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# Montenegro: New Companies Law

Corporate & Commercial

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On 25 June 2020 the National Assembly of Montenegro adopted the new Companies Law ("Official Gazette of Montenegro", no. 065/20 from 03.07.2020) (hereinafter: the New Law) which entered into force on 11 July 2020.

The New Law replaced the previous Companies Law ("Official Gazette of Republic of Montenegro", no. 6/2002, "Official Gazette of Montenegro", no. 17/2007, 80/2008, 40/2010 – other law, 36/2011 and 40/2011 – other law) (hereinafter: the Previous Law).

What is immediately noticed as the most significant difference how all matters regarding companies are regulated in much more detail as well as other matters which were not regulated before, inter alia:

- i. the foundation of branches;
- ii. the responsibilities for the company's obligations;
- iii. the representation of the company and the procura;
- iv. the particular duties towards the company (very significant, as it determines the persons who have particular duties towards the company, who is considered connected person, as well as the particular duties in question and legal remedies in case of breach of those duties);
- v. the property and capital of the company.

The categories of companies remain the same (partnership, limited partnership, joint stock company and limited liability company), while the status of entrepreneurs and part of foreign companies are further elaborated.

## **Entrepreneur**

The New Law regulates matters concerning the process of becoming an entrepreneur and registration before the Central Registry of Business Entities of Montenegro (hereinafter: CRBE), the possibility of appointing a manager, as well as the termination of business activities.

## **Partnership**

The main novelty implemented by the New Law is the obligation to have the agreement between partners concluded, which represents the agreement on the establishment of the partnership, necessary inter alia, for registration of the general partnership before CRBE.

The rights and responsibilities of partners are regulated in more detail, their internal legal affairs as well as towards third parties, business management as well as termination of the general partnership and possible manners of terminating the status of a partner.

## **Limited partnershi**

The New Law regulates the manner of founding and registration of limited partnership before the CRBE. The rights and duties of the members are regulated in more detail, as well as the termination of the membership.

## **Limited liability company**

As with the other categories of companies, matters concerning the founding, capital and termination of membership in the limited liability company are regulated in more detail in the New Law.

One of the most significant changes concerns the management bodies. The difference from the previous legislation is that now the GSM is, as a rule, the mandatory body in company, besides the executive director. Further, the limited liability companies which fulfil certain conditions, such as those which are considered to be large legal entities in accordance with accounting laws and public limited liability companies, are obliged to have the same management structure as in the joint stock company. The New Law regulates the functions and manner of work of GSM, as well as the matters regarding the position of the executive director.

## **Joint stock company**

The founding and registration of the company before CRBE are regulated in more detail, as well as the nullification of the founding, the memorandum of association and statute, the obligation to do the registration of changes and publish the information.

Further, the shareholders' rights are regulated in more detail, e.g. the right to hire an expert, and the right to ask questions regarding materials and proposals of decisions which will be discussed in the session of GSM.

However, the main novelty which the New Law introduced concerns the manner of managing the company. The difference between the Previous Law, which envisaged only one-tier management (consisting of the general shareholders meeting (GSM), board of directors (BoD) and executive director (ED)), is that now it is possible to organize a two-tier management as well (consisting of GSM,

supervisory board and management board).

When it comes to GSM, the matters concerning its sessions are regulated in more detail, and most significantly, its functions, which, inter alia, are to adopt the remuneration policy the content of which is now prescribed by law.

Apart from the nullification, the New Law introduces the possibility of rebuttal of the GSM's decisions. As far as the BoD is concerned, now there is a distinction between the joint stock company and the public joint stock company when it comes to the number of BoD's members, and its composition and election of the members are regulated in more detail, as well as their functions and duties.

Another novelty introduced by the New Law is BoD's committees which can be established for certain expert matters.

The position of an executive director is also regulated in more detail.

The supervisory board, as a body in the two-tier system of management, is envisaged by the New Law, which regulates its composition, election of members and functions.

As a part of two-tier management structure, the New Law introduces and regulates the matters concerning the management board, inter alia, its composition, election of and remuneration for members, as well as its functions.

The secretary of the company is no longer a mandatory body in the joint stock company.

In general, the New Law, regulates further matters concerning the capital of the company, possibility and manner of increase and decrease of the company's basic capital, as well as the status changes, changes of legal form and the termination of the company.

#### **Cross-border mergers of the companies**

The New Law introduces a new manner of conducting a status change, by merging companies (one or more) registered in Montenegro with a company registered in some other country (member of the European Union or signatory of the Agreement on the European Economic Area). The provision concerning the cross-border merger of the companies will be applicable from the date Montenegro becomes a European Union member state.

#### **Penalties**

The New Law brings changes concerning the penalty provisions, in relation to the maximum amount of the pecuniary fine for the offences prescribed by the law. Therefore, now the maximum amounts of pecuniary fees are EUR 10,000 for the company, and EUR 2,000 for the responsible person in the company.

#### **Obligation of compliance with the New Law**

First of all, the obligation of Ministry of Finance is prescribed to issue the forms of registration applications forms and to regulate the procedure of registration before the CRBE within 60 days from the day the New Law enters into force.

All joint stock companies and limited liability companies which fulfil certain conditions, such as those which are considered as large legal entities in accordance with the accounting laws and public limited liability companies, are obliged to align their management structure in compliance with the New Law and do the registration of changes before CRBE within nine months from the day the New Law entered into force.

Other companies registered before the CRBE are obliged to ensure compliance with the New Law and perform the registration of changes within 18 months from the day the New Law entered into force, and the general partnerships and entrepreneurs who are not registered before the CRBE to do so within nine months from the day the New Law entered into force.

The relevant authority (CRBE) will commence the liquidation procedure for all companies which did not register (i.e. comply with the New Law) within 30 days after the previously mentioned time periods pass. All procedure which commenced in accordance with the Previous Law will end according to the same law.