

Pursuant to Article 95 item 3 of the Constitution of Montenegro, I hereby issue the

DECREE PROMULGATING THE LAW ON FINANCIAL LEASING, FACTORING, PURCHASE OF RECEIVABLES, MICRO-LENDING AND CREDIT-GUARANTEE OPERATIONS

I hereby promulgate the Law on Financial Leasing, Factoring, Purchase of Receivables, Micro-Lending and Credit-Guarantee Operations adopted by the 26th Parliament of Montenegro at its fifth sitting of the Second regular (autumn) session in 2017, on 25 October 2017.

Number: 01-1032/2
Podgorica, 1 November 2017
The President of Montenegro
Filip Vujanović, m.p.

Pursuant to Article 82 Item 2 and Article 91 paragraph 1 of the Constitution of Montenegro, the 26th Parliament of Montenegro at its fifth sitting of the Second regular (autumn) session in 2017, on 25 October 2017 adopted the

Law on Financial Leasing, Factoring, Purchase of Receivables, Micro-Lending and Credit-Guarantee Operations

(Official Gazette of Montenegro, No 73/2017 of 3 November 2017)

I Basic Provisions

Subject of the Law Article 1

This Law governs financial leasing, factoring, purchase of receivables, micro-lending and credit-guarantee operations, as well as establishment, operation and control of operation of business organisations engaged in those activities (hereinafter referred to as the financial services providers).

Application of other Laws Article 2

Provisions of the law governing the legal status of business organisations shall apply to the financial services providers, unless otherwise stipulated by this Law.

Provisions of the law governing obligations shall apply to operations referred to in Article 1 of this Law, unless otherwise stipulated by this Law.

Provisions of the law governing protection of users of credit and other financial services shall apply accordingly to consumer protection of users of financial services from this Law, unless otherwise stipulated by this Law.

The Central Bank of Montenegro (hereinafter referred to as the Central Bank) shall apply provisions of the law governing administrative procedure in the process of rendering a decision in accordance with this Law, unless otherwise stipulated by this Law.

Use of Gender-sensitive Language

Article 3

Expressions used in this Law for natural persons in the masculine gender shall include the same expression in the feminine gender.

Competence of the Central Bank

Article 4

The Central Bank shall issue a license to financial services providers, carry out control of operations of financial services providers and other tasks set forth by this Law.

The Central Bank shall decide about matters referred to in paragraph 1 of this Article by way of a decision.

In the process of rendering a decision in accordance with this Law, the Central Bank shall rule applying the abridged procedure.

An administrative dispute may be initiated against the decisions referred to in paragraph 2 of this Article.

II Financial Leasing

1. Definition and Subject of Financial Leasing

Definition of Financial Leasing

Article 5

A financial leasing shall be a legal transaction between the lessor and the lessee, whereby the lessor retains the ownership right of the subject of leasing selected by the lessee, transfers to the lessee for a contracted period a right of possession and right of use of the subject of leasing, as well as all risks and benefits incidental to the ownership right, while

the lessee pays to the lessor a contracted lease payment in contracted instalments, and is entitled to buy out the subject of leasing in accordance with this Law.

The lease payment, within the meaning of this Law, shall mean a monetary amount set by a financial leasing contract the lessee is obliged to pay to the lessor in contracted manner, following the delivery date of the subject of leasing.

Subject of Leasing

Article 6

Subject of leasing shall be a specifically designated, movable, immovable, non-expendable and tangible subject of leasing (equipment, plants, vehicles, immovables and similar) in free circulation, including also computer software.

Subject of leasing may also be a future object referred to in paragraph 1 of this Article.

A movable object shall be deemed to be the subject of leasing even in such case when it becomes appurtenance of or is attached to the immovable object.

Money and securities cannot be subject of leasing.

2. Contractual Parties to the Financial Leasing Operation

Contractual Parties

Article 7

Contractual parties to a financial leasing operation shall be the Lessor, the Lessee and the Supplier of the subject of leasing.

The lessor and the Supplier of the subject of leasing may be the same person.

The Supplier of the subject of leasing and the Lessee may be the same person, in which case a specific rights, obligations and responsibilities may be separately arranged by contracts.

Lessor

Article 8

The lessor shall be a business organisation referred to in Article 43 of this Law, which as the owner of the subject of leasing transfers to the lessee the right of possession and the right of use of the subject of leasing, under conditions set forth in a financial leasing contract.

Lessee Article 9

The lessee shall be a natural person, legal person or entrepreneur with a residence or registered office in Montenegro to which the lessor transfers the right of possession and the right of use of the subject of leasing for a contracted period, for which the lessee pays initial payment (amount the lessee is to pay to the lessor before the contract on financial leasing is delivered) and contracted instalments of the lease payment in accordance with the contract on financial leasing and this Law.

Supplier of the Subject of Leasing Article 10

The Supplier of the subject of leasing shall be a legal person or entrepreneur, from whom a Lessor acquires the subject of leasing under a contract on supply of subject of leasing for the purpose of delivering the subject of leasing to the Lessee in accordance with the contract on financial leasing.

The lessee shall choose the Supplier of the subject of leasing, unless otherwise stipulated by the contract on financial leasing.

3. Contracts on Financial Leasing Operations

Important Elements of the Contract on Financial Leasing Article 11

A contract on financial leasing shall be contract concluded in writing between the Lessor and the Lessee, which shall contain amongst others the following:

- 1) name, registered office and unique identification number of the Lessor;
- 2) name and address of the Lessee, unique citizen's identification number or name, registered office and unique identification number of the Lessee;
- 3) a statement of the Lessee that has chosen the subject of leasing and the Supplier of the subject of leasing, in the event the Supplier of the subject of leasing and Lessor are not the same person;
- 4) a detailed specification of subject of leasing from the contract on financial leasing, in order for it to be uniquely identify;
- 5) time period for which the contract is concluded;
- 6) the numerical acquisition value of the subject of leasing;
- 7) the numerical value of the initial payment, as well as the date or the method of determining the due for payment date on the initial payment;
- 8) the numerical value of lease payment and number of contracted instalments for the lease payment;

- 9) the date or the method for determining the due for payment date for individual instalments of the lease payment and additional deadline for settling payment liability for the lease payment;
- 10) the delivery date (date when the Lessee and Supplier of the subject of leasing have signed a document of handover of subject of leasing) and place for delivery of the subject of leasing;
- 11) the right to buyout and the price for which the lessee is entitled to buyout the subject of leasing;
- 12) if the lessee is consumer, also other elements in accordance with the law governing the consumer loans.

Contract on Supply of the Subject of Leasing

Article 12

The contract on supply of the subject of leasing shall be a contract concluded in writing between the lessor and the supplier of the subject of leasing, whereby the lessor acquires the right of ownership of the subject of leasing chosen by the lessee, for the purpose of delivery of the subject of leasing to the lessee.

The contract on supply of the subject of leasing shall contain the following elements, including but not limited to: detailed specification of the subject of leasing, price of the subject of leasing and deadline, place and manner of delivering the subject of leasing.

The lessor shall become the only and legal owner of the subject of leasing when the supplier of the subject of leasing receives from the lessor the entire amount of the purchase price from the contract for supply of the subject of leasing, unless otherwise stipulated by the contract for supply of the subject of leasing.

The contract for supply of the subject of leasing may be amended, rescinded or terminated solely by mutual agreement between the lessor and the supplier of the subject of leasing.

Any conclusion, as well as any amendment, rescission or termination of the contract for supply of the subject of leasing may be carried out only upon obtaining a prior written consent of the lessee.

4. Rights, Obligations and Responsibilities of the Lessee

Handing over the Subject of Leasing

Article 13

The Lessee shall be obliged to take over the subject of leasing in the manner, within deadline and in the place set forth in the financial leasing contract.

The Lessee shall be obliged to inspect the subject of leasing in the customary manner before signing the document on handover of the subject of leasing, and immediately notify the lessor of any visible defects.

The document on handover of the subject of leasing, within the meaning of this Law, shall mean a document in writing signed by the lessee accepting supply of the subject of leasing from the contract for supply of the subject of leasing.

If the lessee fails to present objections to visible material defects or state of the subject of leasing until signing the document on handover of the subject of leasing it shall be deemed that has accepted the subject of leasing and that the subject of leasing has no visible material defects.

Paying the Lease Payment Article 14

The Lessee shall be obliged to pay numerical value of the lease payment within deadlines and in the manner set forth in the financial leasing contract.

Use of the Subject of Leasing Article 15

The lessee shall have the right to quiet possession and the right to use of the subject of leasing.

During the term of the financial leasing contract, the lessee shall be responsible to use the subject of leasing in accordance with the financial leasing contract and in line with the purpose of the subject of leasing, with the diligence of a prudential businessperson or a bonus paterfamilias.

The lessee shall have no right to create lien or any other encumbrance over the subject of leasing during the term of the financial leasing contract without consent of the lessor.

The lessee shall have right to transfer the use of entire or part of the subject of leasing to a third party, upon previously obtained consent of the lessor.

Maintenance of the Subject of Leasing Article 16

The lessee shall be obliged to maintain the subject of leasing in good condition, and make necessary repairs on the subject of leasing at its own cost, in accordance with the financial leasing contract.

The lessee shall be liable to the lessor for damage caused by the failure to maintain the subject of leasing in good condition.

The lessee shall not be liable for wear and tear of the subject of leasing resulting from its regular usage, nor for damage due to its deterioration.

Accidental Destruction of the Subject of Leasing

Article 17

The lessee shall bear the risk of accidental destruction of or damage to the subject of leasing from the date of signing the document on handover of the subject of leasing.

The risk of accidental destruction of the subject of leasing shall pass to the lessee at the time of signing the document on handover of the subject of leasing in accordance with Article 13 of this Law, unless otherwise provided in the financial leasing contract.

Right to Buy-out

Article 18

The lessee shall have the right to buy out the subject of leasing at the price and terms determined by the financial leasing contract, upon payment of the last instalment of the lease payment.

If the lessee does not exercise the right referred to in paragraph 1 of this Article, the lessee shall be obliged to return the undamaged subject of leasing, subject to wear and tear of the subject of leasing resulting from its regular usage to the lessor or person designated by the lessor, in accordance with the financial leasing contract and this Law.

The lessee shall be obliged to notify the lessor on forthcoming return of the subject of leasing no later than 30 days before the lapse of the period for which the contract on financial leasing is concluded, unless it wishes to acquire ownership of the subject of leasing upon lapse of such contract.

Insurance the Subject of Leasing

Article 19

If the financial leasing contract or the law sets the obligation to insure the subject of leasing, the lessee shall be obliged to insure the subject of leasing in accordance with the terms specified in such contract, or the law.

Unless otherwise stipulated by the financial leasing contract, the lessee shall bear all costs of insurance for the full term of the financial leasing contract, whereby the lessor must be stated as the beneficiary of the insurance policy.

In the event that the lessee intentionally damages the insured subject of leasing, the insurer may present a claim for damage compensation only towards the lessee.

Liability for Damage Article 20

The lessee shall be liable for compensation of material and non-material damage caused by the use of the subject of leasing, regardless of whether the subject of leasing was used by the lessee himself or by a person authorized by the lessee to use the subject of leasing.

If, pursuant to law, the lessor, as the owner of the subject of leasing is liable for misdemeanour offence or service compensation in direct relation to the use of the subject of leasing, it shall be deemed that the lessee is the owner of the subject of leasing for the purpose of determining the existence of misdemeanour offence and related liability, as well as the liability for payment of misdemeanour fine or compensation of services rendered.

5. Rights, Obligations and Responsibilities of the Lessor

Acquiring the Subject of Leasing Article 21

The Lessor shall be obliged to acquire the subject of leasing in accordance with the contract on delivery of the subject of leasing and the specification of the subject of leasing provided by the Lessee.

Inspection of the Subject of Leasing Article 21

The lessor shall have the right to inspect, or to authorise a third party to inspect the subject of leasing.

The lessor shall have the right to make all necessary repairs to the subject of leasing if the lessee fails to maintain the subject of leasing in good condition in accordance with the financial leasing contract.

The lessee shall be obliged to indemnify promptly the lessor for necessary expenses of repairs referred to in paragraph 2 of this Article.

Protection in the Event of Bankruptcy of Lessee Article 23

In the event of bankruptcy of the lessee, the lessor shall have the right to request for the Subject of leasing to be exempt from the bankruptcy estate (right to segregation).

Exclusions of Liability for Material Defects Article 24

The supplier of the subject of leasing shall be liable to the lessee for material defects of the subject of leasing, unless otherwise stipulated by the financial leasing contract.

Exclusion from Liability for Damage Caused by the Subject of Leasing

Article 25

The lessor shall not be liable to the lessee for damage caused by the subject of leasing except if the lessor took part in the selection of the supplier or the specification of the subject of leasing or has caused damage by using the subject of leasing, unless otherwise stipulated by the financial leasing contract.

Liability for Legal Shortcomings

Article 26

The lessor shall be liable for legal shortcomings of the subject of leasing which exclude, reduce or limit the lessee's right of quiet possession, of which the lessee was not informed at the time of conclusion of the financial leasing contract.

The Lessor's liability for legal shortcomings of the subject of leasing cannot be limited or excluded by the financial leasing contract.

6. Rights, Obligations and Responsibilities of the Supplier of the Subject of Leasing

Delivery of the Subject of Leasing

Article 27

The supplier of the subject of leasing shall be obliged to deliver the subject of leasing to the lessee in accordance with the contract on delivery of the subject of leasing and specification of the lessee, along with appurtenances, in the manner, at the time and place as set forth in the financial leasing contract.

Liability of the Supplier of the Subject of Leasing

Article 28

The Supplier of the subject of leasing shall be liable for material defects of the subject of leasing, unless otherwise stipulated by the financial leasing contract.

If the Supplier of the subject of leasing fails to deliver the subject of leasing to the Lessee, if delivers the subject of leasing late or the subject of leasing has material defects, the lessee shall have the same rights in respect of the supplier of the subject of leasing as he would have had under the law governing obligations as he would have been a party to a contract with the supplier of the subject of leasing, including also the right to make all claims under the terms of a guarantee.

Notwithstanding paragraph 2 of this Article, the lessee shall not have right to terminate or rescind the contract on supply of the subject of leasing without the lessor's consent, nor shall have the right to demand price reduction.

The supplier of the subject of leasing cannot be liable to both the Lessor and the Lessee in respect of the same damage.

The supplier of the subject of leasing and the lessor shall have the joint liability towards the lessee for damage caused in the event the supplier of the subject of leasing fails to deliver or delivers late the subject of leasing or the subject of leasing has material defects.

7. Third Party Rights

Third Party Claims Article 29

A third party may bring a claim with respect to the subject of leasing to the Lessor and/or the Lessee.

The lessee shall be obliged, within the deadline set in the financial leasing contract or if such deadline is not specified within five days, to notify the lessor in writing of disturbance of the quiet possession right and right to use the subject of leasing by a third party, and the lessor may request that the lessee oppose to such claim.

If a Lessee fails to act in accordance with paragraph 2 of this Article, the lessee shall be liable to the lessor for any costs and damage incurred by the lessor as a consequence of such delay or omission.

The lessor shall be obliged to indemnify the lessee for loss sustained in the event that the lessee has sustained loss or paid certain compensation to a third party in order for such third party to waive its rights over the subject of leasing.

The Lessee must not initiate, run proceedings and/or accept third party claims in relation to the subject of leasing without the prior written consent of the lessor.

The lessor shall be obliged join as a co-defendant with the lessee in any legal proceedings instituted by a third party against the lessee claiming any right to the subject of leasing.

In the event that the third party claim results in confiscation of the subject of leasing, the financial leasing contract shall be terminated, and in the event that the rights to possession or right to use the subject of leasing by a third party are limited, the lessee shall have the right to terminate the contract or reduce the lease payment.

Right to Transfer of Rights, Obligations and Responsibilities

Article 30

The lessor may transfer to a third party its ownership right to the subject of leasing and/or the right to claim due or future contracted instalments of the lease payment, including the initial payment and/or other rights under the financial leasing contract.

The lessor shall be obliged to notify in writing the lessee of the transfer referred to in paragraph 1 of this Article, whereby the lessee shall not have right to oppose or obstruct such transfer .

The transfer of rights referred to in paragraph 1 of this Article may be performed only for the benefit of a third party authorised to perform financial leasing activities in accordance with this Law or special law.

The third party to whom the rights referred to in paragraph 1 of this Article have been transferred shall have the same rights, obligations and responsibilities of the lessor in accordance with the financial leasing contract and this Law.

After the transfer of rights referred to in paragraph 1 of this Article is completed, the rights, obligations and responsibilities of the lessee from the financial leasing contract shall remain unchanged.

The lessor shall not have right to pledge the subject of leasing before obtaining prior consent of the lessee.

8. Contract Termination

Termination of the Financial Leasing Contract by the Lessee

Article 31

In the event that the supplier of the subject of leasing fails to deliver the subject of leasing within the deadline and in accordance with conditions from the contract on supply of the subject of leasing, or delivers the subject of leasing late, the lessee may refuse to accept the delivery and terminate the financial leasing contract, whereby it has the right to compensation of damages from the supplier of the subject of leasing.

If the subject of leasing, at the moment of delivery, has visible material defects, the lessee may refuse to accept delivery and terminate the financial leasing contract, as well as to use any rights the lessee has pursuant to this and other laws toward the supplier of the subject of leasing.

The financial leasing contract may also provide for other events that give the lessee the right to terminate the financial leasing contract.

If the financial leasing contract is terminated, the lessee shall have the right to claim back amount of payments made to the lessor.

Amount to be paid back to the lessee referred to in paragraph 4 of this Article shall be reduced by the amount of the revenue the Lessee generated from use of the subject of leasing.

Termination of the Contract on Supply of the subject of leasing

Article 32

In the event that the supplier of the subject of leasing fails to deliver the subject of leasing to the lessee in accordance with the financial leasing contract, or delivers it late, or if the subject of leasing has a material defect, and because of that the lessee refuses the delivery of the subject of leasing and terminates the financial leasing contract, the lessor may terminate the contract on supply of the subject of leasing, and shall be obliged to provide compensation of damages to the lessee.

If the contract on supply of the subject of leasing is terminated in accordance with paragraph 1 of this Article, any amount that the lessor has paid to the supplier of the subject of leasing, as well as any amount that the lessee has paid to the lessor, must be returned entirely within eight days as of the day the contract on supply of the subject of leasing is terminated.

If the reasons for termination of the contract on supply of the subject of leasing are intention or gross negligence of the lessor, the lessor shall be liable to the lessee for actual damages and lost profit.

Termination of the Financial Leasing Contract by the Lessor

Article 33

Unless otherwise stipulated by the financial leasing contract, the lessor may terminate the financial leasing contract in the event the lessee is late to pay the initial payment, entire or part of due contracted instalment of lease payment, or fails to settle this obligation within the additional period stipulated in the financial leasing contract.

The financial leasing contract may also stipulate other events when the lessor has the right to terminate the financial leasing contract.

Notification on Obligation to Return the Subject of Leasing

Article 34

In the event of termination of the financial leasing contract due to breach of provisions of the financial leasing contract by the lessee, the lessor may, regardless of any other rights that it may have under the financial leasing contract or under the law, serve a notice on the lessee on obligation to return the subject of leasing.

The notice on obligation to return the subject of leasing, within the meaning of this Law, shall mean a written notification sent by the lessor to the lessee notifying the lessee of breach of financial leasing contract and inviting it to return voluntarily the subject of leasing to the lessor or a third party appointed by the Lessor.

The notice on obligation to return the subject of leasing must contain the following elements:

- 1) name, registered office and unique identification number of the lessor;
- 2) the full name and address of the lessee, unique citizen identification number or name, registered office and unique identification number of the lessee;
- 3) specification of the subject of leasing from the financial leasing contract, in order to be uniquely identified;
- 4) deadline for returning the subject of leasing to the lessor; and
- 5) legal grounds for returning the subject of leasing from the lessee.

The notice on obligation to return the subject of leasing referred to in paragraph 2 of this Article shall be considered as an enforceable document in accordance with the law governing enforcement and securing of claims.

The lessee shall be obliged to surrender, peacefully and willingly, the subject of leasing to the lessor or person appointed by the lessor immediately upon receiving a notice on obligation to return the subject of leasing, unless otherwise stipulated by the financial leasing contract.

If the lessee does not reply to the notice referred to in paragraph 2 of this Article and/or fails to return the subject of leasing to the lessor in accordance with the notice on obligation to return the subject of leasing, the lessor shall be entitled to initiate enforcement proceedings on the basis of the notice on obligation to return the subject of leasing before the body competent for levying enforcement in order to gain the possession of the subject of leasing.

Returning the Subject of Leasing Article 35

Based on the notice on obligation to return the subject of leasing, the lessor may file a request to the competent court for repossession of the subject of leasing from the lessee or another person holding the subject of leasing, and request the surrender of the subject of leasing to the Lessor.

The body competent for levying enforcement shall be obliged to render a decision upon request of the lessor within three days as of the day of filling the request referred to in paragraph 1 of this Article.

The lessee shall be obliged to return the subject of leasing to the lessor within three days as of the day of receiving a final and binding decision adopting the lessor's request referred to in paragraph 1 of this Article.

Sale of the Subject of Leasing Article 36

After the subject of leasing has been returned, the Lessor shall be authorised to initiate proceedings of sale of the subject of leasing in such manner to achieve the highest possible price.

In the event of sale of the subject of leasing referred to in paragraph 1 of this Article, the proceeds of the sale of the subject of leasing remaining after the lessor has settled its claim shall be returned to the lessee within eight days from the day of the sale.

If the lessor fails to pay the lessee the remaining sum within the deadline referred to in paragraph 2 of this Article, the Lessor shall pay the prescribed default interest to the Lessee.

Abuse by the Lessor Article 37

In the event of abuse of the right to return the subject of leasing by the lessor, the lessee may initiate proceedings to recover damages that includes but not be limited to: compensation for the disruption of the lessee's right to quiet enjoyment of possession and right to use of the subject of leasing, compensation for loss of revenues a use of the subject of leasing would have generated, and compensation for loss of the right to exercise the right to buy out the subject of leasing.

Damage Compensation Article 38

In the event the lessor terminates the financial leasing contract due to breach of contractual obligations by the lessee, the lessee shall be obliged to provide compensation for the damage caused to the lessor in a manner that would bring the lessor to the position he would have been in had the Lessee timely complied with his contractual obligations from the financial leasing contract.

Bankruptcy and Liquidation of the Lessor Article 39

In the event of bankruptcy or liquidation of the lessor, the lessee shall maintain all rights and shall be responsible for all obligations from the financial leasing contract.

In the event of bankruptcy or liquidation of the lessor, the bankruptcy and/or liquidation estate shall not include the subject of leasing, except in the event the subject of leasing was returned to the lessor in accordance with this Law.

Opening of the bankruptcy proceedings or liquidation proceedings of the lessor shall not affect obligations and responsibilities of the lessor from the financial leasing contract and must enable to the lessee the quiet enjoyment of possession, right use of the subject of leasing, and exercise of the right to buy out the subject of leasing.

9. Registration of Leasing

Registration of Immovable Assets as Subject of Leasing

Article 40

Financial leasing contract having as its subject an immovable property shall be registered in the immovable property cadastre in accordance with regulations governing the registration of immovable property.

Registration of Movable Assets as Subject of Leasing

Article 41

Data from the financial leasing contracts where the subject of leasing are movable assets, termination of the contract, as well as other data, shall be registered in the Pledges Registry, in accordance with provisions of the law governing the pledge over movable assets.

Deadline for Registration

Article 42

The lessor shall be obliged to submit the request or application for registering encumbrances and limitations, or data from the financial leasing contract referred to in Articles 40 and 41 of this Law within three business days as of the day the financial leasing contract is concluded.

10. Conditions for Performing Financial Leasing Operations

Persons Performing Financial Leasing Operations

Article 43

Financial leasing operations may be performed by:

- 1) leasing companies;
- 2) banks licensed by the Central Bank to perform financial leasing under a license or special approval; and

- 3) other business organisation entitled to perform financial leasing operations under a special law and where the Central Bank does not issue a license to perform such activities.

Leasing Company Article 44

A leasing company shall be a business organisation with registered office in Montenegro performing the financial leasing operations as the sole activity based on a license issued by the Central Bank.

In addition to operations referred to in paragraph 1 of this Article, a leasing company may perform only activities related to trade in subjects of leasing which are returned to the leasing company, as well as operating leasing operations which include legal transactions of transfer of subject of leasing to possession and for use to another person without a right to buy it back.

Only a business organisation having a license referred to in paragraph 1 of this Article may use the word "leasing" or derivative of the word "leasing" in its name.

Application to register a leasing company with the Central Registry of Business Entities of Montenegro (hereinafter referred to as CRPS) shall be submitted no later than within 30 days as of the day a decision on issuing a license is received.

Form of Organisation Article 45

A leasing company may be founded as a joint stock company or a limited liability company.

Initial Capital Article 46

Minimum amount of monetary part of the initial capital of a leasing company shall amount to 125,000 euro.

The initial capital referred to in paragraph 1 of this Article must be paid in full prior to the registration of the leasing company in CRPS.

Core Capital Article 47

A leasing company shall be obliged to maintain initial capital in the amount that may not be lower than the minimum amount of the initial capital referred to in Article 46 of this Law.

Application for Issuing a License Article 48

Founders of a leasing company shall submit an application for issuing a license (hereinafter referred to as the application), to the Central Bank and the following shall be attached:

- 1) decision or contract on founding the leasing company,
- 2) proposed articles of association of the leasing company,
- 3) statement of the founder on payment of monetary amount of the initial capital and evidence on sources of such funds,
- 4) for each legal and natural person acquiring a qualifying holding in the leasing company, documents and data which are being submitted along with an application for issuing approval to acquire qualifying holding referred to in Article 52 paragraph 2 of this Law ;
- 5) business plan for a period of three years with projection of balance sheet and income statement for first three years of operation;
- 6) description of envisaged management structure of the leasing company, including administrative, accounting and risk management procedures;
- 7) description of planned internal control mechanisms in accordance with this Law and the law governing prevention of money laundering and terrorism financing;
- 8) data on members of the board of directors and executive director, with documentation and information submitted along with the request to issue approval referred to in Article 109 of this Law.

In addition to the documentation referred to in paragraph 1 of this Article, the applicant shall also be obliged to submit other documentation and information upon request of the Central Bank.

Deadline for Deciding upon Application Article 49

The Central Bank shall be obliged to decide on issuing or rejecting the application to issue a license to the leasing company within 90 days as of the day of duly submitted application referred to in Article 48 paragraph 1 of this Law.

Rejecting the Application Article 50

The Central Bank shall reject the application for issuing a license to the leasing company, if:

- 1) fails to submit stipulated documentation and data along with the application for issuing a license;
- 2) provisions of the articles of incorporation or articles of association of the leasing company are not aligned with the law;
- 3) persons intending to acquire qualifying holding in the leasing company do not meet requirements referred to in Article 52 of this Law;
- 4) members of the board of directors or executive director do not meet requirements for issuing the approval referred to in Articles 107 or 108 of this Law respectively;

- 5) the control of operation of the leasing company in accordance with this Law may be difficult or prevented due to links of the leasing company with other legal or natural persons, if there are other reasons due to which it is not possible to carry out control on consolidate bases;
- 6) funds of initial capital originate from unreliable or suspicious sources.

11. Acquisition of a Qualifying Holding

Acquisition of a Qualifying Holding in the Leasing Company Article 51

A legal or natural person cannot acquire a qualifying holding in the leasing company, independently or jointly with other related party, without a prior approval of the Central Bank.

Qualifying holding shall be an investment bases on which an investor, independently or with a related party, acquires 10% of more participation in capital or voting rights of the leasing company.

Person with a qualifying holding in the leasing company cannot increase participation in capital or voting rights in the leasing company in such a manner as to reach or exceed more than 20%, 33% or 50% of holding in voting rights or capital of the leasing company without a prior approval of the Central Bank.

Related parties referred to in paragraphs 1 and 2 of this Article shall be considered to be two or more legal and/or natural persons where is present one of the following forms of relationship:

- 1) one party has participation in capital or voting rights of other party of at least 20%;
- 2) two or more parties are controlled by a third party, in such manner as that the third party, independently or with a related party, has participation in capital or voting rights in such parties of 50% or more, or has a possibility to exercise a prevailing impact on decision-making, business policy, or strategy for work of those persons regardless the level of participation in capital; and/or
- 3) two or more parties are family members (a spouse, a person who lives in a domestic partnership equal to statutory marriage under the law, children and other persons who live in family household of that party).

Rendering a Decision upon Request Article 52

The Central Bank shall render a decision on request for issuing approval for acquisition of a qualifying holding in the leasing company within 60 days as of the day of receiving duly request.

Documentation set forth by the Central Bank regulation shall be submitted along with the request for issuing approval referred to in paragraph 1 of this Article.

In the process of rendering a decision on granting the approval for acquisition of a qualifying holding, the Central Bank shall assess the eligibility and financial condition of the applicant based on the following:

- 1) reputation of the applicant with respect to its financial and business activities;
- 2) indicators that may be of importance for the assessment of the applicant's influence on risk management in the leasing company;
- 3) meeting the set requirements for selection of persons who will be proposed by the applicant as an executive director of the leasing company after acquiring the qualifying holding;
- 4) financial standing of the applicant;
- 5) capabilities of the leasing company to comply with requirements set by this Law, in particular whether a group which member the leasing company is going to become has an ownership structure which enables efficient supervision, efficient exchange of information between the competent supervisory authorities and assigning division of responsibilities among the competent authorities;
- 6) the existence of valid reasons to suspect, pursuant to regulations governing the prevention of money laundering and terrorism financing, that the acquisition of a qualifying holding carries out or intends to carry money laundering or terrorism financing or that such acquisition may impact an increase of risk of money laundering or terrorism financing.

The Central Bank shall reject the request for granting approval for acquisition of a qualifying holding in the leasing company if:

- 1) the applicant fails to submit stipulated documentation to the Central Bank;
- 2) the applicant fails to meet requirements in terms of eligibility and financial standing referred to in paragraph 3 of this Article.

Acquisition of a Qualifying Holding without the Central Bank Approval **Article 53**

When there are facts that point out that a person has a qualifying holding in the leasing company for which it has not obtained an approval, the Central Bank may request from such person and from the leasing company to supply data and documentation relevant for assessing whether such person has a qualifying holding in the leasing company.

Persons referred to in paragraph 1 of this Article shall be obliged to submit to the Central Bank requested data and information by no later than eight days as of the day of receiving the request referred to in paragraph 1 of this Article.

When based on data and information referred to in paragraph 1 of this Article, or based on some other data and information it has available, establishes that a person has acquired or increased a qualifying holding in the leasing company without an approval, the Central Bank shall notify such person that it shall be obliged, within eight days as of receiving the

notification, to submit a request to the Central Bank for issuing an approval and shall warn such persons of consequences referred for in Article 54 paragraph 2 of this Law.

Legal Consequences of Illicit Acquisition of a Qualifying Holding

Article 54

Person referred to in Article 53 paragraph 3 of this Law cannot exercise voting rights in excess of level of voting rights which such person had prior to the acquisition or increase of a qualifying holding in the leasing company, nor exercise other rights resulting from ownership, until obtaining an approval of the Central Bank.

To a person that fails to submit the request for granting an approval within the deadline referred to in Article 53 paragraph 3 of this Law, or if the request to grant approval is rejected, the Central Bank shall order by way of a decision to reduce its holding in capital of the leasing company up to the level of qualifying holding for which has an approval of the Central Bank or up to the level for which no approval of the Central Bank is required.

In case the holding in capital is reduced within the meaning of paragraph 2 of this Article, new legal owner shall acquire all rights attributed to it as a result of acquired holding in the leasing company capital.

III Factoring

1. Factoring Operations

Definition of Factoring

Article 55

The factoring shall be a legal transaction where a person that carries out factoring operations (factor) purchases the object of factoring resulting from a legal transaction of sale of goods or delivery of service concluded between the creditor of the object of factoring and debtor of the object of factoring (hereinafter referred to as the underlying activity).

Object of factoring shall be any existing or future, total or partial, due or undue, short-term monetary receivable generated as a result of the underlying activity.

Future receivable shall be a receivable not existing at the moment the factoring contract is concluded, but it is determinable at such time and the debtor of such receivable is known.

The short-term receivable, within the meaning of this Law, shall be receivable from the underlying activity due for collection up to one year from the day the factoring contract is concluded.

Participants in the Factoring Operation

Article 56

Participants in a factoring operation shall be a creditor, debtor, and factor.

The creditor shall be a legal or natural person claiming the object of factoring based on the underlying activity.

The debtor shall be a legal or natural person owing the object of factoring based on the underlying activity.

The factor shall be a business organisation purchasing the object of factoring pursuant to the factoring contract.

The factor shall be obligated to handle the object of factoring with the diligence of a prudential businessperson

Fees

Article 57

The factor shall be entitled to a fee for performing factoring operations (hereinafter referred to as the factoring fee).

The factor shall also be entitled to a fee for performing activities related to the factoring operations, such as keeping records, agreement and monitoring repayment of the object of factoring, collecting data, developing analysis and providing information on creditor worthiness of the debtors of objects of factoring and similar (hereinafter referred to as the administrative fee).

2. Types of Factoring

Recourse Factoring

Article 58

The recourse factoring shall be a type of factoring assuming that the creditor is liable to the factor for collectability of the object of factoring on the day the object of factoring becomes due or on the day when it is assumed that the subject of factoring is collected pursuant to the factoring contract.

In case of the recourse factoring the factor shall be entitled to request the settlement of the object of factoring from the debtor, creditor or from both at the same time, within the limits of liability of the debtor and creditor, unless otherwise contracted.

In the event of the creditor's liability, the factor shall be obliged to notify the creditor that the collection of the object of factoring was not carried out at time the object of factoring was due or at time when it is assumed under the factoring contract that the object of factoring is collected within eight days as of the day the object of factoring becomes due or from the time when it is assumed that the subject of factoring is collected pursuant to the factoring contract.

In the event that it cannot be established with certainty that the recourse or non-recourse factoring is contracted, it shall be deemed that recourse factoring is contracted.

After recourse is exercised by the factor against the creditor, the factor shall be obliged to transfer to the creditor the object of factoring, as well as all documentation pertaining to the object of factoring, including also the documentation the creditor has submitted to the factor in accordance with this Law, within two days after the recourse is exercised.

Non-recourse Factoring Article 59

The non-recourse factoring shall be a type of factoring which does not assume that the creditor is liable to the factor for collectability of the object of factoring.

Domestic Factoring Article 60

Domestic factoring shall be a legal transaction of factoring where the object of factoring is created from the underlying activity between residents,

Within the meaning of paragraph 1 of this Article, the resident shall be deemed to be:

- 1) Business organizations and other legal persons registered in Montenegro, with the exception of their representative offices outside of Montenegro;
- 2) Foreign company branches registered with the registry of the competent authority in Montenegro;
- 3) Entrepreneurs – natural persons registered in or with habitual residence in Montenegro, conducting an economic activity for its own account for the purpose of gaining profit, and also registered with the competent authority in Montenegro
- 4) Natural persons – citizens of Montenegro residing in Montenegro continuously for a year or longer;
- 5) Natural persons – foreign citizens, who based on the residence permit or work visa, reside in Montenegro continuously for a year or longer;
- 6) Diplomatic, consular and other representative offices of Montenegro in foreign countries, employees in these representative offices, and the members of their families who are not foreign citizens.

International Factoring Article 61

International factoring shall be a type of factoring where the object of factoring is created from the underlying activity with a non-resident.

International factoring shall be carried out in a single-factor system and two-factor system.

The single-factor system of international factoring shall mean that only one factor participates in the factoring.

The two-factor system of international factoring shall mean that two factors participate in the factoring of which one is a foreign factor and the other is a domestic factor.

Reverse Factoring Article 62

Reverse factoring shall mean a type of factoring where the factor and the debtor of the object of factoring contract a program to pay the object of reverse factoring to the creditor of the object reverse factoring in such manner as that the factor undertakes to pay the object of reverse factoring before its due or upon the object of reverse factoring becomes due upon request of the creditor of the object of reverse factoring or upon instructions of the debtor of the object of reverse factoring, with transfer of so paid object of reverse factoring from the creditor of the object of reverse factoring to the factor.

The object of reverse factoring shall be any existing or future, due or undue, total or partial, short-term monetary debt generated as a result of underlying activity.

The future debt, within the meaning of paragraph 2 of this Article, shall be a debt not existing at the moment the factoring contract is concluded, but the debt is determinable at such time and the debtor from the underlying activity is known.

The short-term debt, within the meaning of paragraph 2 of this Article, shall be a debt from the underlying activity due for collection up to one year from the day the factoring contract is concluded.

In case of a reverse factoring, the factor shall be liable towards the debtor of the subject of reverse factoring so in accordance with a reverse factoring contract:

- 1) upon request of a creditor of the object of reverse factoring, to buy-out the subject of reverse factoring from the creditor of the subject of reverse factoring; or
- 2) upon instruction of the debtor of reverse factoring, to acquire the object of reverse factoring by complying with the object of reverse factoring against the creditor of the object of reverse factoring.

In the case of reverse factoring where the factor assumes the liability to acquire the object of reverse factoring, in line with instructions of the debtor of the object of reverse factoring, by complying with the object of reverse factoring against the creditor of the object of reverse factoring, the factoring interest shall represent an interest the factor calculates on the amount of liability resulting from the object of reverse factoring paid to the creditor of

the object of reverse factoring for the period between compliance with such liability and time of payment to the factor, by the debtor of the object of reverse factoring, of the amount of liability resulting from the object of reverse factoring the factor paid to the debtor of the object of reverse factoring.

Provisions of this Law governing the factoring shall apply accordingly to the reverse factoring issues not governed by this Article.

3. Factoring Contract

Definition of the Factoring Contract

Article 63

The factoring contract shall be a contract concluded in writing under which the factor undertakes to provide factoring service and the creditor of the underlying activity to transfer the object of factoring to the factor, as well as that the factor shall pay a relevant fee, depending on the contracted type of factoring.

The factoring contract may have as its subject one or more objects of factoring.

The factoring contract shall not be deemed to be a credit contract, within the meaning of legislation governing credit and loan.

Elements of the Factoring Contract

Article 64

Elements of the factoring contract shall be, including but not limited to:

- 1) identification data on contractual parties;
- 2) data on type of factoring;
- 3) data on underlying activity or object of factoring resulting from such activity;
- 4) data on amount, the manner of calculation and payment of value of the object of factoring;
- 5) data on amount, the manner of calculation and payment of the factoring fee, interests, payment and refund of the advance payments, the administrative fees and other fees, depending on the type of factoring;
- 6) duration of the factoring contract;
- 7) date the factoring contract is concluded; and
- 8) signatures of the contractual parties.

Contract Nullity

Article 65

Factoring contract having as its subject the sale of the object of factoring that was the subject of an earlier factoring contract shall be null and void.

4. Obligations of Participants in a Factoring Transaction

Documentation on the Transfer of Object of Factoring

Article 66

The creditor shall be obliged to deliver the following to the factor when transferring the object of factoring:

- 1) original or certified copy of the contract on underlying transaction, or a contract based on which the object of factoring was formed and/or original or certified copy of the invoice or other documents proving the basis for and identifying the object of factoring, and
- 2) proof of notification of the debtor on the sale of the object of factoring, if there is a notification obligation of the debtor within the meaning of Article 68 paragraph 2 of this Law.

The factor and the creditor shall draw up a separate document evidencing the delivery of the documentation referred to in paragraph 1 of this Article.

Date of Transfer of Object of Factoring

Article 67

The date of transfer of the object of factoring shall be the date when the factor and the creditor drafted a special document on the delivery of documentation referred to in Article 66 paragraph 2 of this Law.

Notice on the Sale of the Object of Factoring

Article 68

Notice of the sale of the object of factoring shall be made in writing and shall contain, including but not limited to, the following elements:

- 1) the date the factoring contract is concluded;
- 2) data on the object of factoring that resulted in the factoring contract;
- 3) data on the factor to which the debtor has the obligation to pay for the object of factoring; and
- 4) instructions for payment of the object of factoring.

The creditor shall be obliged to supply the notice referred to in paragraph 1 of this Article to the debtor, except in cases when it is contracted for the creditor to proceed with collection of the full amount of the object of factoring on his behalf and for the account of the factor.

Paying for the Object of Factoring Article 69

Upon receiving the notice referred to in Article 68 of this Article, the debtor shall have the obligation to pay for the object of factoring to the factor.

By paying for the object of factoring to the creditor, the debtor shall not be relieved of the obligation to the factor if notified of the sale of the object of factoring before the payment, and the creditor must transfer such payment to the factor without delay.

Liability of the Creditor Article 70

The creditor shall be liable to the factor for existence, reasonableness and accuracy of the value of the object of factoring.

The creditor shall guarantee to the factor that the object of factoring is free of pledge and other encumbrances, as well as objections and other rights of third parties, unless otherwise stipulated in the factoring contract.

In the event that the object of factoring is not free of pledge and other encumbrances or objections or other rights of third parties, while the factoring contract does not exclude the guarantee referred to in paragraph 2 of this Article, the factor shall have a right of recourse against the creditor even when the non-recourse factoring is contracted.

Transfer of the Object of Factoring to Third Parties Article 71

Transfer of the object of factoring to third parties shall be allowed, unless expressly forbidden by a factoring contract.

Effect of Factoring on the Prohibition to Transfer the Object of Factoring Article 72

In the case when the sale of the object of factoring is prohibited by the underlying transaction or business rules for participants in the underlying transaction, such a prohibition shall have no legal effect on the sale of the object of factoring to the factor, which is based on the factoring contract and in accordance with this Law.

Records on Objects of Factoring Article 73

The factor shall be obliged to maintain proper and updated records of the objects of factoring, which shall be obliged to disclose to the Central Bank for review in the process of supervision over the performance of factoring operations.

5. Performing Factoring Operations

Persons Performing Factoring Operations

Article 74

Factoring operations may be performed by:

- 1) factoring companies;
- 2) banks licensed by the Central Bank to perform factoring operations under a license or special approval; and
- 3) other business organisations entitled to perform factoring operations in accordance with a special law and where the Central Bank does not issue a license to perform such operations.

Factoring Company

Article 75

A factoring company shall be a business organisation with registered office in Montenegro performing the factoring operations as a sole activity based on a license issued by the Central Bank.

A factoring company may also perform operations related to and connected with the factoring operations.

Only business organisation having a license referred to in paragraph 1 of this Article may use the word “factoring” or derivative of the word “factoring” in its name or in the name of its product or service.

Application to register a factoring company with the CRPS shall be submitted no later than within 30 days as of the day a decision on issuing a license is received.

Form of Organisation

Article 76

A factoring company may be founded as a joint stock company or a limited liability company.

Initial Capital

Article 77

Minimum amount of the monetary part of initial capital of a factoring company shall be 125,000 euro.

Initial capital referred to in paragraph 1 of this Article must be paid in full prior to the registration of the factoring company in the CRPS.

Core Capital Article 78

A factoring company shall be obliged to maintain initial capital in the amount that may not be lower than the minimum amount of the initial capital referred to in Article 77 of this Law.

Issuing License to and Acquisition of Qualifying Holding in the Factoring Company Article 79

Provisions of Articles 48, 49, and 50 of this Law governing shall apply to the procedure of submitting the application and deciding upon the application for issuing license to a factoring company.

Provisions of Articles 51 to 54 of this Law shall apply to the acquisition of a qualifying holding in the factoring company.

IV PURCHASE OF RECEIVABLES

Definition of Purchase of Receivables Article 80

Purchase of receivables, within the meaning of this Law, shall be purchase of receivables of banks and other legal and natural persons, except receivables to be purchased in accordance with the provisions of this Law governing the factoring operations.

Persons Performing Activities of Purchase of Receivables Article 81

Purchase of receivables, in the form of an activity, may be performed by:

- 1) companies for purchase of receivables;
- 2) banks issued with an approval of the Central Bank to perform activities of purchase of receivables under a license or special approval; and
- 3) other business organisations entitled to perform purchase of receivables operations in accordance with the separate law and where the Central Bank does not issue a license to perform such operations.

Company for Purchase of Receivables Article 82

Company for purchase of receivables shall be a business organisation with registered office in Montenegro performing the purchase of receivables as a sole activity based on a license issued by the Central Bank.

A company for purchase of receivables may also perform operations related to and connected with the purchase of receivables operations.

Application to register a company for purchase of receivables with the CRPS shall be submitted no later than within 30 days as of the day a decision on issuing a license is received.

Form of Organisation

Article 83

A company for the purchase of receivables may be established as a joint stock company or limited liability company.

Initial Capital

Article 84

Minimum amount of the monetary part of initial capital of a company for purchase of receivables shall be 200,000 euro.

Initial capital referred to in paragraph 1 of this Article must be paid in full prior to the registration of the company for purchase of receivables with the CRPS.

Core Capital

Article 85

A company for purchase of receivables shall maintain core capital in the amount that may not be below the minimum amount of the initial capital referred to in Article 84 of this Law.

Detail Requirements

Article 86

The Central Bank may govern in more details requirements for performing purchase of receivables operations by way of its regulation.

Application for Issuing License to a Company for Purchase of Receivables

Article 87

Provisions of Articles 48, 49, and 50 of this Law shall apply to the procedure of submitting the application and deciding upon the application for issuing license to a company for purchase of receivables.

Provisions of Articles 51 to 54 of this Law shall apply to the acquisition of a qualifying holding in the company for purchase of receivables.

V MICRO-LENDING

Micro-Lending Operations Article 88

Micro-lending operations, within the meaning of this Law, shall be the operations of granting micro-loans to natural persons, entrepreneurs and micro, small and medium-sized business organisations.

Micro-loan, within the meaning this Law, shall be:

- 1) Earmarked loan granted to a natural person in the amount up to 20,000 euro,
- 2) Earmarked loan granted to an entrepreneur in the amount up to 30,000 euro, and
- 3) Earmarked or non-earmarked loan granted to a micro, small or medium-sized business organisation in the amount up to 50,000 euro.

Micro, small and medium-sized enterprises referred to in paragraph 1 of this Article shall be deemed to be micro, small and medium-sized enterprises defined by the law governing accounting.

Contract on Micro-Loan entered into with Natural Person Article 89

A contract on micro-loan entered into with a natural person must contain, as a minimum, all elements prescribed by the law governing the consumer loans.

Persons Performing Micro-Lending Activities Article 90

Only micro-lending financial institutions may perform micro-lending operations, in accordance with this Law.

Micro-Lending Financial Institution Article 91

Micro-lending financial institution shall be a business organisation with registered office in Montenegro performing micro-lending operations pursuant to a license issued by the Central Bank.

Micro-lending financial institution may be established as a joint stock company or a limited liability company.

Only a micro-lending financial institution may use the word “micro-lending” or derivative of the word “micro-lending” in its name or in the name of its product or service.

Application to register a micro-lending financial institution with the CRPS shall be submitted no later than within 30 days as of the day a decision on issuing a license is received.

Activities of Micro-lending Financial Institution Article 92

Micro-lending financial institution may perform the following operations:

- 1) grant micro-loans from own and borrowed funds;
- 2) issue guarantees to persons referred to in Article 88 paragraph 2 of this Law; and
- 3) Provide consulting services.

Initial Capital Article 93

Minimum amount of the monetary part of initial capital of a micro-lending financial institution shall be 125,000 euro.

Initial capital referred to in paragraph 1 of this Article shall be paid in full prior to the registration of the micro-lending financial institution into CRPS.

Core Capital Article 94

Micro-lending financial institution shall be obliged to maintain core capital in the amount that may not be below the minimum amount of the initial capital referred to in Article 93 of this Law.

Issuing License to and Acquisition of a Qualifying Holding in the MFI Article 95

Provisions of Articles 48, 49, and 50 of this Law shall apply to the procedure of submitting the application and deciding upon the application for issuing license to a micro-lending financial institution.

Provisions of Articles 51 to 54 of this Law shall apply to the acquisition of a qualifying holding in the micro-lending financial institution.

VI CREDIT-GUARANTEE OPERATIONS

1. Performing Credit-Guarantee Operations

Definition of the Credit-Guarantee Operations

Article 96

Credit-guarantee operations, within the meaning of this Law, shall be the operations of issuing guarantees by a credit-guarantee fund for regular meeting of obligations of loan beneficiaries.

Persons Performing Credit-Guarantee Operations

Article 97

Credit-guarantee operations, in accordance with this Law, shall be performed only by credit-guarantee funds.

Credit-Guarantee Fund

Article 98

Credit-guarantee fund shall be a business organisation with registered office in Montenegro performing as its sole activity the credit-guarantee operations, pursuant to a license issued by the Central Bank.

Credit-guarantee fund shall be established as a joint stock company.

Application to register a credit-guarantee fund with the CRPS shall be submitted no later than within 30 days as of the day a decision on issuing a license is received.

Issuing License to and Acquisition of a Qualifying Holding in the Credit-Guarantee Fund

Article 99

Provisions of Articles 48, 49, And 50 of this Law shall apply to the procedure of submitting the application and deciding upon the application for issuing license to a credit guarantee fund.

Provisions of Articles 51 to 54 of this Law shall apply to the acquisition of a qualifying holding in the credit guarantee fund.

Initial Capital

Article 100

Minimum amount of the monetary part of initial capital of a credit-guarantee fund shall be 1,000,000 euro.

Donated capital shall not be treated as initial capital referred to in paragraph 1 of this Article.

2. Operations of a Credit-Guarantee Fund

Capital and Regulatory Capital Article 101

Capital of a credit-guarantee fund shall comprise the following:

- 1) paid-in share capital;
- 2) charged issue premiums;
- 3) donated capital, if requirements referred to in Article 102 of this Law have been met;
- 4) prior year retained profit;
- 5) current year calculated profit;
- 6) provisions charged against post-tax profit.

Regulatory capital of a credit-guarantee fund shall include the amount of capital referred to in paragraph 1 of this Law deducted by:

- 1) non-recoverable prior year losses;
- 2) current year loss;
- 3) bookkeeping value of acquired own shares.

Credit-guarantee fund shall be obliged to maintain the regulatory capital at least at the minimum monetary amount of the initial capital referred to in Article 100 paragraph 1 of this Law.

Donated Capital Article 102

Credit-guarantee fund may accept donations from international organisations and other donors.

Donations shall be treated as donated capital of the credit-guarantee fund provided that:

- 1) Donation is irrevocable and have been made in cash with a view of supporting the activities of the credit-guarantee fund;
- 2) In the event of bankruptcy or liquidation of the credit-guarantee fund, the donation shall be treated as share capital.

Donated capital shall be included in the regulatory capital no more than up to the amount of nominal amount of share capital of the credit-guarantee fund.

Distribution of Profit

Article 103

Where the credit-guarantee fund has share capital and donated capital in composition of its capital, realised profit shall be distributed in the manner that total realised profit is classified into a profit from share capital and profit from donated capital, proportionate to the share to donated capital ratio.

Profit from donated capital, established in accordance with paragraph 1 of this Article, shall be added to the donated capital and it cannot be used for dividend payout to shareholders.

Multiplication Ratio

Article 104

The multiplication ratio of a credit-guarantee fund shall represent the ratio of total amount of guarantees issued by the credit-guarantee fund to the amount of regulatory capital ratio less the amount of expected operating expenses of the credit-guarantee fund in the year in which regulatory capital is calculated.

The multiplication ratio shall be calculated using the following formula:

$$KM = \frac{G}{RK - OT}$$

Elements of the formula referred to in paragraph 2 of this Article shall have the following meaning:

- 1) **KM** – multiplication ratio;
- 2) **G** – total amount of guarantees issued by the credit-guarantee fund;
- 3) **RK** – amount of regulatory capital;
- 4) **OT** – amount of expected operating expenses of the credit-guarantee fund in the year in which regulatory capital is calculated.

Multiplication ratio of the credit-guarantee fund may not exceed 5 at any time.

Exposure limits

Article 105

Credit-guarantee fund may issue a loan guarantee of no more than up to 70% of the loan value for which the guarantee is being issued, including also accrued interest.

Total guaranteed amount for a single loan user or a group of connected loan users may not exceed 5% of the regulatory capital of the credit-guarantee fund nor may it exceed the amount of 100,000 euro.

A group of connected loan users, referred to in paragraph 2 of this Article, shall be considered related parties within defined in Article 51 paragraph 4 of this Law.

Investing Idle Funds Article 106

Credit-guarantee fund may invest idle funds solely in the following:

- 1) bonds and other debt securities issued by Montenegro, the European Union member state or country signatory to the Agreement on the European Economic Area or central banks thereof or being guaranteed by Montenegro, the European Union member state or country signatory to the Agreement on the European Economic Area;
- 2) bonds and other debt securities issued or irrevocably guaranteed by the country with credit rating A or better assigned by the rating agency Standard & Poor's or any equivalent rating assigned by another internationally recognised rating agency;
- 3) bonds and other debt securities issued by banks and other legal persons, provided that they are listed on a stock exchange and traded in organised financial markets and that they have issuer's credit rating A or better assigned by the rating agency Standard & Poor's or any equivalent rating assigned by another internationally recognised rating agency;
- 4) deposits with banks which have credit rating A or better assigned by the rating agency Standard & Poor's or any equivalent rating assigned by another internationally recognised rating agency.

Credit-guarantee fund shall be obliged to maintain at any time aligned/matched maturity structure of receivables and liabilities, including contingent off-balance sheet liabilities.

VII GOVERNANCE, RISK MANAGEMENT, AUDIT AND REPORTING

1. Corporate Governance

Board of Directors Article 107

The Board of Directors shall be mandatory body of financial service providers.

Only a person holding high education, having personal reputation and experience in financial sector activities may be appointed as a member of the board of directors of a financial service provider.

A member of the Board of Director directors of a financial service provider cannot be a person:

- 1) whose property was subject to a bankruptcy proceeding or a sizeable enforcement was levied;

- 2) who is a member of a board of directors or an executive director of a bank or another financial service provider;
- 3) employed in the Central Bank for the last 12 months performing tasks where had an insight in the data on operations of financial service providers considered as a secret and the knowledge of which could lead to the competitive advantage in respect to other financial service providers;
- 4) who occupied managing positions in a financial institution or another business organisation at the time when such organisation was subject to bankruptcy proceedings, unless the Central Bank establishes that the person was not responsible for bankruptcy of such business organisation;
- 5) who was subject to a safety measure prohibiting further conduct of professional occupation, activity or duty imposed by a competent court;
- 6) who was sentenced for a crime which makes him not worthy of performing the function of member of the Board of Directors

A member of the board of directors shall be appointed with prior approval of the Central Bank.

Executive Director Article 108

Only a person meeting requirements stipulated for appointment of a member of the board of directors of the financial service provider referred to in Article 107 of this Law and having experience in managing operations of a financial service provider may be appointed as the executive director of the financial service provider.

An executive director shall be appointed with prior approval of the Central Bank.

An executive director shall be an employee of the financial service provider, with full time working hours.

Rendering a Decision on Issuing Approvals Article 109

The Central Bank shall render a decision upon request for issuing approvals referred to in Article 107 paragraph 4 and 108 paragraph 2 of this Law within 30 days as of the day of receiving a duly request.

Documentation envisaged by the Central Bank regulations shall be submitted along with the request referred to in paragraph 1 of this Article.

2. Risk Management

Risk Management System

Article 110

A financial services provider shall be obliged to establish, maintain and enhance effective risk management system that ensures identification, measurement, assessment and control of risks it is exposed to in its operations.

The Central Bank shall prescribe minimum standards for risk management to which financial services providers are exposed in their operations, including also classification of balance and off-balance sheet items based on which the financial services providers are exposed to credit risk.

The financial services provider shall prescribe, in its internal documents, the procedures for risk identification, measurement and assessment, as well as risk management in accordance with regulations, standards and rules of the profession, which shall include procedures:

- 1) for risk identification, measurement and assessment;
- 2) for risk management;
- 3) ensuring the control and consistent application of all internal procedures of the financial services provider with regard to the risk management; and
- 4) for regular reporting of the bodies of the financial services provider on risk management.

3. Internal Controls System and External Audit

Internal Controls System

Article 11

A financial services provider shall be obliged to establish, maintain and enhance an efficient and effective internal controls system corresponding to the size and complexity of its operations, which is provided through:

- 1) Efficiency and effectiveness of operations at all levels of authority;
- 2) Reliability, timeliness and completeness of financial and other information regarding the operations of the financial services provider; and
- 3) Compliance of the operations of the financial services provider with law, other regulations and general documents.

Grounds for Functioning of Internal Controls System

Article 112

A financial services provider shall be obliged to establish grounds for the functioning of internal controls system which shall:

- 1) ensure continuous assessment and adequate functioning of internal controls system;

- 2) establish and develop procedures for the identification, assessment, control and limitation of all important risks in operations;
- 3) determine an efficient organisational structure of the financial services provider;
- 4) precisely define, in general and other internal documents of the financial services provider, powers and responsibilities at all levels;
- 5) establish an efficient information system to serve in the function of internal controls system; and
- 6) set guidelines for permanent oversight and periodic control of effectiveness, development and improvement of internal controls system.

Control of Management and Accounting Article 113

Internal controls system shall primarily include the control of management and accounting.

The control of management shall include, as a minimum:

- 1) establishing, monitoring and development of the organisational structure of the financial services provider, with defined individual duties and powers;
- 2) oversight of the procedures and records with regard to taking decisions on business transactions at all management level.

The control of accounting shall include, as a minimum, control of compliance with plans, policies and procedures that ensure:

- 1) the execution of all business transactions in line with the decisions made by financial services provider's bodies;
- 2) timely and accurate bookkeeping recording of business transactions that enable development of financial reports in line with the law governing accounting.

External Audit Article 114

Financial services providers shall be obliged to ensure external audit of annual financial reports and consolidated financial reports in accordance with the law governing audit.

Financial services providers shall be obliged to deliver to the Central Bank, no later than within five months following the end of the business year of the respective annual financial reports, the following:

- 1) annual financial report and consolidated financial report;
- 2) report on audit of annual financial reports and consolidated financial reports.

Business year shall be calendar year.

Persons performing audit referred to in paragraph 1 of this Article shall be obliged to notify forthwith the Central Bank on:

- 1) disclosed irregularities or facts and circumstances that may jeopardise the operations of the financial service provider; and

- 2) circumstances that are reasons, in accordance with this Law, for revoking license of the financial service provider.

4. Reporting

Reporting to the Central Bank Article 115

Financial services providers shall be obliged to prepare and deliver to the Central Bank, within prescribed deadlines, accurate reports and other data on their financial standing and operations.

The Central Bank shall prescribe by way of its regulation the types, the form and the contents of reports and data referred to in paragraph 1 of this Article and deadlines for their delivery to the Central Bank.

In addition to the reports delivered in accordance with paragraphs 1 and 2 of this Article, the financial services provider shall be obliged, upon the request of the Central Bank, to submit additional reports and information relevant for the supervision of their operations or execution of other tasks from within the competence of the Central Bank.

VIII ORGANISATIONAL PARTS AND RESTRUCTURING OF FINANCIAL SERVICES PROVIDERS

Establishing Organisational Parts and Subsidiary Legal Persons Article 116

A financial service provider may establish branches, representative offices and other organizational parts without status of a legal person in Montenegro and abroad (hereinafter referred to as the parts of a company) and subsidiary legal persons.

Establishing a subsidiary legal persons and parts of a company abroad shall be carried out with prior approval of the Central Bank.

Documentation envisaged by a regulation adopted by the Central Bank shall be submitted along with the request for granting the approval referred to in paragraph 2 of this Article.

The Central Bank shall reject a request to grant the approval referred to in paragraph 2 of this Article if the establishment of part of a company is not economically justifiable or if the establishment of a subsidiary or part of a company abroad would make the exercising of the Central Bank control function more difficult.

Restructuring of Financial Service Providers

Article 117

Financial service providers may be restructured by:

- 1) merger of two financial service providers established based on an approval of the Central Bank and performing the same activity, and so as follows:
 - by establishing a new financial service provider,
 - absorption-type merger of one financial service provider with the another financial service provider (hereinafter referred to the as the acquiring company);
- 2) de-merger into two or more financial service providers; or
- 3) spin-off with establishment of one or more financial service providers.

In the event of restructuring of financial service providers, the following requests shall be submitted to the Central Bank:

- 1) in case of merger by establishing a new financial service provider, participants in the merger shall submit to the Central Bank a request to issue a license to a new financial service provider created by the merger;
- 2) in case of absorption-type merger, the acquiring company shall submit to the Central Bank a request to issue an approval for absorption of another financial service provider;
- 3) in case of de-merger into two or more financial service providers, the company being restructured through de-merger shall submit to the Central Bank a request to issue a license to a financial service provider created by the de-merger; and
- 4) in case of restructuring through spin-off with establishment of one or more financial service providers, the financial service provider being restructured shall submit to the Central Bank at the same time a request for approval to transfer part of its assets and liabilities to one or more financial service providers being established (hereinafter referred to as the new financial service providers) and a request to issue a license to new financial service providers.

Documentation envisaged by a special regulation of the Central Bank shall be submitted along with the request referred to in paragraph 2 of this Article.

Rendering a Decision upon Requests

Article 118

The Central Bank shall render a decision upon requests referred to in Article 117 paragraph 2 of this Law within 90 days as of the day of receiving a duly request.

The Central Bank shall:

- 1) issue a license referred to in Article 117 paragraph 2 items 1, 3, and 4 of this Law if requirements for issuing the appropriate license set by this Law are met;
- 2) issue an approval for absorption-type merger referred to in Article 117 paragraph 2 item 2 of this Law, if the following requirements are met:
 - absorption-type merger does not jeopardise the financial conditions of the acquiring company;

- the acquiring company has an organisation, management, decision making and information technologies system which enable for the financial service provider to be fully integrated into that system in a manner that does not jeopardise its functioning;
 - absorption-type merger is justified economically;
- 3) issue an approval for transfer of part assets and liabilities referred to in Article 117 paragraph 2 item 4 of this Law, if:
- transfer of assets and liabilities does not worsen the financial standing of the applicant, and
 - the applicant continues to be compliant in terms of its operation with the law after transfer of assets and liabilities.

IX PROTECTION OF USERS OF FINANCIAL SERVICES

Core Principles for the Protection of Users of Financial Services Article 119

Core principles for the protection of users of financial services shall be, within the meaning of this Law, the right to:

- 1) relationship with the financial services provider;
- 2) protection against discrimination;
- 3) be informed;
- 4) determination or determinability of contracted obligation;
- 5) protection of rights and interests.

A user of financial services, within the meaning of this Law, shall be a natural person using or have used financial services under this Law or has addressed the financial services provider for the purpose of using such services.

General Operating Conditions Article 120

General operating conditions, within the meaning of this Law, shall be operating conditions that are applied to the users of financial services, conditions for establishing the relationship between users of financial services and financial services providers and the process of their mutual communication, as well as the conditions of performing operations between the users of financial services and financial services providers.

A financial services provider shall be obliged to post on a visible location in its business premises and on its web site general operating conditions.

Prohibition of Conditioning User of Financial Services

Article 121

A financial services provider may not condition its contract signing with the user of financial services by the use of other services or services of third parties that are not connected with the underlying activity.

Right to be Informed

Article 122

A user of financial services shall have the right to obtain from the financial services provider, without compensation, the information, data and instructions related to its contractual relationship with the financial services provider in the manner and within timeframes specified by the contract.

Complaint of the User of Financial Services

Article 123

User of financial services shall have the right to file a complaint in writing to the financial services provider if it deems that the financial services provider does not adhere to contractual obligations.

A financial services provider shall be obliged to submit in writing a response to the complaint referred to in paragraph 1 of this Article within 15 days following the day of its receipt.

Other Protection

Article 124

User of financial services who is not satisfied with a response to complaint referred to Article 123 paragraph 2 of this Law or the response was not delivered within the prescribed timeframe, shall be entitled to protection in accordance with the law governing establishment and operation of banks.

X BUSINESS SECRET

Definition of Business Secret

Article 125

Data and information on clients obtained by the financial services provider during its operations shall represent a business secret.

Obligation of Safekeeping Business Secret Article 126

Members of the bodies of the financial services provider, employees with the financial services provider and other persons that, during their operations or on behalf of the financial services provider, have obtained data and information referred to in Article 125 of this Law, shall be obliged to safekeep those data and information after separation from the financial services provider and they may not use them to their personal advantage, nor made them available to third parties.

Notwithstanding paragraph 1 of this Article:

- 1) all data and information referred to in Article 125 of this Law may be disclosed to:
 - the Central Bank,
 - competent court,
 - competent state prosecutor and administration authority competent for police affairs for the purpose of pursuing perpetrators of criminal offences,
 - Other persons, with a consent of a person to which the data pertains;
- 2) Data in accordance with the law governing the prevention of money laundering and terrorism financing may be made available to the authority competent for prevention of money laundering and terrorism financing;
- 3) Data on indebtedness of clients of financial services providers and how regular are in paying obligations may be made available to persons that could have contingent liability towards the financial services provider resulting from such indebtedness as an endorser, guarantor and similar;
- 4) Data that are required for carrying out an operation the financial services provide may perform in accordance with this Law may be made available to another participant in the transaction.

Handling Data Representing Business Secret Article 127

Persons that have obtained data that represents a business secret in accordance with Article 126 of this Law shall be obliged to use such data solely for the purpose for which they have been obtained and must not make them available to third parties except in cases prescribed by the law.

XI SUPERVISION OF OPERATIONS

1. Performing Supervision of Operations of the Financial Services Providers

Supervision of Operations Article 128

The Central Bank shall perform the supervision of operations of financial services providers to which it has issued a license in accordance with this Law.

The supervision referred to in paragraph 1 of this Article shall cover the examination of compliance of operations of financial services providers in accordance with this Law and other laws.

The Central Bank shall determine the frequency and the scope of supervision referred to in paragraph 2 of this Article, taking into account the type and complexity of operations performed by the financial services provider and level of risk of its operations.

Methods of Performing Supervision **Article 129**

The Central Bank shall perform the supervision of operations of the financial services providers by:

- 1) analysing the reports, information and other data that the financial services providers deliver in accordance with this Law, information and data that the financial services providers deliver at the Central Bank's request and other data on operations of the financial services providers available to the Central Bank (hereinafter referred to as the off-site supervision);
- 2) direct examination of business books, bookkeeping and other documentation with the financial services providers and their counterparts in the supervised transactions (hereinafter referred to as the on-site supervision).

The employees of the Central Bank, authorised for the conduct of such duties by the Central Bank, shall perform the supervision of operations.

The Central Bank may also authorise persons not employed with the Central Bank to perform specific duties in the process of supervision of operations that required specific specialised knowledge.

The Central Bank shall notify a financial services provider of a planned on-site supervision, as a rule, ten working days before the commencement of the supervision.

Notwithstanding paragraph 4 of this Article, if the reports and information held by the Central Bank indicate that there are irregularities that may be relevant to the safe and sound operations of the financial services provider, an on-site supervision may also start without a prior notice.

A financial services provider shall be obliged to enable the authorised persons of the Central Bank undisturbed performance of on-site supervision and provide adequate conditions for performing such supervision.

On-Site Supervision

Article 130

A financial services provider shall be obliged to enable authorised person of the Central Bank the performance of on-site supervision in the head office of the financial services provider and other locations where the financial services provider or other party based on its authorisation, performs the operations subject to the supervision.

The financial services provider shall be obliged to enable the Central Bank's authorised person insight in business books, other business documentation and administrative or business records, as well as the control of information technology and other supporting technologies to the extent required for the performance of supervision.

The financial services provider shall be obliged to make available to the Central Bank's authorised person electronic records, copies of business books, other business documents and administrative or business records in paper form or electronic copy on media, as well as to ensure adequate access to the system for managing databases in use.

The supervision referred to in paragraph 1 of this Article shall be performed during business hours of the financial services provider, and if it is necessary, due to the volume or nature of supervision, the financial services provider shall be obliged to enable also the performance of supervision outside business hours.

Report on Supervision

Article 131

A report shall be made on completed supervision of the financial services provider.

Notwithstanding paragraph 1 of this Article, if the supervision does not disclose any illegalities or irregularities in the operations that require imposing measures against the financial services provider, the report shall not be made.

Financial services provider may deliver to the Central Bank objections to the report on performed supervision within eight business days following the day of its receipt.

The Central Bank may directly examine the statements of the financial services provider contained in its objections to the report on performed supervision and, if it deems them justified, the Central Bank shall make an addendum to the report to which the financial services provider may submit objections within three business days following the day of its receipt.

The Central Bank shall notify the financial services provider of accepting or non-accepting the objections within eight days of the day of receiving objections to the report on supervision or objections to the addendum to the report on supervision.

The report on performed supervision shall be confidential and shall not be disclosed either partly or fully without consent of the Central Bank.

Measures during Supervision Article 132

If a financial services provider fails to submit objections to the report on supervision within the deadlines prescribed in this Law or fails to provide reasonable grounds for its objections to the report or addendum to the report that stated irregularities in operations of the financial services provider, the Central Bank shall impose measures against the financial services provider for removal of the established irregularities and taking timely actions to improve safety and soundness of operations of the financial services provider.

In the event referred to in paragraph 1 of this Article, depending on the severity of the irregularities disclosed and readiness of the financial services provider to remove such irregularities, the Central Bank may:

- 1) warn the financial services provider in writing on the irregularities disclosed in operation and instruct the removal of such irregularities within the specified deadline;
- 2) conclude a written agreement with the financial services provider on the removal of disclosed irregularities within the specified deadline;
- 3) by way of a decision impose one or more measures referred to in Article 134 of this Law, or
- 4) revoke the license of the financial services provider.

Order on Imposing Measures Article 132

The Central Bank shall, in the form of an order, impose measures against a financial services provider, if during a supervision has disclosed:

- 1) that the financial services provider has by way of its action or failure to carry out certain actions acted contrary to the law;
- 2) irregularities in operations of the financial services provider that do not present actions contrary to regulations and no written agreement has been signed for their removal; or
- 3) that financial services provider needs to undertake appropriate actions and activities to improve its operations.

The order referred to in paragraph 1 of this Article shall specify the deadline for implementing measures imposed.

The financial services provider may, no later than 15 days prior the lapse of the deadline referred to in paragraph 2 of this Article, request by way of explanatory note, extension of such deadline, and the Central Bank shall render a decision thereof no later than by the lapse of the deadline specified in the order on imposing measures.

Types of Measures Imposed in the Order

Article 134

In the order on imposing measures, the Central Bank may:

- 1) order the financial services provider to remove the irregularities disclosed in its operations;
- 2) order the financial services provider to increase capital;
- 3) temporarily prohibit the financial services provider to sign new contracts in certain or in all operations until the disclosed irregularities have been removed;
- 4) order the financial services provider to resolve a member of the board of directors and/or executive director and/or other responsible person if they no longer meet the requirements prescribed by this Law or act contrary to the provisions of this Law;
- 5) order the financial services provider to undertake other activities to harmonise its operations with regulations.

Additional Measures against the Credit-Guarantee Fund

Article 135

In addition to the measures prescribed in Article 134 of this Law, the Central Bank may order the credit-guarantee fund also to:

- 1) increase of the regulatory capital;
- 2) reduce or temporarily suspend activities of issuing guarantees;
- 3) reduce the multiplication ratio.

Reporting to the Central Bank on Compliance with the Order on Imposing Measures

Article 136

An order on imposing measures may specify the deadline within which the financial services provider shall be obliged to notify the Central Bank on the implementation of the measures imposed and provide corresponding evidences thereof.

If it determines that the measures imposed have not been implemented or they have not been implemented within the deadline and in the manner specified in the order referred to in paragraph 1 of this Article, the Central Bank may impose a new measure against the financial services provider pursuant to this Law.

Procedure after Imposing Measures

Article 137

Immediately after the disclosed irregularities have been removed, and not later than upon the expiry of the deadlines for the removal of the irregularities disclosed, the financial services provider shall be obliged to submit to the Central Bank a report on the removed irregularities, supported by appropriate evidence.

The Central Bank shall issue a resolution with the conclusion that the financial services provider has removed the irregularities in its operations if, on the basis of the report referred to in paragraph 1 of this Article or on-site supervision, it determines that the all the irregularities disclosed in its operations have been removed.

If the financial services provider fails to remove the irregularities disclosed within the deadlines referred to in paragraph 1 of this Article, the Central Bank shall impose, on the basis of available evidence or, as needed on the basis of on-site supervision, new measures against the financial services provider in accordance with this Law.

2. Revoking a License

Conditions Article 138

The Central Bank shall revoke a license of the financial services provider, if the financial services provider:

- 1) fails to start with operations specified in the license within six months following the day of granting of the license;
- 2) fails to perform longer than six months the operations specified in the license;
- 3) obtains license on the basis of false and incorrect documentation and data;
- 4) disables the Central Bank to perform the supervision of operations;
- 5) fails to implement measures imposed by the Central Bank;
- 6) fails to submit or submits false reports on its financial condition and operations to the Central Bank;
- 7) ceases to meet the requirements under which the license has been granted;
- 8) adopts a decision on voluntary liquidation or a bankruptcy proceeding is initiated against the financial services provider.

Additional Conditions for Revoking License of the Credit-Guarantee Fund Article 139

In addition to the conditions for revoking license specified in Article 138 of this Law, the Central Bank may revoke license to the credit-guarantee fund even if:

- 1) the regulatory capital of the credit-guarantee fund has declined to level below a half of the minimum monetary amount of the initial capital, and/or
- 2) the credit guarantee fund has the multiplication ratio above the prescribed level.

Consequences of Revoking a License Article 140

Upon the receipt of the decision on revoking a license, the financial services provider shall be obliged to:

- 1) immediately cease to perform the operations for which the revoked license has referred to;
- 2) submit, within eight days, to CRPS a request for corresponding deletion of data on the activity and name of the financial services provider; and
- 3) complete commenced contracted operations and continue to report the Central Bank until the completion of contracted operations it has performed based on the license, or until the termination of the operations of the financial services provider.

3. Supervision Fee

Central Bank Fees Article 141

The Central Bank shall charge fee for granting licenses, approvals from this Law and for the performance of supervision of operations of the financial services providers to which the Central Bank has issued a license in accordance with this Law, the amount and manner of payment of which shall be determined by way of a regulation of the Central Bank.

4. Supervision of Operation of Other Persons

Supervision of Operations of Persons providing Financial Services without a Central Bank License Article 142

If there are indications that a person is engaged in operations from this Law without a required license of the Central Bank, the Central Bank may carry out supervision of operations of such person, for the purpose of collecting required information, by inspecting its business records and other documentation.

The person referred to in paragraph 1 of this Article shall be obliged to enable access to documentation and operations of such person to authorised supervisors of the Central Bank

XII COOPERATION OF THE CENTRAL BANK WITH OTHER AUTHORITIES AND REGISTRY OF FINANCIAL SERVICES PROVIDERS

Cooperation with other Supervisory Authorities in Montenegro Article 143

The Central Bank may, based on the memorandum of cooperation, cooperate with other authorities in Montenegro responsible for the supervision of financial sector entities, by exchanging information required for pursuing supervisory function.

The submission of information and notification referred to in paragraph 1 of this Article shall not be considered as breach of data confidentiality.

The competent authority referred to in paragraph 1 of this Article shall be obliged to keep information and notifications received pursuant to paragraph 1 of this Article confidential and it may use them only for purposes that are delivered and make them available to third parties only with prior consent of the Central Bank.

**Exchange of Information between the Central Bank and Competent Authorities of
Other Countries
Article 144**

The Central Bank may sign agreement with one or more supervisory authorities from foreign countries for the purpose of obtaining information and data required for pursuing supervision on consolidated basis and establishing other forms of cooperation.

The submission of information and notification through forms of cooperation referred to in paragraph 1 of this Article shall not be considered breach of data confidentiality.

The competent authority referred to in paragraph 1 of this Article shall keep information and notifications received pursuant to paragraph 1 of this Article confidential and it may use them only for purposes that are delivered and make them available to third parties only with prior consent of the Central Bank.

**Registry of Financial Services Providers
Article 145**

The Central Bank shall keep the registry of financial services providers to which license has been granted in accordance with this Law.

The registry of the financial services providers shall be public and data from the registry shall be published at the web site of the Central Bank.

XIII PENALTY PROVISIONS

**Offences of Financial Services Providers
Article 146**

A pecuniary fine ranging from 5,000 euro to 20,000 euro shall be imposed against a financial services provider if it:

- 1) fails to submit annual financial report or report on audit of the annual financial report within five months as of the lapse of the business year for which the financial reports are produced (Article 114 paragraph 2);
- 2) fails to submit to the Central Bank accurate reports and other data on its financial condition and operations or fails to submit them with the deadline stipulated in Article 115 paragraph 2 of this Law (Article 115 paragraph 1);
- 3) fails to post general operating conditions on a visible location in its business premises and at its web site (Article 120 paragraph 2);
- 4) conditions signing contracts with users of financial services by the use of other services or services of other persons that are not connected with the underlying activity (Article 121);
- 5) fails to submit to the user of financial services a response in writing to the objection referred to in Article 123 paragraph 1 of this Law within 15 days following the day of its receipt (Article 123 paragraph 2);
- 6) fails to submit to CRPS a request for adequate deletion of data on activity and name of the financial services provider within eight days as of the day of receiving a decision on revoking a license (Article 140 paragraph 1 item 2);
- 7) upon receiving a decision on revoking a license, fails to complete commenced contracted operations or fails to continue with reporting to the Central Bank until contracted operations pursued based on a license are completed or until it ceases with operations (Article 140 paragraph 1 item 3).

A pecuniary fine ranging from 1,000 euro to 2,000 euro shall also be imposed on a responsible person in the financial services provider for the offence referred in paragraph 1 of this Article.

Offences of Other Persons **Article 147**

A pecuniary fine ranging from 10,000 euro to 20,000 euro shall be imposed against a legal person if it:

- 1) is engaged in leasing operations without required license or approval of the Central Bank referred to in Article 43 paragraph 1 item 2 and Article 44 paragraph 1 of this Law;
- 2) uses in its name the word “leasing” or any derivative of the word “leasing”, and does not have a license referred to in Article 44 paragraph 1 of this Law (Article 44 paragraph 3);
- 3) is engaged in factoring operations without a license or approval of the Central Bank referred to in Article 74 paragraph 1 item 2 and Article 75 paragraph 1 of this Law;
- 4) uses in its name the word “factoring” or any derivative of the word “factoring”, and does not have a license referred to in Article 75 paragraph 1 of this Law (Article 75 paragraph 3);

- 5) pursues purchase of receivables operations without a license or approval of the Central Bank referred to in Article 81 paragraph 1 item 2 and Article 82 paragraph 1 of this Law;
- 6) pursues micro-lending operations without a license of the Central Bank referred to in Article 90 paragraph 1 of this Law;
- 7) uses in its name the word micro-lending or any derivative of the word micro-lending, and does not have a license referred to in Article 91 paragraph 1 of this Law (Article 91 paragraph 3);
- 8) is engaged in credit-guarantee operations without required license of the Central Bank referred to in Article 98 paragraph 1 of this Law.

A pecuniary fine ranging from 1,000 euro to 6,000 euro shall be imposed on an entrepreneur for the offence referred to in paragraph 1 of this Article.

A pecuniary fine ranging from 500 euro to 1,000 shall be imposed on a natural person for the offence referred to in paragraph 1 of this Article.

XIV TRANSITIONAL AND FINAL PROVISIONS

Deadline for Adoption of Enabling Regulations Article 148

The Central Bank shall adopt regulations for implementation of this Law within six months as of the day this Law enters into force.

Implementation of Concluded Contracts Article 149

Contracts on financial leasing, factoring and purchase of receivables concluded before the day this Law commences with application and loan contracts concluded by the micro-lending financial institutions before this Law commences with application shall be implemented in line with conditions as set forth in such contracts.

Aligning Operations of the Micro-lending Financial Institutions Article 150

Micro-lending financial institutions with license issued by the Central Bank, as of the day this Law commences with application, shall continue to perform micro-lending operations in accordance with this Law without a new license being issued by the Central Bank.

Micro-lending financial institutions referred to in paragraph 1 of this Article shall be obliged to bring their internal documents and operations into compliance with the

provisions of this Law within six months as of the day this Law commences with application and submit to the Central bank:

- 1) Documentation attached to the request for issuing approval for acquisition of a qualifying holding referred to in Article 52 of this Article;
- 2) Articles of association of the Micro-lending financial institution, aligned with the law;
- 3) Evidence on meeting requirements referred to in Article 94 of this Law;
- 4) Documentation attached to the request for issuing approval for appointment of a member of the board of directors and of an executive director referred to in Article 109 of this Law.

The Central Bank shall revoke the license of the Micro-lending financial institution which fails to align operations with provisions of this Law within the deadline referred to in paragraph 2 of this Article.

Aligning Operations of Persons Engaged in Financial Leasing, Factoring or Purchase of Receivables Operations

Article 151

Business organisation engaged in operations of financial leasing, factoring, or purchase of receivables as of the day this Law commences with application, shall be obliged to bring their organisation, internal documents and operations into compliance with the provisions of this Law and no later than six months following the day this Law commences with application submit to the Central Bank an application for issuing a license supported by stipulated documentation.

Notwithstanding paragraph 1 of this Article, banks that are as of the day this Law commences with application engaged in leasing or factoring operations pursuant to a license or special approvals issued in accordance with the law governing establishment and operation of banks shall continue to provide those services without a new approval being issued by the Central Bank.

Persons referred to in paragraph 1 of this Article that fail to submit application for granting license within the prescribed decline or their application is rejected, shall be obliged to cease with performing operations for which a license of the Central Bank is required immediately upon lapse of the period for submitting an application for issuing a license or immediately upon receiving a decision rejecting the application for issuing license.

Termination of Validity

Article 152

The Law on Financial Leasing (Official Gazette of the Republic of Montenegro, No 81/05), Chapter IX and Articles 149 through 164 of the Law on Banks (Official Gazette of Montenegro, No 17/08 and 44/10), Article 129 of the Law Amending and Supplementing the Law Stipulating Pecuniary Fines for Offences (Official Gazette of Montenegro, No 40/11), Article 28 paragraphs 6 and 9 of the Law on Consumer Loans (Official Gazette of Montenegro, No 35/13), the Decision on Minimum Standards for Risk Management in

Micro-Credit Financial Institutions (Official Gazette of Montenegro, No 24/09, 41/09, and 61/12), and the Decision on Conditions for Performing Credit-Guarantee Operations (Official Gazette of Montenegro, No 42/08) shall be repealed with effect from the day this Law commences with application.

Entry into Force
Article 153

This Law shall enter into force on the eighth day following the day of its publication in the Official Gazette of Montenegro, and it shall be applied after lapse of six months following the day of its entry into force.

Number: 09-1/17-1/4
EPA 277 XXVI
Podgorica, 25 October 2017

26th Parliament of Montenegro
Speaker of the Parliament
Ivan Brajović, m.p.