquired illegal material benefit or from fifty thousand to one hundred thousand euro for criminal offences for which a prison sentence of up to eight years is prescribed;

(5) From twenty-fold to fifty-fold amount of the caused damage or acquired illegal material benefit or one hundred thousand to two hundred thousand for criminal offences for which a prison sentence of up to ten years is prescribed;

(6) Minimum fifty-fold amount of the caused damage or acquired illegal material benefit or minimum two hundred thousand euro for criminal offences for which a prison sentence of over ten years is prescribed.

Weighing Up Fine

Article 16

(1) The Court shall weigh up the fine to a legal person for a committed criminal offence within the ranges prescribed by the law for that criminal offence, considering the purpose of punishment and taking into account all the circumstances that may have influence on reducing or increasing the fine (mitigating and aggravating circumstances), and particularly:

- 1) Seriousness of the criminal offence, including risk of harm to the public interests;
- 2) Degree of responsibility of the legal person for the committed criminal offence;
- 3) Position and the number of responsible persons in the legal person who committed the criminal offence;
- 4) The fact whether the responsible person had been convicted in the past or violated laws and other regulations;
- 5) Circumstances under which the criminal offence was committed;

- 6) Economic power and business profits of the legal person;
- 7) Earlier business operations of the legal person, including violations of laws and other regulations;
- 8) Conduct of the legal person after the commission of the criminal offence, including replacing persons who omitted to perform mandatory supervision, disciplining and dismissing the responsible person who committed the criminal offence;
- 9) Attitude towards the victim of the criminal offence, including damages and elimination of other detrimental effects caused by commission of the criminal offence, as well as whether those were completed before or after the legal person learned about initiation of criminal procedure;
- 10) Exploitation of financial distress, difficult circumstances, extreme need, lack of experience, naive trust of the victim, or lack of ability of the victim to exercise his/her judgment;
- 11) Whether the restitution was made of the material benefit acquired through the committed criminal offence;
- 12) Whether the legal person had undertaken, before the crime was committed, all the effective, necessary and reasonable measures aimed at preventing and detecting the commission of the criminal offence;
- 13) Whether the legal person reported the criminal offence prior to learning about criminal procedure being initiated, as well as cooperated with investigation and law enforcement authorities or obstructed the procedure being conducted;
- 14) Attitude of the legal person towards the committed criminal offence, including whether it admitted its liability for the committed criminal offence;

(2) A circumstance which is the feature of the criminal offence may not be taken into consideration either as an aggravating or as a mitigating circumstance, unless it exceeds the measure required for establishing the existence of the criminal offence or certain form of criminal offence or if there are two or more such circumstances, only one being sufficient for the existence of more serious or privileged type of the criminal offence.

Recidivism

Article 17

When weighing up the fine the Court shall give particular consideration to whether the legal person had been previously convicted of a criminal offence, whether the former offence was of the same kind as the latest one and how much time has elapsed from the earlier conviction.

Multi-recidivism

Article 18

(1) The Court may impose a more severe fine on the legal person - up to two-fold of the amount prescribed by Article 15 of this Law, if there is multi-recidivism of the legal person to the criminal offence.

(2) Multi-recidivism exists if the legal person has been fined over fifty thousand euro at least two times for the criminal offence and if the period not longer than five years has passed from the last validly imposed penalty.

Reduction of Fine

Article 19

The Court may impose a fine on the legal person that is below the limit set in Article 15 of this Law, when:

- 1) Law prescribes that the legal person may be fined more leniently;
- 2) Law prescribes that the legal person may be released from the penalty and the Court does not release it from the penalty;
- 3) It determines that there are particularly mitigating circumstances and estimates that the purpose of punishment may be achieved even with the reduced fine.

Limits to Reducing a Fine

Article 20

(1) When conditions for reducing a fine referred to in Article 19 of this Law are fulfilled, the Court shall reduce the fine within following limits:

1) If a minimum fine of five-fold amount of the caused damage or acquired illegal material benefit or ten thousand euro fine (Article 15, item 2) is prescribed for the criminal offence, the fine may be reduced to two-fold amount of the caused damage or acquired illegal material benefit or to one thousand euro;

2) If a minimum fine of ten-fold amount of the caused damage or acquired illegal material benefit or a twenty thousand euro fine (Article 15, item 3) is prescribed for the criminal offence, the fine may be reduced to five-fold amount of the caused damage or acquired material benefit or to ten thousand euro;

3) If a minimum fine of fifteen-fold amount of the caused damage or acquired illegal material benefit or a fifty thousand euro fine (Article 15, item 4) is prescribed for the criminal offence, the fine may be reduced to eight-fold amount of the caused damage or acquired illegal material benefit or to twenty five thousand euro;

4) If a minimum fine of twenty-fold amount of the caused damage or acquired illegal material benefit or a one hundred thousand euro fine (Article 15, item 5) is prescribed for the criminal offence, the fine may be reduced to ten-fold amount of the caused damage or acquired illegal material benefit or to fifty thousand euro;

5) If a minimum fine of fifty-fold amount of the caused damage or acquired illegal material benefit or a two hundred thousand euro fine (Article 15, item 6) is prescribed for the criminal offence, the fine may be reduced to twenty-five-fold amount of the caused damage or acquired illegal material benefit or to one hundred thousand euro;

(2) When the Court is authorised to release the legal person from a penalty, it may reduce the penalty without the limits to reducing the penalty referred to in paragraph 1 of this Article.

Weighing up Fines for Multiple Criminal Offences

Article 21

(1) If the legal person is liable for multiple criminal offences the Court shall impose a single fine which shall be a sum of individually set fines. Such a single fine shall not exceed one hundred and fifty-fold amount of the damage caused or acquired illegal material benefit, if the individual fines have been set in such a manner, or seven million and five hundred thousand euro.

(2) In case that three year prison sentences are prescribed for all multiple crime offences, the single fine shall not exceed the twenty-fold amount of the damage caused or acquired illegal material benefit if single fines have been set in that manner, or one hundred thousand euro.

Article 22

(1) The termination of the legal person penalty may be imposed if the business conducted by the legal person was wholly or considerably in the function of committing the criminal offence.

(2) The liquidation procedure shall be conducted for business organisations, along with imposing the penalty of terminating the legal person.

(3) The legal person shall cease to exist upon deletion from the Central Registry of the Commercial Court or some other registry maintained by the competent state body.

(4) If the penalty referred to in paragraph 1 of this Article is imposed on a legal person, the remaining property of the business organisation and the property of another legal person shall be confiscated for the benefit of Montenegro.

General Grounds for Release from Penalty

Article 23

(1) If the legal person had detected and reported the criminal offence before it learned about the criminal procedure being initiated, it may be released from penalty.

(2) If upon committing the criminal offence the legal person voluntarily and immediately restores the illegally acquired material benefit or eliminates the resulting detrimental consequences, or delivers data significant for liability of some other legal person with which it is not organisationally connected, it may be released from penalty.

(3) If the legal person has taken all the effective, necessary and reasonable measures aimed at preventing and detecting the commission of the criminal offence, it may be released from penalty.

2) Suspended Sentence

Conditions for Imposing Suspended Sentence

Article 24

(1) The Court may impose a suspended sentence on the legal person for the criminal offence.

(2) With the suspended sentence, the Court may determine a fine up to hundred thousand euro against the legal person, provided that it shall not be enforced if the convicted legal person is not liable for committing a new criminal offence in terms of Article 5 of this Law during the period of time defined by the Court, which may not be shorter than one year or longer than three years (probation period).

(3) Under the suspended sentence, the Court may determine that the penalty shall also be enforced if the convicted legal person fails to restore the material benefits acquired by committing the criminal offence within specified period of time, fails to compensate for the damage it caused by committing the criminal offence, or fails to meet other obligations prescribed by criminal law provisions. The time limit for meeting these obligations shall be set by the Court within the specified probation period.

(4) Safety measures imposed together with the suspended sentence shall be enforced.

Revocation of the Suspended Sentence Due to a New Criminal Offence

Article 25

(1) The Court shall revoke the suspended sentence if the convicted legal person is liable for one or more criminal offences during the probation period for which the fine in the amount of one hundred thousand euro or higher fine has been imposed.

(2) If the convicted legal person is liable for one or more criminal offences during the probation period for which the fine lower than one hundred thousand euro is imposed, after assessing all the circumstances regarding the committed criminal offences and the legal person,

and particularly relatedness of committed criminal offences and their significance, the Court shall decide whether to revoke the suspended sentence. The Court shall thereby be limited by the prohibition of pronouncing the suspended sentence if the fine over one hundred thousand euro should be imposed on the legal person for committing criminal offences defined in the suspended sentence and for new criminal offences (Article 24, paragraph 2).

(3) If the Court revokes a suspended sentence it shall, by applying provisions of Article 21 of this Law, impose a single penalty for both the previously committed and for the new criminal offence, taking the penalty from the revoked suspended sentence as already determined.

(4) If the Court does not revoke the suspended sentence, it may impose the suspended sentence or penalty for the new criminal offence.

(5) If the Court decides that the suspended sentence should be imposed for the new criminal offence as well, by applying provisions of Article 21 of this Law, it shall determine a single penalty for both the previously committed criminal offence and for the new criminal offence and shall specify a new probation period which may not be shorter than one or longer than three years, starting from the day when the new judgment becomes final. If during the new probation period the convicted legal person is liable for a criminal offence again, the Court shall revoke the suspended sentence and impose the penalty, by applying provisions of paragraph 3 of this Article.

Suspended Sentence under Protective Supervision **Article 26**

(1) The Court may determine that the legal person with a suspended sentence imposed on, be placed under protective supervision for some specified period of time for the duration of the probation period.

(2) If the Court establishes that during the protective supervision the purpose of this measure has been achieved, it may cancel the protective supervision before the time specified for it expires.

(3) If the convicted legal person who has been placed under the protective supervision fails to comply with the obligations determined by the Court, the Court may warn the legal person or replace prior obligations with other obligations or extend the protective supervision within the specified probation period or revoke the suspended sentence.

Contents of Protective Supervision **Article 27**

The protective supervision may include one or more obligations, as follows:

- 1) To design and implement the program of effective, necessary and reasonable measures aimed at preventing commission of the criminal offence;
- 2) To establish internal control aimed at preventing commission of criminal offences in future;
- 3) To make periodic reports on its business operations and deliver them to the authority responsible for enforcement of protective supervision;
- 4) To eliminate or reduce the risk of causing further damage with the committed criminal offence;
- 5) To restrain from business activities that might provide opportunity or incentive for re-offending;
- 6) To eliminate or mitigate the damage caused by the criminal offence;
- 7) To do community service for six months, provided that this obligation shall not endanger regular business operations of the legal person.

3) Safety Measures **Types of Safety Measures** **Article 28**

(1) The following safety measures may be imposed for criminal offences that legal persons are liable for:

- 1) Design and implementation of the program of effective, necessary and reasonable measures;
- 2) Confiscation of objects;
- 3) Publication of the judgment;
- 4) Prohibition to conduct certain business or other activities.

(2) The Court may impose one or more safety measures on the legal person when conditions prescribed by the law are fulfilled.

(3) Prohibition to conduct certain business or other activities may not be imposed with a suspended sentence.

Design and Implementation of the Program of Effective, Necessary and Reasonable Measures

Article 29

(1) The Court may impose the security measure requiring design and implementation of the program of effective, necessary and reasonable measures if it believes that by doing so additional criminal offences will be prevented.

(2) The security measure referred to in paragraph 1 of this Article may not be shorter than three or longer than five years, starting from the day when judgment becomes final.

Confiscation of Objects

Article 30

(1) The objects which were used or were intended for the commission of the criminal offence or that resulted from the commission of the criminal offence may be confiscated, if they are in the ownership of the legal person.

(2) The objects referred to in the paragraph 1 of this Article may be confiscated even if they are not in ownership of the legal person, if required so by public safety interests or by ethical reasons, provided that the right of third persons to indemnity is not encroached thereby.

(3) The law may define a mandatory confiscation of objects. The law may also define the conditions for confiscation of certain objects in specific cases.

Publication of Judgment

Article 31

(1) The Court shall impose the safety measure of publishing the judgment if it believes it would be useful to inform the public about the judgment, particularly if the judgment publication would contribute to eliminate a threat to life or health of people or to protect the safety of trade or other general interest.

(2) Depending on the relevance of the criminal offence and need to inform the public, the Court shall select the media to publish the judgment and decide whether the judgment explanation would be published completely or in the form of an extract, taking into consideration that the manner of publication ensures that all, for the interest of whom the judgment should be published, are informed.

Prohibition to Conduct Certain Business or Other Activity

Article 32

(1) The Court may prohibit the legal person to manufacture certain products or conduct certain activities in the trade of goods and services or engage in other activities.

(2) The safety measure referred to in paragraph 1 of this Article may be imposed on the legal person if its further conduct of a business or another activity would pose a threat for life or health of people or would be detrimental to economic or financial operations of other legal persons or to the economy in general, or if the legal person has been punished during the last two years for the same or similar criminal offence.

(3) The Court shall define duration of the safety measure referred to in paragraph 1 of this Article that may not be shorter than six months or longer than five years, starting from the day when judgment becomes final.

3. Legal Consequences of Conviction

Occurrence of Legal Consequences of Conviction

Article 33

(1) Legal consequences of the conviction on the legal person shall occur on the day judgment imposing a fine becomes final, as follows:

- 1) Prohibition to conduct business on the basis of a permit, license, authorisation or concession granted by state authorities;
- 2) Prohibition of getting a permit, license, authorisation or concession granted by state authorities.

(2) Legal consequences of the conviction referred to in paragraph 1 item 2 of this Article may be prescribed to the maximum of ten years.

4. Statute of Limitations

Time Limits for Statute of Limitations

Article 34

(1) Time limit for statute of limitations for prosecution for criminal offence against a legal person shall be set according to the penalty prescribed for the responsible person who committed the criminal offence. The prosecution shall not be initiated when the time limit for statute of limitations time limit prescribed by Article 124 of the Criminal Code expires.

(2) The penalty imposed may not be enforced upon the expiry of:

- 1) Three years after imposing the fine;
- 2) Eight years after imposing the penalty of terminating the existence of the legal person.

(3) The enforcement of safety measure shall be barred by the statute of limitations:

- 1) Upon the expiry of five years from the day judgment imposing the measure of confiscating objects becomes final;
- 2) Upon the expiry of three months from the day the judicial decision imposing the measure of judgment publication becomes final;
- 3) Upon the expiry of the period for which the legal person was imposed the measure of designing and implementing the program of effective, necessary and reasonable measures, starting from the day judicial decision becomes final;
- 4) Upon the expiry of the period for which the legal person was imposed the measure of prohibition to conduct certain business or other activities, starting from the day the judicial decision becomes final.

5. Seizure of Material Benefit

Ground for Seizing Material Benefit

Article 35

(1) The legal person shall not retain any material benefit acquired through the criminal offence.

(2) The benefit referred to in paragraph 1 of this Article shall be seized under conditions prescribed by this Law and by the judicial decision determining the commission of the criminal offence.

Conditions and Manner of Seizing Material Benefit Article 36

(1) Money, things of value and all other material benefits acquired through the criminal offence shall be seized from the legal person, and should such a seizure be not possible, the legal person shall pay the monetary value equivalent to the acquired material benefit.

(2) The material benefit acquired through the criminal offence shall also be seized from the persons it has been transferred to without compensation or with compensation that is obviously different from its real value.

(3) The material benefit acquired through the criminal offence in favour of other persons shall also be seized.

6. Rehabilitation, Cessation of Legal Consequences of Conviction and Disclosure of Data from Criminal Records

General Notion of Rehabilitation Article 37

(1) The conviction shall be erased and all its legal consequences shall cease by rehabilitation, whereas the convicted legal person shall be deemed not convicted.

(2) The rehabilitation shall come into effect either by law (legal rehabilitation) or upon a motion by the convicted legal person based on the judicial decision (judicial rehabilitation).

(3) No rights of third persons grounded on conviction shall be encroached by the rehabilitation.

Legal Rehabilitation Article 38

(1) The legal rehabilitation shall be granted solely to a legal person that was not convicted or was deemed not convicted by law prior to the conviction the rehabilitation is related to.

(2) The legal rehabilitation shall be granted in the following instances:

1) If the legal person convicted, but released from the penalty, does not commit a new criminal offence within the period of one year of the judgment becoming final;

2) If the legal person to whom a suspended sentence is imposed does not commit a new criminal offence during the probation period and one year from expiration of the probation period;

3) If the legal person sentenced to a fine in the amount of five thousand euro does not commit any new criminal offence within the period of three years from the day of the fine being enforced, barred by statute of limitation or pardoned.

(3) The legal rehabilitation shall not occur if safety measures are still effective.

Judicial Rehabilitation Article 39

(1) The judicial rehabilitation may be granted to the legal person sentenced to a fine of over five thousand euro if it does not commit a new criminal offence within five years from the day the fine was enforced, barred by statute of limitation or pardoned.

(2) In the case referred to in paragraph 1 of this Article the Court shall grant the rehabilitation if it identifies that the convicted legal person has deserved to be rehabilitated and if it has compensated the damage caused by the criminal offence in line with its possibilities, while the Court shall be obliged to take into consideration all other circumstances of importance for granting rehabilitation, and particularly the nature and significance of the criminal offence.

(3) The rehabilitation may not be granted to the legal person sentenced to a fine of over one hundred thousand euro.

(4) The judicial rehabilitation may not be approved if safety measures are still effective.

Judicial Rehabilitation of a Legal Person with Several Prior Convictions

Article 40

The Court may grant the rehabilitation to the legal person that has been convicted several times solely if the conditions referred to in Article 38 of this Law are fulfilled with respect to each criminal offence that the legal person has been convicted of. When assessing whether to grant rehabilitation in such a case, the Court shall take into consideration all circumstances referred to in Article 39 paragraph 2 of this Law.

See:
Corrigendum 13/2007-1.

Cessation of Legal Consequences of Conviction

Article 41

(1) When three years from the day of executing, barring by statute of limitation or pardoning the penalty elapse, the Court may decide to terminate the legal consequence of the conviction related to the prohibition of acquiring a specific right, if it has not already ceased due to rehabilitation.

(2) When deciding on cessation of legal consequence of the conviction, the Court shall take into consideration the conduct of the convicted legal person after being convicted, whether it has compensated the damage caused by the criminal offence and restored the material benefit acquired through the commission of the criminal offence, as well as other circumstances that may indicate the justifiability of cessation of legal consequence of the conviction.

Disclosure of Data from Criminal Records

Article 42

(1) Criminal records shall include the following data: name and registered office of the legal person; business activity of the legal person; registration number and identity code of the legal person; data on the committed criminal offence; data on penalties, suspended sentence, safety measures; data on the responsible person who committed the criminal offence for which the legal person was convicted; pardoned penalties related to the convicted legal person the criminal record is maintained for, as well as data on legal consequences of conviction; subsequent changes of data included in the criminal records; data on enforced penalty and cancellation of records on wrong conviction.

(2) Data from the criminal records may be disclosed solely to the Court, the State Prosecutor and administration body in charge of internal affairs, related to the criminal procedure instituted against the legal person who has prior convictions, the body in charge of enforcement of criminal sanctions and the body that participates in the procedure of granting amnesty, pardon, rehabilitation or deciding on cessation of legal consequences of the conviction, when so needed for performing activities within their competence.

(3) Data from criminal records may also be disclosed, upon a request with explanation, to a state authority and legal person, if there is a justified interest based on law.

(4) Upon its request, the legal person can obtain data on its conviction or non-conviction only if such data are needed for the purpose of exercising its rights abroad.

(5) The criminal records shall be maintained by the Central Registry of the Commercial Court.

7. Territorial Applicability of the Law

Conditions for Application of the Law

Article 43

(1) This Law shall apply to a domestic and foreign legal person liable for a criminal offence committed in the territory of Montenegro.

(2) A foreign legal person liable for a criminal offence committed abroad to the prejudice of Montenegro, its national or a domestic legal person shall be subject to this Law.

(3) This Law shall also be applied to a domestic legal person liable for committing a criminal offence abroad.

(4) If special conditions referred to in Article 138, paragraph 3 of the Criminal Code have been fulfilled, this Law shall not apply in cases referred to in paragraphs 2 and 3 of this Article.

8. Application of the General Part of the Criminal Code

Relevant Application of Provisions of the Criminal Code

Article 44

Legal persons shall be subject to the provisions of the General Part of the Criminal Code related to the criminal offence (Article 5), manner of commission of the criminal offence (Article 6), time of commission of the criminal offence (Article 7), place of commission of the criminal offence (Article 8), an offence of minor significance (Article 9), extreme necessity (Article 11), incitement (Article 24), aiding (Article 25), limits of responsibility and punishability of accomplices (Article 27), punishment for inciters and aides for an attempt and minor criminal offence (Article 28), purpose of punishment (Article 32), purpose of a suspended sentence (Article 54), revocation of a suspended sentence due to a previously committed criminal offence (Article 56), revocation of a suspended sentence due to the failure to meet particular obligations (Article 57), time limits for revocation of a suspended sentence (Article 58), duration of protective supervision (Article 63), consequences of failing to meet the obligations pertaining to protective supervision (Article 64), protection of victim (Article 114), course and cessation of status of limitations for bringing criminal charges (Article 125), course and cessation of status of limitations for enforcement of penalty and security measures (Article 128), applicability of criminal legislation with respect to time (Article 133) and definitions of terms (Article 142), unless otherwise determined by this Law.

III. PROCEDURE

Single Procedure

Article 45

(1) As a rule, the procedure against the legal person shall be instituted and carried out together with the procedure against the responsible person for the same criminal offence.

(2) In the single procedure, the single charge shall be filed against the accused legal person and the accused responsible person and single judgment shall be passed.

(3) The procedure may be instituted and carried out only against the legal person when it is not possible to institute and carry out the procedure against the responsible person for reasons laid down in law or in cases when the procedure against the responsible person has already been conducted.

Effectiveness of Initiation of the Procedure

Article 46

(1) The State Prosecutor may decide not to institute the criminal procedure against the legal person if:

- 1) Circumstances of the case indicate that it would not be effective to initiate the procedure due to insignificant contribution of the legal person to commission of the criminal offence;
- 2) The legal person does not have any property or the bankruptcy procedure has been initiated against the legal person;
- 3) The legal person had reported the criminal offence before it found out that the law enforcement authorities detected that the criminal offence was committed in the legal person;
- 4) The legal person has cooperated with the law enforcement authorities;
- 5) The legal person has compensated the damage and eliminated other detrimental consequences caused by commission of the criminal offence;
- 6) The legal person has restored the material benefit acquired through the committed criminal offence;
- 7) The legal person had undertaken all effective, necessary and reasonable measures aimed at preventing and detecting commission of the criminal offence before the criminal offence was committed;
- 8) The legal person has disclosed data important for liability of another legal person, with which it is not organisationally connected, to the law enforcement authorities for a criminal offence for which, pursuant to law, the imprisonment of ten years or more severe penalty may be imposed.

(2) When deciding not to institute the criminal procedure, the state prosecutor shall take the circumstances referred to in Article 16 of this Law into consideration.

(3) Provisions of paragraph 1 of this Article shall be applied to criminal offences for which a fine or imprisonment of up to three years is prescribed.

Postponement of Criminal Prosecution

Article 47

(1) The State Prosecutor may postpone the prosecution for criminal offences for which a fine or imprisonment of up to eight years is prescribed, when he/she establishes that it would not be appropriate to conduct the criminal procedure due to the nature of the criminal offence and the circumstances under which the offence has been committed, previous business operations of the legal person, if the legal person agrees to fulfil one or several obligations, as follows:

- 1) Compensate the damage and eliminate detrimental consequences caused by the criminal offence;
- 2) Pay a certain amount for the benefit of a humanitarian organisation, fund or public institution, provided that this amount may not exceed ten thousand euro;
- 3) Fulfil obligations related to the committed criminal offence or obligations the fulfilment of which would have a preventive effect aimed at preventing commission of a new criminal offence;
- 4) Fulfil one or several obligations referred to in Article 26 of this Law.

(2) When deciding to postpone the criminal procedure, the State Prosecutor shall take the circumstances referred to in Article 16 of this Law into consideration.

(3) The legal person shall be obliged to fulfil the accepted obligation within a time limit which may not exceed six months.

(4) The State Prosecutor shall determine the obligations referred to in paragraph 1 of this Article by a decision. The decision shall be submitted to the legal person, victim, if any, or to the humanitarian organisation or public institution in favour of which the enforcement is being ordered.

(5) Before adopting the decision referred to in paragraph 4 of this Article, the State Prosecutor shall obtain the consent of the victim and approval of the legal person. When determining the obligations referred to in paragraph 1 of this Article, the State Prosecutor may accept the proposal of the victim.

(6) If the legal person fulfils the obligation referred to in paragraph 1 of this Article, the State Prosecutor shall dismiss the crime report and the provisions of Article 59 of the Criminal Procedure Code shall not apply, and the State Prosecutor shall inform thereon the victim before getting the consent.

Territorial Jurisdiction Article 48

(1) As a rule, the court on whose territory the criminal offence has been committed or attempted shall have the territorial jurisdiction.

(2) If the procedure is instituted against the accused legal person only, the Court in whose territory the accused legal person has a head office or the Court in whose territory the part of the accused foreign legal person is located shall have the jurisdiction.

Representative of the Accused Legal Person Article 49

(1) In the criminal procedure, the accused legal person shall be represented by a representative who is authorised to take all actions that the defendant is entitled to take according to the Criminal Procedure Code. Each accused legal person must have its representative.

(2) The representative of the legal person shall be a person authorised to represent that legal person based on the law, an act of a competent state authority, or charter, i.e. other general act of the legal person.

Appointment of the Representative of the Accused Legal Person Article 50

(1) Representative of the accused legal person may not be a responsible person against whom the criminal procedure is conducted for the same criminal offence, except in case that such a person is the only member of the legal person.

(2) Managing or governing body of the accused legal person may appoint another person from the ranks of its members as the representative.

(3) The accused legal person may have only one representative.

(4) For each individual case, the Court must determine the identity of the representative of the accused legal person and whether the representative is authorised for such representation.

(5) If the accused legal person ceased to exist before the criminal procedure has been finished by final decision, its legal successor shall determine its representative within eight days from the day of dissolution of the accused legal person. If the legal person does not determine its representative, the Court shall appoint the representative for the legal person.

Representative of the Accused Foreign Legal Person Article 51

(1) The representative of the accused foreign legal person shall be the person managing the part of the foreign legal person conducting business in the territory of Montenegro.

(2) If the accused foreign legal person or the part of the foreign legal person is collectively represented by several persons, such persons shall designate the representative among themselves. If, upon the invitation of the Court to do so within a specified time, the representative is not designated from among these persons or the Court is not timely notified thereof in writing, the Court shall appoint one of them as the representative.

**Exemption of the Representative
Article 52**

(1) The representative of the accused legal person may not be a person summoned to give testimony regarding the same legal matter.

(2) In cases referred to in paragraph 1 of this Article, the Court shall require from the accused legal person or the part of the foreign legal person that the competent body of the accused domestic or foreign legal person appoints other representative and notifies thereof the Court in writing within the specified time limit.

(3) If the accused legal person fails to appoint another representative within eight days, a representative shall be appointed by the Court.

**Service of Process to the Representative
Article 53**

Service of process intended for the representative shall be delivered to the accused legal person or to the part of the accused foreign legal person.

**Bringing the Representative before the Court
Article 54**

If the orderly summoned representative of the accused legal person fails to appear, without providing an excuse for the absence, the Court may order that the representative is brought involuntarily.

**Costs of Representation
Article 55**

(1) The costs of representing the accused legal person shall be considered as costs of the criminal procedure. These costs shall not be prepaid from the funds of the Court, except in cases referred to in Article 50, paragraph 5 and Article 52, paragraph 3 of this Law.

(2) The legal person shall bear only the costs of the procedure caused by guilt of its representative.

**Defence Attorney
Article 56**

(1) In addition to the representative, the accused legal person may also have a defence attorney.

(2) The provisions of the Criminal Procedure Code on mandatory defence attorney shall not apply to the accused legal person.

(3) The accused legal person and the accused responsible person may share the defence attorney, unless that is contrary to the interest of their defence.

**Dismissal of Crime Report
Article 57**

(1) In addition to the grounds for dismissal of crime report referred to in Article 243, paragraph 1 of the Criminal Procedure Code, the State Prosecutor shall dismiss a crime report against the legal person also in the case when there is no ground for the liability of the legal person prescribed by Article 5 of this Law.

(2) When the State Prosecutor concludes that there is no ground for prosecution for a criminal offence, he shall be obliged to inform thereon the victim within eight days and instruct him/her that he/she may institute the prosecution himself/herself, except in cases referred to in the Article 46 and Article 47, paragraph 5 of this Law. The Court shall proceed in the same manner if it passed the decision on suspension of the procedure due to the fact that the State Prosecutor has abandoned the prosecution.

Content of Indictment Article 58

An indictment against the legal person must include, in addition to the elements prescribed by Article 274 of the Criminal Procedure Code, the name under which the legal person is appearing in legal transactions, its registered office, registration number and identity code, name and surname of its representative and ground for liability of the legal person.

The Hearing and Order of Closing Statements Article 59

(1) At the main hearing, the accused responsible person shall be heard first, and then the representative of the accused legal person.

(2) Once the presentation of evidence is over and statements of the plaintiff and the victim are completed, the defence attorney of the accused legal person shall be allowed to speak first, then the representative of the accused legal person, the defence attorney of the responsible person and finally the responsible person himself/herself.

Writing a Judgment Article 60

In addition to the parts specified in Article 369 of the Criminal Procedure Code, a written judgment must include:

- 1) In the introduction to the judgment - the name under which the legal person is appearing in legal transactions, its registered office, registration number and identity code, the name and surname of its representative who attended the main hearing;
- 2) In the body of the judgment - the name under which the legal person is appearing in legal transactions, its registered office, registration number and identity code, decision that declares the accused legal person liable for the criminal offence for which it has been prosecuted, or releases it from the liability for such offence, or dismisses the charges.

Partial Annulment of the Judgement of the First-Instance Court Article 61

The second-instance Court may annul a judgment in the part related only to the accused legal person or only to the accused responsible person, if such part of the judgment may be separated without detriment to the proper adjudication.

Security Measures Article 62

(1) In order to secure the enforcement of confiscation of material benefit, the Court may, upon the proposal of the prosecutor in charge, impose a temporary security measure against the accused legal person in accordance with the Law on Execution Procedure. In that case, Article 216, paragraphs 2 and 3 of the Criminal Procedure Code shall be accordingly applied.

(2) If the circumstances justify the suspicion that, within the accused legal person, the criminal offence, for which there is a reasonable doubt that the legal person has been liable for, will be committed again or that another similar criminal offence will be committed, the Court may, in the same procedure and in addition to the measures referred to in paragraph 1 of this Article,

temporary prohibit the accused legal person to conduct one or more specified business or other activities.

(3) If criminal procedure has been instituted against the legal person, the Court may, upon the proposal of the State Prosecutor or by official duty, prohibit amendments to the charter that might lead to deletion of the accused legal person from the Central Registry of the Commercial Court or another registry that is maintained by the competent state authority. Such prohibition shall be entered in the Central Registry of the Commercial Court or another registry that is maintained by the competent state authority.

Application of Criminal Procedure Code Article 63

(1) Unless otherwise determined by this Law, the provisions of the Criminal Procedure Code shall accordingly be applied in the criminal procedure against the legal person.

(2) Provisions of Articles 511 to 520 and Article 522 of the Criminal Procedure Code shall also be applied in the criminal procedure against the legal person when the committed criminal offence is not from the sphere of organised crime.

IV TRANSITIONAL AND FINAL PROVISIONS

Article 64

(1) Economic offences defined by special laws shall become administrative offences upon this Law entering into force.

(2) Procedures for economic offences instituted until the effective day of this Law shall be completed before the Court where the procedure has been instituted and in compliance with regulations used as a basis for their institution.

Article 65

Upon entering into force, this Law shall supersede the Law on Economic Offences (Official Gazette of the Socialist Federal Republic of Yugoslavia 4/77, 14/85, 74/87, 57/89 and 3/90 and Official Gazette of the Federal Republic of Yugoslavia 27/92, 24/94, 28/96 and 64/01).

Article 66

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

SU-SK No 01-576/6
Podgorica
27 December 2006

The Constituent Parliament of the Republic of Montenegro
The Speaker
Ranko Krivokapic, m.p.

AMENDMENTS

Upon a comparison with the original text, it was established that errors found their way into the text of the Law on Criminal Liability of Legal Persons, published in the Official Gazette of the Republic of Montenegro 2/07, resulting in the following

COORIGENDUM TO THE LAW ON CRIMINAL LIABILITY OF LEGAL PERSONS

The Corrigendum is published in the Official Gazette of the Republic of Montenegro 13/2007 of 6 March 2007

In Article 40, "37" shall be replaced by "38", and "38" shall be replaced by "39".

The Constituent Parliament of the Republic of Montenegro