



MFIC | Montenegrin Foreign  
Investors Council

# WHITE BOOK: LOOKING AHEAD

FOREIGN INVESTORS' VIEW OF THE INVESTMENT CLIMATE IN MONTENEGRO

*"Montenegro is replete with investment opportunities.  
It has tremendous growth potential, but to fully realize it, there is much more that can be done.  
This is our contribution to achieving the goal of a prosperous and sustainable country of Montenegro"*

2013





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2013



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## FOREWORD

2013 was a great year for the Montenegrin Foreign Investors Council (MFIC). We welcomed numerous new members, respectable investors, thus showing the importance of continuing to improve the business climate in Montenegro. This is a must in order to attract more investors and keep the country attractive for the existing ones. On the other hand, the level of FDI inflow is significantly lower compared to previous years. Furthermore, the government was forced to introduce so-called crisis measures in order to balance the state budget, i.e. increase existing or introduce new taxes (higher personal income tax, higher VAT, a €1 tax on SIM cards, tariff meters, cable connections, etc.) a measure that proved to be counterproductive in the existing market circumstances. Regardless, the government's commitment to improving the business environment needs to be recognized. We had the opportunity to bear witness of that readiness in meetings with several different ministers (in the Ministries of Tourism, Labour, Justice and Finance) and at the end of the year also with the prime minister, who clearly underlined that the government is determined to further improve the market conditions for foreign investments.

Looking back at 2013 in Montenegro, we can say that it was a very challenging year. The challenges are clearly reflected in the macroeconomic indicators: a significantly lower inflow of FDI (preliminary data for 2013 show that the net FDI inflow amounted to €323.9 million, or 29.8% less than in 2012), a relatively high unemployment rate (compared to the Eurozone), a decline in foreign trade and general uncertainty when it comes to the business environment. However, there have also been some positive developments we wish to recognize.

It is our great pleasure that Montenegro's EU accession process is going smoothly. The screening process was completed in June. Chapters 5, 6, 20, 23 and 24 were opened, while chapters 25 and 26<sup>1</sup> were opened and temporarily closed, which indicates the country's resolve and commitment to the process. I am particularly glad to learn that the whole government shares the opinion that accession to EU is important for Montenegro not because of accession as such, but in order to adopt European values and standards, thereby improving the international image of the country.

I was very pleased to read that the efforts invested by the Montenegrin government in improving its economy's regulatory environment for business were recognized and appreciated by numerous international organizations and research institutions. Namely, the most recent Doing Business Report 2014 positioned Montenegro in 44<sup>th</sup> place when it comes to the overall business climate, compared to the last year's position of 51<sup>st</sup>, i.e. in 2<sup>nd</sup> place (behind Macedonia) among the comparable economies of the region.

Ever since the 40<sup>th</sup> Government of Montenegro, led by Prime Minister Đukanović, was elected, the MFIC has wholeheartedly supported its commitment to the reform processes and its readiness to build its economy as an open business environment, predisposed to attracting solid foreign partners. In that regard, we take this opportunity to support the mentioned processes offering once again the knowledge and experience of our member companies to the government.

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<sup>1</sup> For an overview of the Acquis Communautaire Chapters please see Appendix 1

We should continue and intensify the open dialogue between the government's and the MFIC's representatives in a more detailed and professional way, through which good solutions for the most important issues of economic development of the country could be jointly developed.

Noticing over the past three years that the MFIC rating has been very well perceived by readers as a very quick, simple and illustrative insight into the local investment and business environment related trends, in this White Book edition we decided to continue representing a perception-based evaluation of the simplicity and effectiveness of doing business in Montenegro. The overall rating is 6.3 (on a scale of 1 to 10), up by 0.4 compared to last year, which undoubtedly indicates certain improvements (the Rule of Law, Property Development and the Labour Market/Employment) which we will always acknowledge, although some old issues persistently emerge alongside new ones that have a negative impact on our members' businesses. More specifically, the Rule of Law, Property Development and Labour Market/Employment are the focus areas evaluated by our members as positively developing, while, on the other hand, Taxation has been showing negative trends. Also industry-wide, indicators for Production/Energy have increased; for Tourism these have been stable, but Telecommunications and ICT figures have been sharply decreasing.

By publishing this edition of the White Book we wanted to go a step ahead and act more proactively towards establishing a more flexible and foreign-investor-friendly business environment in the country. Our intention was to avoid constant repetition of some, as I have already said, persistent business barriers, not because these no longer create serious problems in our everyday practice, but because this time we wanted to give a more concrete and practical contribution to creating a more positive image of the country. In that sense we changed the concept of this year's White Book, offering specific proposals of amendments to the laws most problematic from foreign investors' point of view, including the wording itself of certain articles of such laws.

Finally, we take this occasion to thank all contributors to this edition of the White Book, especially to our members.

Rüdiger J. Schulz,  
MFIC President

## INTRODUCTION

A lot has changed since we published our first compilation of recommendations back in 2011. This time we will try to capture some of those developments, but will focus more on the future. We will be looking ahead to see how we can together build a better business environment.

Montenegro is replete with investment opportunities. It has tremendous growth potential, but to fully realize it, there is much more that can be done. This is our contribution to achieving the goal of a prosperous and sustainable Montenegro.



Figure 1: MFIC in numbers

It is our common desire to see Montenegro become one of the most attractive destinations for FDI, something not easily achieved amongst such fierce competition coming from jurisdictions with a much longer tradition of attracting foreign capital and with a more developed infrastructure and regulatory environment and practices. But we would not be here if we did not believe Montenegro has something to offer that other countries do not. This is what we need to build our strategy on – the uniqueness that will set this country apart and make it a regional hub for business and investment.

As the number of Foreign Investors has grown in Montenegro so has our membership, from the five companies that established the MFIC back in 2009, to 22 in 2014.

### MFIC: WHO WE ARE

The Montenegrin Foreign Investors' Council (MFIC) is an association of leading foreign investors in Montenegro established in January 2009. Our aim is to:

*Improve the investment climate and support business development in Montenegro;*

*Promote communication, cooperation and dialogue between the Council and the Montenegrin authorities;*

*Cooperate with the Montenegrin authorities to help overcome the issues and obstacles that foreign investors may face, including those concerning economic relations with other countries;*

*Liaise with other investors' organizations within the SEE region.*



And with members our strength in numbers has grown as well in terms of percentage of GDP and the number of jobs our members provide in Montenegro:

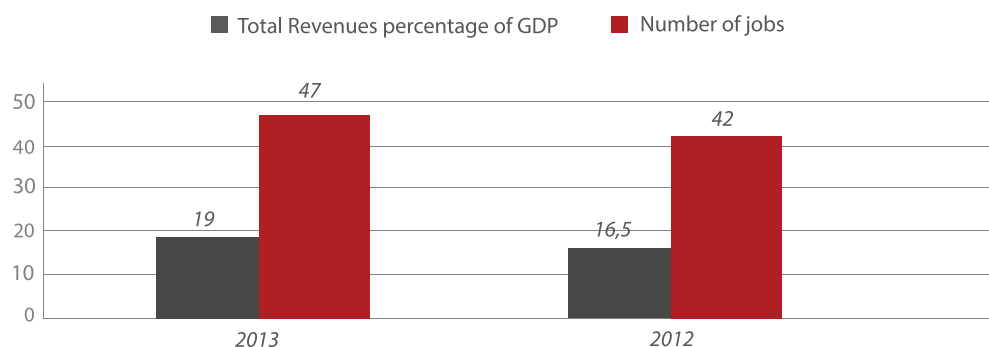


Figure 2: Total revenue of MFIC members as a percentage of GDP and number of jobs for 2013 and 2012

*THE MFIC WILL BE WORKING HARD TO FOSTER DIALOGUE BETWEEN POLICY MAKERS AND INVESTORS IN ORDER TO IMPROVE THE MONTENEGRIN BUSINESS ENVIRONMENT THROUGH BOTH INFORMAL AND FORMAL EVENTS, SUCH AS FORUMS, PRESENTATIONS, OFFICIAL MEETINGS, ETC.*



## SUMMARY

2013 was a year of mixed messages for foreign investors, inside the country and outside. Some major developments were initiated, some continued, while the instability of the business environment kept raising the concerns of the business community, often slowing down or completely disrupting new investments. In discussions with our members, the words most mentioned this year were stability and predictability – or a lack thereof, to be more precise. We heard them so much that we decided to dedicate a whole chapter to it.

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*Frequent changes of regulation, increases in tax rates and other fees that business are required to pay, increase the transaction costs of doing business not only in purely financial terms, but in extended time and lost opportunities – while companies in Montenegro struggle to keep up with the changes and comply with the regulations and increases in expenses, companies outside focus on developing their businesses. Montenegro does not have the time for this, we need to work together on increasing competitiveness not increasing business barriers.*

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From the government we repeatedly heard that increasing taxes was a painful although inevitable measure to compensate for the declining revenues. However, an important ingredient remains missing: the expansion of the tax base, as according to MFIC information, 90% of the revenues for Montenegro's budget comes from approximately 500 companies or 1.5% of the total number of companies. These figures demonstrate the huge potential of spreading the tax burden equally to all, not to mention the grey economy.

In the chapter titled "MFIC members recommendations for improving the regulatory environment" we discuss laws and regulations, proposing changes that we believe would bring about a positive impact on the investment and business environment and further align the regulations with EU and international standards.

As in the previous White Book, we identified several key issues such as the Labour Law, Property Development, Taxation, Corporate Governance and the Rule of Law. Our members noted improvements in the environment in these aspects, however, there were also new challenges.

In the chapter devoted to the Industry Overview, the White Book deals with issues and recommendations that are specifically related to industries which our members come from and have not been mentioned in the focus areas in the previous chapter.

In the final part we offer further detail on the well-established cooperation the MFIC has with the government and the MFIC's activities related to education.

# 1. MFIC BUSINESS ENVIRONMENT INDEX 2013

## ABOUT THE INDEX

The MFIC Index is a perception-based evaluation of the ease of doing business in Montenegro. It is derived solely from the opinions of its members who grade the individual industries which they represent on a scale of 1 to 10, where 1 is the poorest score and 10 the best. The aim is to provide foreign investors and local decision makers equally with a quantitative overview of how the investors already running a business in the country perceive the business environment on the basis of several indicators (see below). It is divided into two categories: in the first investors provide a rating of the industry in which they operate as a whole, and in the second, of individual focus areas that the MFIC has identified on the basis of the inputs from our members.

### 1.1. THIRD YEAR OF THE MFIC INDEX

In 2014, with the third result of our internal, perception-based research of investment and business environment expressed through the MFIC index we can afford ourselves the luxury of starting to talk about trends. And this trend is visibly positive. In small steps, and perhaps not as fast as we all would like, but it is a trend that certainly gives us all reason for optimism:

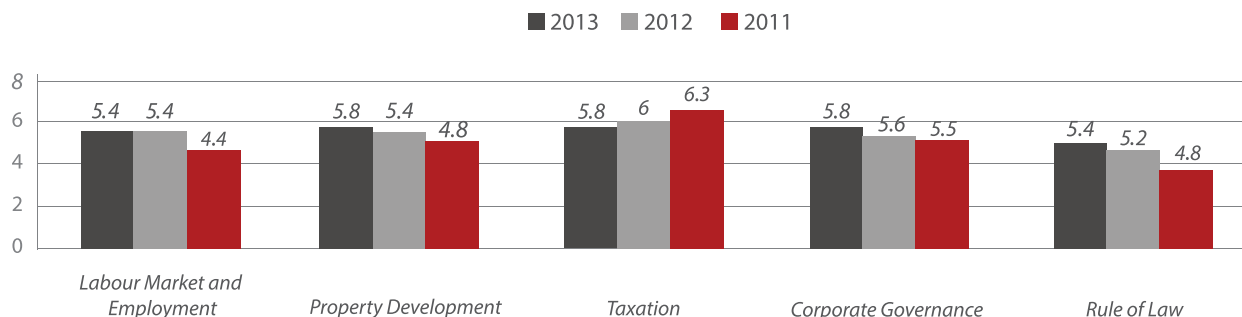
#### OVERALL RATING 2013



**MFIC INDEX: 6.3 (5.9<sup>2</sup>)**

This is what the results in individual categories of the index look like over the past three years:

*How much positive or negative impact these Focus Areas had on your business:*



<sup>2</sup> 2012 result

When rating the industry, our members considered how easy or difficult their daily operations are due to the general business climate and regulatory environment, and other factors such as:

- administration,
- the legal framework including laws and institutions,
- other business infrastructure areas like roads/education/ etc.

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*We would like to emphasize that there is no specific methodology behind this ranking, it reflects the subjective perception of MFIC members and not generally accepted facts.*

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### How do you feel in: (Industries Rating)



These represent conditions as “provided” by the state, and do not reflect current conditions or other external factors such as the economic crisis.

For rating the individual focus areas, our members considered how positive or negative an impact on their business each of the categories listed below has:

- **The labour market and employment** include several issues such as severance payments, fixed-term contracts, sick leave, etc.
- **Property development** for this particular purpose relates to construction permits, registration, cadastre, enforcing mortgage contracts, real-estate appraisal, etc.
- **Taxation/contributions** refers to various fees, taxes, levies and the overall consistency and transparency in paying taxes/evasion of payments.
- **Corporate governance** includes financial reports, bankruptcy regulation, VAT harmonization with the EU and audit practices.
- **Rule of Law** and provisioning of public services includes the length of commercial disputes and court cases, permits and licences, temporary residence and work permits, etc.

## 2. YEAR IN REVIEW

2013 was a year with several significant developments for the business and investment environment. Below is a list of the major developments according to the EBRD's annual publication Transition Report for 2013, and what the key priorities are for 2014, with an additional point from the MFIC:

### Highlights 2013

**The fiscal position has weakened considerably over the past year.** Weak growth and the activation of sizeable state guarantees for the aluminium company, Kombinat Aluminijuma Podgorica (KAP), have taken a significant toll on public finances in 2013.

**European Union (EU) accession negotiations are advancing.**

Montenegro opened accession negotiations in 2012 and has so far provisionally closed two of the 35 EU acquis chapters over the past year. Under the new enlargement rules Montenegro will have to begin work on the more difficult chapters related to the judiciary and justice early in the accession process.

**Generation capacity in the energy sector is expanding.** A number of small hydropower plants are currently under construction, and there has been considerable investor interest in the construction of a second unit in the Pljevlja thermoelectric power plant. Plans for commencing the construction of the Italy-Montenegro underwater cable are advancing.

### Key priorities for 2014

**The fate of KAP should be resolved as soon as possible.** The financial difficulties of the company have spilled over to the public sector. A sustainable solution to the widening fiscal gap will not be possible unless KAP's liabilities are resolved.

**Efforts should be stepped up to address the high level of non-performing loans (NPLs) in the banking sector.** NPLs represent nearly 20% of total loans, and provisions are below 40%. Regulatory barriers to the enforcement, restructuring or write-off of NPLs need to be removed.

**Further reforms are needed in infrastructure, especially in roads and certain municipal and environmental sectors.**

These sectors could benefit from greater commercialisation, especially through public-private partnership (PPP) projects.

There is a need for **more centralization on the administration side, on the path towards the EU.**

Growth resumed in 2013, and according to the estimates of the Ministry of Finance, GDP grew at the moderate pace of 2.6%, after the economy went into recession in 2012, with real GDP contracting by 2.5%.

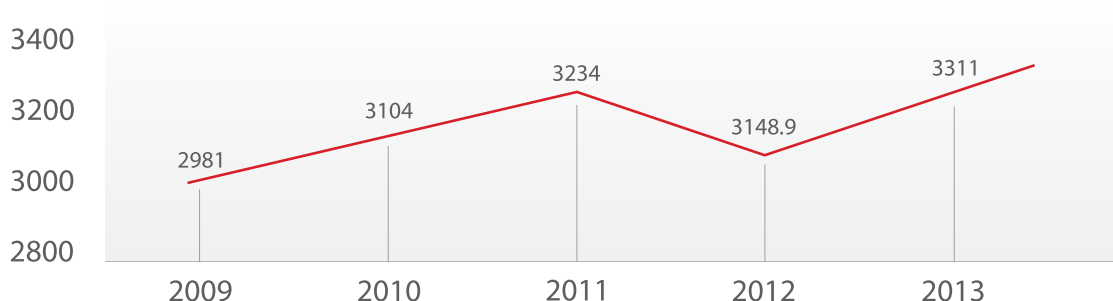


Figure 3: GDP in € thousands, Sources: Monstat 2009-2012, Ministry of Finance estimate for 2013

In 2013, a trend in FDI inflow was recorded. According to the Central Bank of Montenegro's preliminary data for 2013, net FDI inflow amounted to 324 € million, or 29.8% less than in 2012:

	2009	2010	2011	2012	2013
<b>Direct investment, € million<sup>3</sup></b>	<b>1,066</b>	<b>543</b>	<b>389</b>	<b>482</b>	<b>324</b>

Table 1: Foreign Direct Investment, source Central Bank of Montenegro

However, the decline in FDI from the post-independence boom is evident, but in per capita terms Montenegro still ranks first among the five countries of the South-East Europe region<sup>4</sup>. For example, in 2011, which saw the lowest level of FDI in several years, the per capita FDI of €869 was more than double the next best result – €341 in Serbia.

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<sup>3</sup> Source: Central Bank, for 2013 estimates by the Montenegrin Ministry of Finance.

<sup>4</sup> According to the central banks of the five countries in the region: Montenegro, Serbia, Albania, Macedonia, B&H.

Once again we note the importance of FDI for the Montenegrin economy: “Overall, growth has been largely driven by external demand and one-off base effects, compensating for a still weak domestic demand... Overall, despite some improvement, external imbalances still remain very large.”<sup>5</sup>

In order to mitigate the consequences of the lingering crisis that has drained the lifeblood of Montenegro’s economy – FDI – and to return to strong growth, Montenegro needs a competitive environment for FDI more than ever before.

## 2.1. MACROECONOMIC BACKGROUND

Montenegro’s economy grew at an outstanding pace in the pre-crisis period with an average of almost 7% from 2004 to 2008. This has mainly been due to strong domestic demand especially in the area of real estate, fuelled by large FDI inflows and rapid credit growth. The growth proved unsustainable as demand contracted due to the impact of the global crisis and internal factors. The steep decline in demand was followed by a drastic fall in FDI, leading to an almost total freeze in the real estate market and a sudden liquidity shortage.

The impact of the crisis on the Montenegrin economy has been severe and fully unfolded during 2009, with annual GDP contracting by 5.7% YoY from an already high 6.9%. After contracting for almost two years, industry began to grow again in the second half of 2010. Nevertheless, industrial production at the end of 2010 was still considerably below its pre-crisis peak, and economic performance remained depressed until 2012, while growth resumed during 2013 at a moderate pace at 3.5%<sup>6</sup>.

On the fiscal side, policies have become more prudent in the past couple of years, but the deteriorating economic situation and the activation of state loan guarantees have caused a surge in public debt, reaching almost 55% of GDP in 2013 from 27.5% in 2007.<sup>7</sup>

In addition, unfavourable public debt dynamics have resulted in a sovereign debt rating downgrade by Standard and Poor’s (S&P). The downgrade may hinder access to markets to fund the deficit.

	Dec 2010	Dec 2011	Mar 2012	Jun 2013
<b>MNE</b>	<b>BB</b>	<b>BB</b>	<b>BB</b>	<b>BB-</b>

Source: Standard & Poor’s. \* No change since 13 June 2012.<sup>8</sup>

<sup>5</sup> European Commission, Montenegro 2013 progress report.

<sup>6</sup> Preliminary data, source: Monstat.

<sup>7</sup> Ministry of Finance data.

<sup>8</sup> <http://www.standardandpoors.com/prot/ratings/entity-details/en/us/?entityID=384575&sectorCode=SOV>

### 3. WHAT OTHERS THINK

Numerous international organizations and think-tanks have published their research on Montenegro. We would like to take a look at some of them.

According to the Global Competitiveness Index World Economic Forum (WEF), Montenegro's competitiveness grew again after two years of decline in 2012 and 2011.<sup>9</sup>

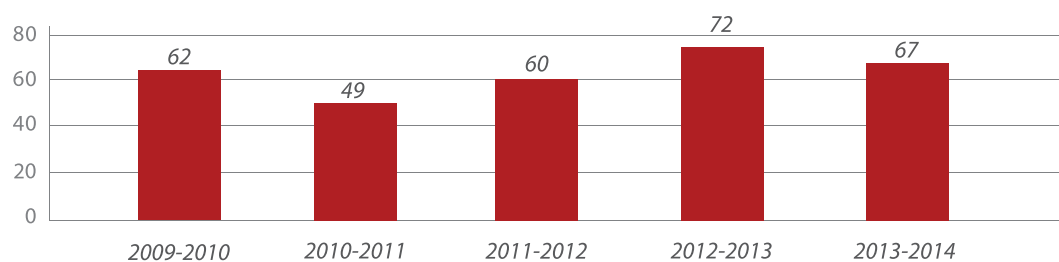


Figure 4: Montenegro's ranking in Global Competitiveness Index 2009–2014

The GCI sends what could be considered a mixed message, and to a large extent is consistent with the perception of our members that reforms that go deeper into the core issues are needed to achieve results that would turn the lingering progress into a more rapidly advancing development.

As assessed in Bertelsmann Stiftung's Transformation Index (BTI) 2013, Montenegro Country Report<sup>10</sup>:

*"The government has struggled to maintain macroeconomic stability during the crisis, with both public and foreign debt levels increasing and a continuing high current account deficit. Cuts in public spending have exacerbated dissatisfaction among citizens whose living standards have diminished."*

Montenegro's economy is highly susceptible to outside influences and dependent on outside sources of funding, which can greatly contribute to further reversing the negative trends from the past. This is why attracting FDI will continue to be extremely important for maintaining and further increasing the current growth rates.

<sup>9</sup> [http://www3.weforum.org/docs/WEF\\_GlobalCompetitivenessReport\\_2013-14.pdf](http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf)

<sup>10</sup> Bertelsmann Stiftung's Transformation Index (BTI) 2014 covers the period from 31 January 2011 to 31 January 2013. The BTI assesses the transformation toward democracy and a market economy as well as the quality of political management in 129 countries. More on the BTI at <http://www.bti-project.org>.



Status Index	1 - 10	7.50 (7.28)	# 22 of 129 (27)	▶
Political Transformation	1 - 10	7.90 (7.60)	# 23 of 129 (28)	▶
Economic Transformation	1 - 10	7.11 (6.96)	# 28 of 129 (31)	▶
Management Index	1 - 10	6.42 (6.09)	# 19 of 129 (19)	
	Scale	Score	Rank	Trend

Table 2: BTI 2014 Scores (2013 in brackets)

According to the World Bank’s Doing Business 2014, Montenegro has made significant progress relative to its regional peers in improving the business environment according to the survey, which places the country in 44<sup>th</sup> place out of 189 economies surveyed.

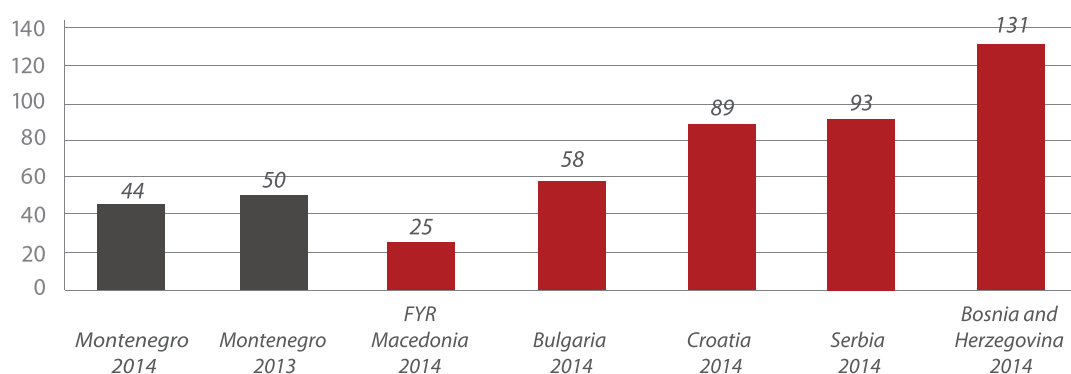


Figure 5: WB Doing Business 2014 – Overall rating, regional comparison

What makes perhaps Montenegro’s success even more significant is the fact that it was one of the rare countries in the region to make progress – the only other country to improve its position was Bulgaria, however only by one place.

Thus, Montenegro has continued improving its business environment over the years, according to the DB report. However, it should be noted that this progress is the result of significant advances in property development fields, dealing with construction permits and registering property, while all other indicators were on a slight downward trend, or no changes were noted.<sup>11</sup>

<sup>11</sup> Starting a Business, Getting Electricity, Getting Credit (no change), Protecting Investors, Paying Taxes, Trading Across Borders, Enforcing Contracts, Resolving Insolvency (no change).

However, it should be noted that this progress is the result of significant advances in property development fields (Dealing with Construction Permits and Registering Property), while all other indicators were on a slight downward trend, or no changes were noted.

In summary, these are the positive accomplishments the DB 2014 highlighted for 2013:

Dealing with Construction Permits	Registering Property
<p>Montenegro made dealing with construction permits easier by introducing a one-stop shop and imposing strict time limits for the issuance of approvals</p>	<p>Montenegro introduced new notary systems and combined procedures for drafting and legalizing sale and purchase agreements</p>

According to the Heritage Foundation's 2014 Index of Economic Freedom, Montenegro's economic freedom score is 63.6, making its economy the 68<sup>th</sup> freest in the 2014 Index, up two positions from the 2013 Index.<sup>12</sup>

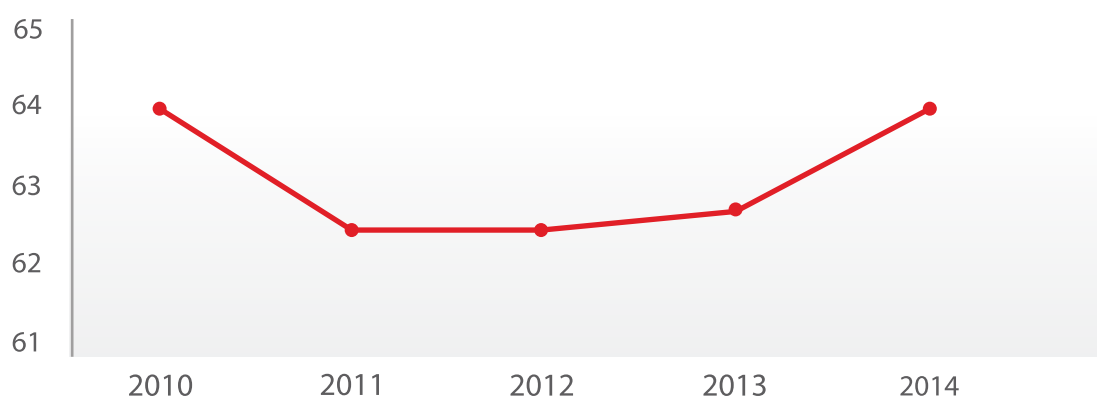


Figure 6: Montenegro's score over time, Heritage Foundation's Index of Economic Freedom.

As the report states: "Its score is 1.0 point higher than last year, with notable gains in business freedom and investment freedom outweighing declines in labour freedom, monetary freedom, and freedom from corruption. Montenegro is ranked 31<sup>st</sup> out of 43 countries in the Europe region, and its overall score is above the world average."

<sup>12</sup> 2014 Index of Economic Freedom, Heritage Foundation; <http://www.heritage.org/index/country/montenegro>

### 3.1. IN CONCLUSION

Montenegro's global rankings in the most important research such as Doing Business and Global Competiveness Index kept improving, creating a positive trend over the years, similar to what the perception of our members is.

Also, according to the majority of the research presented here, some of the areas such as the rule of law, corporate governance and infrastructure remain underdeveloped.

*Montenegro 2013 Progress Report by the European Commission on the Legal System:*

*"Overall, further efforts are required to improve the legal system and tackle corruption with the aim of improving the business environment."*

## 3.2. CHALLENGES AHEAD

In summary, it is illustrative here to quote the findings of IMF's staff team's visit to the country<sup>13</sup> which offers a balanced and informed view of what Montenegro will have to deal with in the short and medium term:

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### IMF Executive Board 2013 Article IV Consultation with Montenegro

"...Montenegro has significant potential in energy and tourism, but this will require improvements in the business climate to facilitate greater inflows of foreign investment into these sectors, including by strengthening anti-corruption efforts."

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"A sustained, multi-year fiscal consolidation effort is needed to reduce the public debt burden to an appropriately low level in the medium term."

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"It is essential to remove structural distortions that hinder the cleanup of private sector balance sheets, including lengthy and ad hoc judicial processes that delay collateral execution. Efforts should also focus on improving the accuracy of appraisals, strengthening the land registry, and advancing auditing standards."

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<sup>13</sup> <http://www.imf.org/external/np/sec/pr/2013/pr13315.htm>

## 4. MFIC MEMBERS RECOMMENDATIONS FOR IMPROVING THE REGULATORY ENVIRONMENT

The regulatory environment in Montenegro has seen many changes during the past few years primarily related to the EU reform agenda. We will list some of the observations of our members on specific issues that can be further improved to better accommodate the needs of business and economic development. In this edition of the White Book, we will offer more specifics as requested by the government.

*NOTE: WE WILL NUMBER EACH RECOMMENDATION USING THE LETTER 'R' FOLLOWED BY THE RECOMMENDATION NUMBER, SUCH AS R1, R2, RX...*

### 4.1. LAWS

In this section we have compiled suggestions from our members on how to update the regulation that creates business barriers and bring it in line with modern international standards and best practices.

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#### LAW ON THE ASSESSMENT OF ENVIRONMENTAL IMPACT

Article 8 of the Law defines **stages in the process of producing an assessment of environmental impact** which increases the time for approval of the project, thus prolonging the timeframes for obtaining a building permit. **(R1)**<sup>14</sup> Our proposal is to amend the conditions set out in Articles 20 to 24 to shorten the deadlines defined therein, which would greatly shorten the procedure for obtaining approval for the assessment and consequently the building permit. **(R2)** In addition, we propose amending the Rulebook on projects which need to have an assessment of the environmental impact, so that telecommunication facilities are classified in a list that omits Phase I (the request for the assessment) and go directly to Phase II (project development).

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#### LAW ON COMPANIES

**(R3)** It is necessary to return the provision in the Law on Companies according to which a **Registrar is not liable for the authenticity** of information from the application for registration; rather the responsibility lies with requestor. The reason is that in practice, the registration procedure is being delayed as the Registrar is having to verify all the submissions including the notarized documents which should be a part of this institution's responsibility.

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<sup>14</sup> As explained in the note above, the symbol **(Rx)** throughout the document denotes a recommendation and assigns a number to it.

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## LAW ON SPATIAL PLANNING AND CONSTRUCTION

**Article 91** established the authority for the issuance of building permits in a way that divides the jurisdiction in this matter between the central government administration and local government administration. For example, telecommunication facilities are under the jurisdiction of local government administration, however some local governments still do not process requests submitted by mobile operators for issuing building permits or construction of temporary buildings which causes significant difficulties for them in conducting business operations in those municipalities. **(R4)** In this sense, it would be necessary to define timeframes for processing the requests and possible penalties for local governments that do not act in accordance with this law.

**Article 128** of the Law defines a Cadastre of Ducts (underground and above-ground ducts), in the sense of keeping records on such facilities, but it is not applied in practice since the record has not yet been created. This means that it is impossible to register the underground reservoirs of petrol stations and similar. **(R5)** It is necessary to establish a unified cadastral map at the state level, where it would update the information on underground installations and create a unique database that would be accessible to everyone.

**Different fees for utility equipment** from municipality to municipality. Some municipalities have extremely high prices, so that the operators do not pay to invest in the construction of new infrastructure.

**(R6)** It is necessary to equalize the price list on charges for utility equipment in municipalities.

In accordance with the Law on Spatial Planning and Construction, the administrative authority or local government was mandated to establish a website to make available spatial-technical conditions (UTU) to all interested parties. Such a website has not yet been realized in practice, although it would significantly accelerate the procedure for issuing construction permits.

Telecommunications is an area that is rapidly developing in terms of technology, so replacement of equipment is unavoidable. **(R7)** However, the current Law on Spatial Planning and Construction deals with the construction, reconstruction and renovation of facilities, but not the replacement of equipment, so we think that by-laws should be adopted that deal with this area.

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## LAW ON PROTECTION FROM POLLUTION FROM VESSELS

**(R8)** Article 4 of the Law on Protection from Pollution from Vessels should have a new paragraph 2 added as follows:

“Prohibited activities from paragraph 1 of this Article shall not include washing vessels’ exteriors using biodegradable soaps with required certificates proving the lack of dangerous materials.”

Example: Biodegradable “sea safe” soap produced and sold in Turkey, which brings significant profit to Turkey.

## LAW ON PORTS

Article 26b of the Law on Ports – **(R9)** we propose changing point 15 of paragraph 1 to return the wording from the previous law so that point 15 reads as follows:

“15) conduct repair and reconstruction works on the body, deck and engine if these activities are a part of the regular maintenance of a vessel;”

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## LAW ON YACHTS

**(R10) Article 20 of the Law on Yachts** should be amended as follows:

“The Shipmaster, or the skipper of a foreign yacht which is sailing into Montenegrin waters may, prior to sailing into the destination port, send copies of documents via mail, fax or email to the Port Authority or a Branch Office for purposes of conducting border controls, receiving a vignette and notarization of the signature of crew and passengers, whereby he shall warrant by means of his signature on an appropriate form by the Port Authority that the copies of all documents submitted are equal to their originals.

**(R11)** A penalty provision in Article 42 of this Law should also be added for a person who verifies that copies are authentic, when he knows or must know that they are not equal to the original.

**Article 20 of the Law on Yachts – paragraph 4 (R12)** should be amended to define the minimum time frame as follows:

“The Port Authority of a Branch Office shall, in case not all evidence from the paragraph 3 of this Article for obtaining a vignette has been submitted, order the Shipmaster, or the skipper of a foreign yacht to submit within a time frame which cannot be longer than 48 hours the required evidence, and during that time the yacht will stay in the destination port.

**Article 25 of the Law on Yachts – paragraph 2 (R13)** should be amended as follows:

“A foreign yacht that is participating in a sports competition or is arriving in Montenegro in order to be presented at a nautical fair does not have to have a vignette, under the condition that the organizer of the competition or the nautical fair has reported the yacht to the Port Authority or a Branch Office no later than 48 hours from the beginning of the competition or fair. This exception applies to a period of 48 hours before and after the dates in the organizer’s application.

**Article 28 of the Law on Yachts** – the following should be added: **(R14)** daily vignette fee and a price list of administrative fees paid with this fee.

**Article 29 of the Law on Yachts – (R15)** a sentence should be added at the end of paragraph 3:

“Exceptionally from paragraph 1 of this Article, pilotage is not mandatory for a yacht commanded by a person who has sailed into the same port more than five times with previous approval from the Port Authority or a Branch Office.

The Port Authority or a Branch Office shall respond to a request by the Shipmaster for exemption from mandatory pilotage within 24 hours from the reception of the request. In case there is no response within the given deadline, it shall be considered that the approval has been granted.

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## LAW ON CONSUMER PROTECTION

**The user's rights defined in Article 25** are different from the rights of the consumer guaranteed by the Law on Contract and Tort and the Law on Electronic Communication, which are *lex specialis* for the area of electronic communications. **(R16)** It is necessary to harmonize the provisions of the Law on Customer Protection to both users and service providers in order that they clearly know their rights and obligations.

Moreover, according to Article 36 of the new Law on Consumer Protection (Official Gazette No. 2/14 and 6/14), public service providers are required to obtain approval from the Organization for Consumer Protection prior to forming the final price of a service.

As the electronic communications sector is already under a strict regulatory regime, this legal provision creates unnecessary additional obligations for providers, i.e. seeking the opinion from a non-governmental organization, although a regulatory body exists – the Agency for Electronic Communications whose purpose is, *inter alia*, to regulate wholesale and retail prices, and operators of electronic communications are required to notify the Agency on all price changes. **(R17)** This is why our proposal is to revoke this provision.

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## LAW ON FOREIGNERS

**(R18) The validity of a residence permit** should be extended to 3 years from the existing 12 months as that would significantly simplify the procedure for employing foreigners.

**(R19)** There should be a possibility for an employee, when changing employers, to only **obtain a new working permit without revoking the residence permit** when such a permit is still valid.

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## LAW ON PENSION AND DISABILITY INSURANCE

**Article 82 of the Law on Pension and Disability Insurance** defines that the procedure for pension and disability insurance is initiated upon the request from an insured person, or an employer of the insured person and upon the proposal of a health organization that provides health protection.

In practice this Article cannot be implemented since, if an employer initiates the procedure for establishing the right of an employee to disability pension, and the employee does not respond to the invitation of the Committee of the state Pension Insurance Fund, the procedure is cancelled. The same situation arises when a health organization initiates the procedure, and in practice the only way a disability is established is on the basis of a personal request.



**(R20)** This Article should be amended with norms that would make an appearance before the Committee mandatory, including penalty provisions. We propose that failure to appear be considered a breach of work obligation.

## LAW ON HEALTH INSURANCE

**Article 26 of the Law on Health Insurance** defines that the earnings during sick leave from work for up to 60 days shall be calculated and paid by the employer, and that after 60 days the employer shall continue to pay earnings but is refunded by the state Fund for Pension Insurance. Too often in practice we witness the situation where employees who are on sick leave for longer periods of time, just a few days prior to the expiration of the 60-day deadline interrupt their sick leave only for a day or two and then continue to take sick leave, and their salaries continue to be paid out by the employer with no refund.

**(R21)** In order to prevent this obvious abuse, we propose that Article 26 be amended so as to state that the interruption of sick leave for less than seven days is not considered an interruption but that the sick leave is only being resumed.

**Article 27** of the same law defines that the *“Earnings during the sick leave shall not be higher than the average salary of employees in Montenegro in the previous year, according to the state institution in charge of statistics, except for cases of sick leave defined in Article 28 paragraph 3 of this law”*.

**(R22)** We consider that this article is contrary to other regulations and the mandatory payment of health insurance for all employees – as these payments vary based on salary levels, and those employees who pay significantly larger amounts are, despite that, in case of sick leave, left with an amount far less than what they had previously been paying.

It is not clear whether an employer can on his/her own pay a larger sum. Regardless, it is the companies that have higher revenues and pay higher than average salaries that will be punished, together with the employees, since they will receive salaries during their sick leave that are above the average level and the difference will not be refunded to them.

**(R23)** Therefore, we consider that this limitation should be revoked, or, payment of the mandatory health insurance premiums should be made equal for all employees.

## LAW ON ELECTRONIC COMMUNICATIONS

**(R24)** Provisions of the **Article 192 of the new Law on Electronic Communications** (2013) stipulate unreasonably high penalties, which we consider to be inappropriate for the offences (as many as 21 cases of breaking the law). As such penalties in EU regulations are meant for cases of breach of regulations in the area of protection of competition regulation and not electronic communications, we can say that the regulatory and business environment in telecommunications is rather rigid.

**(R25) Article 159 regulates the charging of the services** in a manner that is self-contradictory because in one part it gives operators certain rights (the existence of several tariff packages) while in paragraph 7 of the same article it makes the existence of tariff packages pointless.

**Article 174** removes the right of operators that existed in the previous law to obtain customers' unique citizen number. This poses a challenge to operators in terms of their efficiency and protection of rights.

**(R26)** Countries having similar regulations (e.g. Norway), in order to allow companies to meet their needs to identify customers uniquely, developed alternative system of citizen unique numbers (translating citizen IDs), and made available such translated numbers to companies.

**(R27)** Operators (other than the Universal Service Operator) should not have the obligation to provide information on subscribers as it is unnecessary after the introduction of the Universal Service Operator and the universal service information directory.

**(R28)** The **obligation imposed on the Universal Service Operator to print the Directory book** should also be revoked, as it is an outdated form for which there is no interest at all. Even more importantly, if a user requests the deletion of his or her personal data, this is impossible to enact prior to the printing of a new edition.

**(R29)** Part of **Article 151 of the Electronic Communication Law** defining the obligation of operators to define in the subscriber agreement a minimum internet access speed that cannot be lower than half of the maximum internet access speed, should be deleted. Our opinion is that this cannot be the subject of the Law, and EU Directive 136/EC/2009 does not require the law to define the speed, except when defining minimum internet access speed in the subscriber agreement.

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## LAW ON PREMIUM TAXES

Among several increases of different tax rates during the previous year, introduced in an attempt to prevent further deterioration of public finance over the last two years, the current **draft Law on Amendments to the Law on Premium Taxes proposes yet another tax increase**. This time it is the total insurance premium (life and non-life) increased by 9%. The decision was made without adequate analysis of the insurance market in Montenegro which is still in its development stages, and such measures would surely weaken the insurance market, leading some companies to rethink their investment strategy.

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## LABOUR LAW<sup>15</sup>

The **inflexibilities that the current Labour Law incorporates** may bring about negative consequences for the whole of Montenegro's economy.

This is an area that is still subject to criticism from the business community, primarily due to rigid

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<sup>15</sup> For further information see the chapter Labour Market and Employment

provisions that only serve to inhibit a stronger labour market and to indirectly protect people with inadequate performance, thus contributing significantly to a higher unemployment rate.

**(R30)** The **Labour Law is incomplete and to a large extent relies on the General Collective Agreement**, i.e. the Industry-Wide Collective Agreement which makes managing human resources in companies significantly difficult. In practice, it often happens that the regulations of the Labour Law are interpreted differently due to the connection with the General Collective Agreement.

## LAW ON PROTECTION AT WORK

**(R31)** A new paragraph should be added in **Article 34** after paragraph 3 to read as follows: *“In cases where an employer has outsourced work safety tasks to a certified agency or individual, both the employer and a certified agency, to whom the work safety tasks is outsourced, will have joint responsibility, if this agency did not provide the employer with proper information on the work safety measures to be undertaken. If the certified agency provided the employer in a timely manner with the work safety obligations and if employer did not follow the instructions, the employer is responsible for the work safety of the employees.”*

**Article 19** does not clearly define the deadline for performance of work safety training in cases where company regulation risk assessment does not define the risks or dangers in the job. It is not clear whether in such situations an employee may start working and later on get adequate work safety training. **(R32)** The following should be added to **Article 19 after paragraph 1**:

*“Training for safe job performance should be conducted within 15 days, unless, in accordance with the findings of a certified agency or a certified individual, an employee was not exposed to higher risk due to transfer to another position, introduction of new technology or assets, or as a result of a change in the job process.”*

**(R33)** Additionally, we consider that it is not necessary to force an employee to again take work safety training after changing their position if the level of risk or the tools for performing the job have not changed.

## LAW ON EMPLOYMENT AND WORK OF FOREIGNERS

**Article 12**, according to which an employer may employ a foreign national only in the position for which the work permit has been granted, is not acceptable and may create problems in practice. This provision benefits neither the employer nor the employee. **(R34)** We consider that **Article 12 should be formulated in the following manner**: *“An employer shall hire a foreign national according to the educational level for which the work permit is issued”*. **(R35)** The work permit should be issued according to the educational level and not to the positions or tasks a foreigner performs, as that should be a part of the employer’s and employee’s freedom.

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## LAW ON GENERAL ADMINISTRATIVE PROCEDURE

**(R36)** In this law, **Articles 236-240** should be amended in such a manner that will reduce the procedure for deciding on appeal and will stipulate that the second instance shall resolve the matter independently after several repetitions of the same procedure and do so by removing all serious violations of the rules of procedure, and instead return the matter to the first instance authority for retrial an unlimited number of times.

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## LAW ON STATE SURVEYING AND CADASTRE OF IMMOVABLE PROPERTY

**(R37)** The MFIC proposes to add four new paragraphs in **Article 12 after paragraph 3** as follows:

*“Immediately upon receiving the request from paragraph 3 of this article, the state body shall enter a note on the submitted request to the cadastre of immovable property.*

*The note from paragraph 4 of this article shall be deleted after the procedure before the state body is complete. The state body shall make no special decision on entering and deleting the note from paragraph 4 of this article.*

*Entry and deletion of the note from paragraph 4 of this article may be automated in an information system of the state body”.*

Current paragraph 4 would become paragraph 8.

### Fiduciary ownership

Some municipalities levy tax on immovable property over which banks have fiduciary ownership rights. **According to Article 4 of the Law on Tax on Immovable Property**, the tax payer is the owner of the property on 1 January of the year for which the tax is being calculated. As the bank is not an owner of such properties but only has a right (fiduciary), used to secure its outstanding credit, as noted in the information on mortgages and limitations (in the same way a mortgage is registered), it cannot be considered as a taxpayer for relevant properties.

Fiduciary property, according to the Law on Property Rights, **Article 14**, is only a conditionally acquired right to an immovable property which gives the creditor the authorization to collect its debts before other creditors. The debtor continues to use the property, with the benefits belonging to him/her, and thus he/she is the taxpayer in this case.

**(R38)** In order to prevent such cases from occurring in the future, we propose that the **Law on Property Rights be amended** (“Official Gazette of Montenegro”, No. 19/09), so that a new paragraph is added to **Article 378 after paragraph 2 as follows**:

*“The taxpayer for an immovable property which is subject to a fiduciary transfer of ownership shall be the debtor”.*

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## LAW ON PENSION AND DISABILITY INSURANCE

The Law on Pension and Disability Insurance (“Official Gazette of Montenegro”, No. 54/03, 39/04, 61/04, 79/04, 81/04, 29/05, 14/07, 47/07, 12/07, 13/07, 79/08, 14/10, 78/10, 34/11, 73/10, 40/11, 66/12, 36/13, 38/13, 61/13 and 06/14) in **Article 112** stipulates that a beneficiary of an age-limit pension may be employed. If an employer, however, has no need to continue the employment of an employee who is a beneficiary of a pension, the same rules apply for termination of the labour agreement as for an employee who is not a pension beneficiary. We consider that it would be advisable to enable employers to decide independently whether they need to continue such an employment, and that the rules for termination of that employment should not be the same as for other employees, especially when it comes to severance payments).

**(R39)** Thus, we propose the following amendment to the Labour Law (“Official Gazette of Montenegro”, No. 49/08, 26/09, 88/09, 26/10, 59/11 and 66/12), whereas the following should be added to **Article 139 paragraph 1 after point 1**:

*“2) the day the employer reaches a decision that the job performed by the employee who is a pension beneficiary is no longer necessary.”*

Current points 2, 3, 4, 5 and 6 become 3, 4, 5, 6 and 7.

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## LAW ON ENFORCEMENT AND SECURITY

The Law on Enforcement and Security (“Official Gazette of Montenegro”, No. 36/11) lists authentic documents. **(R40)** We consider that it would be necessary to include the loan agreement among the mentioned documents. According to the Law, for a document to be considered authentic and suitable for execution if it lists the executive creditor and the executive debtor, the subject, amount and deadlines for payments (**Article 25 paragraph 3 of the Law on Enforcement and Security**), all the mentioned elements can be found in the loan agreement. This is especially important for purposes of simplifying banking operations and decreasing the expenses the clients have in constituting collaterals.

To that end, to **Article 25 paragraph 2 after point 9** a new point should be added as follows:

*“10) loan agreement.”*

### Execution based on an authentic document

**Article 58 of the Law on Enforcement and Security** (“Official Gazette of Montenegro”, No. 36/11) lists particular instances in which an objection can be made to the decision on execution on the basis of an authentic document. Although the law defines that a debtor is required to submit written documents to prove the objection made (Article 59), in practice the courts often accept as evidence the debtor’s statement without any evidence. The creditor has no right of appeal to the court’s council decision.

We consider that in this way, the law is being misinterpreted and the pending procedure is only

being delayed. With this in mind, we propose that the Law on Enforcement and Security be amended.

**(R41)** In Article 60 paragraph 3 after the words: “executive debtor” the following words are added: “by means of evidence submitted”.

### The process of enforcement under the Law on Enforcement and Security

The process of enforcement under the Law on Enforcement and Security is supposed to be a short procedure overall, as the court must decide upon a motion for execution within 5 days of its submission. This deadline is hardly ever met in practice. Sometimes it takes several months or even a year to block the accounts of the debtor. Furthermore, the law clearly stipulates that the appeal does not suspend the enforcement order, unless it is required by it in some specific cases. However, very often completely ungrounded objections by debtors are taken into account and the court makes a decision to transfer the case into the litigation process, making it extremely difficult or even impossible for the bank to block the account of the debtor even though it is obviously in default and undoubtedly fulfils the objective criteria for an account block.

#### Proposal:

**(R42)** Much stricter control of the court processes with special regard to the objective deadlines would inevitably be needed. Besides the deadlines the objection of the clients shall also be handled in accordance with the provisions of the law. Our members have been expecting the practical implementation of the law governing the institution of public enforcement officers since 2011. Since the practical implementation of the law started recently in April 2014 it might bring some improvement to the identified deficiencies as well, especially in relation to the shortening of the processes and the meeting of the stipulated deadlines.

### Problems occurring during “court sale” of mortgaged real estate initiated by other creditors

**Article 160 of the Law on Enforcement and Security** provides that in case of a “court sale” of real estate, the receivable of the mortgagee who has not initiated the enforcement proceeding shall also be settled. In Article 173 paragraph 4 it is stipulated that if the real estate is not sold at the second auction, a new auction shall be scheduled where the discount of the sale price can be determined without restrictions, but only with the consent of the enforcement creditor which has initiated the subject enforcement proceeding. Some of our members have the experience where the sale price of the real estate was lower than the secured amount of the bank’s 1<sup>st</sup> ranking mortgage right, therefore with such an action the recovery of the bank’s claim was jeopardized.

**(R43)** A change to Article 173 paragraph 4 of the Law on Enforcement and Security is needed in such a way as to include the mortgagee as an entity which has the right to object to the discounted sale price of the real estate on which the enforcement procedure is initiated.

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## LAW ON VALUE-ADDED TAX

### Article 27 – other exemptions

Paragraph 4 (b) defines that banking and financial services are exempt of VAT, while the same paragraph states the following:

“b) services related to management (handling) deposits, savings, banking accounts, payment operations, payment orders, activating due payments, checks or other instruments, excluding the collection and purchase of debts.”

**(R44)** It is not clear enough what ‘managing banking accounts’ means, what it encompasses and whether all related services are non-taxable. It also remains unclear what debt collection is, meaning whether debt collection can be considered as collecting forfeited assets.

### Article 39 – correction of deduction of the incoming VAT

The mentioned article does not allow for correction of incoming VAT if the goods being sold were originally intended to be used for non-commercial purposes or the taxpayer did not have the right to deduct the incoming VAT.

**(R45)** An example would be equipment a bank is buying for its own purposes. As the majority of banks’ business are exempted transactions, they do not have the right to deduct incoming VAT when purchasing equipment. If there is a need to sell, a bank is required to calculate and pay VAT while not having the right to correct the incoming VAT.

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## LAW ON PREVENTING ILLEGAL BUSINESS CONDUCT

**Article 11** of the Law on Preventing Illegal Business Conduct states that:

*“Companies and entrepreneurs, whose accounts have been blocked in the procedure of compulsory debt collection, shall not, after 30 days from the day the account was blocked, collect its debts and pay its commitments by contracting a change of creditors, i.e. debtors in a particular obligation relation (assignment, cession, overtaking, debt ceding and others), by payment in kind, transferring securities and/or any other way used to avoid collection of debts payment of debts through the accounts, unless otherwise defined by the tax regulations.”*

The problematic part is when a bank is a creditor in such a case, as the law puts it in a disadvantaged position, as according to the contract it has with a client it is required to make due payments but the client, due to the blocked account, is not able to collect its debts.



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## LAW ON DEPOSIT PROTECTION

**(R46) Article 28** states that *“The decision on the rate for calculating the regular premium and methods of calculation of premium shall be reached by the Board of Directors, as per the rule until November of the current year for the next year”*, however, the law does not list which conditions may affect the increase of the rate of a premium. At the beginning of 2014 the rate of the premium was increased, while the guaranteed deposit remained unchanged (€50,000).

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## LAW ON OWNERSHIP RIGHTS

**The Law on Ownership Rights** clearly stipulates the principle of the extension of the mortgage right as follows: *“If the value of the property increases during the period of the mortgage, the mortgage right also refers to the improvement of the property”*. There are substantial differences in the interpretation and application of this provision by the competent authorities. Our members had different experiences in this area where some land registry offices accepted the requests and included a newly-built building on an encumbered land plot as mortgage, but there were opposite examples where the banks came across an interpretation according to which the facility that is subsequently built on the mortgaged land cannot be automatically subject to the mortgage right unless it is otherwise stipulated by the Mortgage Agreement.

### Proposal:

**(R47)** The clearly defined standpoint of lawmakers needs to be announced firmly and bindingly that if, in a case where the bank had established a mortgage on the land, the building which was subsequently built on such encumbered property is also subject to the same mortgage i.e. the mortgage right is automatically extended to the constructed facility, regardless of whether the extension of the mortgage is prescribed in the particular Mortgage Agreement or not.



## 4.2. IMPLEMENTATION AND ENFORCEMENT OF THE LAW

Without a predictable business environment and legal certainty, no sustainable development is possible. Our members agree that predictability, stability and legal certainty, or a lack of these, have unfortunately countered the positive steps in 2013.

A good example is the public procurement procedure:

### PUBLIC-PROCUREMENT-RELATED CHALLENGES

Bidders are very often faced with the following challenges in the process of public procurement. Rigidity in the process in terms of eligibility criteria, copying the same documents for each tender position for the same tenderer, submission of documents already in the possession of that or other public bodies, in case of appeal payment of fees of the sum of 1% of the estimated public procurement value, imprecise requirements or a lack of document specifications with regard to the subject of procurement, the inferior status of bidders with the state commission which does not involve representatives of real sector. In addition, multiple institutions in charge, submission of massive documentation, payment of different taxes and fees, waiting for administration "reply", etc. make public procedures complicated and ultimately very expensive, and also create issues.

**(R48)** It is therefore necessary to improve the transparency of the procedures and application of ethical principles by the authorities.

## 5. FOCUS AREAS

### INTRODUCTION

Generally speaking, during the past year we saw limited progress, and the momentum from the previous years and the post-independence boom has gradually faded. The deficiencies and an inefficient administration coupled with an unstable regulatory environment tend to be much more visible in the midst of an economic downturn.

This is going to put additional pressure on the government to continue delivering reforms that will maintain the competitiveness of Montenegro's economy. In this chapter the MFIC offers its view of the specific issues that need further improvement and presents suggestions to help that cause.

The following is a review of five broad categories which encompass numerous individual issues and topics of significance for a well-functioning business environment and an investment-friendly economy, as seen by our members. Now we will discuss the following areas:

- 5.1. Labour Market and Employment
- 5.2. Property Development
- 5.3. Taxation
- 5.4. Corporate Governance
- 5.5. Rule of Law

However, sometimes we like to emphasize issues that are of extreme importance and are very illustrative of the type of changes of a deep-rooted mentality in the administration which is not up to date with global business practices and requires far more than just writing regulations. The following is a perfect example of that:

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*Lack of coordination between state institutions too often causes a situation in which after submitting a request to one state body the applicant must obtain certificates/evidence to support the request from another state body although the law stipulates that they should cooperate and exchange information among themselves. The most interesting situation in this regard was when the Central Registry of Companies which is an office of the Tax Administration required an applicant to submit evidence of regular tax payment issued by the same body that requested it.*

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## 5.1. LABOUR MARKET AND EMPLOYMENT

It is our core belief that the regulatory framework of any modern economy should be designed to stimulate market development, create skilled jobs, productivity and attract investment. As part of this, an effective Labour Law should provide basic fairness and protection for employees, while also promoting healthy competition for skilled, long-term jobs by facilitating flexibility and labour mobility.

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*“Too often the issue of the labor law has been a subject of a ‘compromise’ at the expense of business, and thus at the expense of society as a whole.”*

*Montenegro’s Economy in 2013*

*Montenegrin Chamber of Commerce*

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This is currently not the case in Montenegro, which is why we urge the government to reconsider its policies in this area.

### PRIMARY ISSUES:

In working with our members and partner organizations such the American Chamber of Commerce, Montenegrin Chamber of Commerce and Employers’ Federation, we have prepared joint conclusions in the area of the Labour Law, emphasizing the following:

### PROCEDURE FOR DETERMINING WORK VIOLATIONS

It is necessary for this matter to be regulated not by the General Collective Agreement (see below for details), but solely by the provisions of the Labour Law.<sup>16</sup> **(R49)** These violations should not only be included in the Labour Law, but should necessarily enable the employer to let go workers with unsatisfactory performance, under conditions clearly defined by the Law.

- **ESTABLISHING VIOLATION OF WORKPLACE ORDER**

Another related issue is an overly complicated and rigid regulation, again from the CBA, on establishing violation of workplace order. **(R50)** Simplifying the procedure in a matter that would not force a business to conduct a courtroom-like trial would speed up the process and bring benefits to both employers and employees:

*“The disciplinary procedure provisioned by the General Collective Agreement is too formal and the courts often override the employer’s decision due to formal omissions and not due to the fact that the decision which had been made was, in fact, essentially incorrect. By simplifying this procedure, and making it less formal, the abovementioned problem would be resolved.”* – AmCham Position Paper on the Labour Law, December 2013

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<sup>16</sup> For detailed proposal of how the Labor Law should be amended to accommodate this request please see the Position Document of the AmCham Labor Relations Committee, from December 2013

## ● ADDITIONAL TOOLS TO BE USED IN THE EVENT OF AN EMPLOYEE VIOLATING WORKPLACE ORDER

**(R51)** Our members agree with the position of the AmCham's Labour Committee that it would be *"necessary to provide additional tools that can reduce the occurrences of violations to workplace order, such as warnings and notices. Those could be issued in the event of a petty violation of workplace order or in cases where it is not the intention of the employer to fine the employee and whereby it is evident that a certain omission in performing daily tasks has occurred."*

## BACK MONEY CLAIMS

**(R52)** Frequently abused, in practice demonstrated that the original idea was not formulated well enough. Here we quote the AmCham's position paper:

*"...we propose that Article 123 of the Labour Law be changed to read as follows:  
**'Monetary claims arising from and related to the employment period shall be statute-barred to 3 years as of the date of the obligation occurrence.'**"*

This would make these claims equal to any other claims which in most cases have the statute of limitation clause for good reason.

## NOTICE PERIOD

**(R53)** The Labour Law is not clear enough, and sometimes cannot be applied or is completely contradictory. Complicated procedures and administration are a true burden for any company.

## WORK AGREEMENT DURATION

One of the most criticized provisions of the Law is most certainly the one related to the duration of the work agreement defined by Article 25. The issue here lies primarily with the extremely rigid and complicated procedure for termination of the work agreement, which succeeds in protecting employees with inadequate performance, thus contributing significantly to a higher unemployment rate.

**(R54)** Again, we quote the AmCham's Position Paper fully supported by the MFIC:

*"...we recommend the amendment of Article 25 to remove inconsistencies provided in this Article!<sup>7</sup> Likewise, we stress the necessity to provide a more flexible way to terminate the work agreement, initiated by the employer. This recommendation is presented having in mind that guaranteed work places are not sustainable in today's market, regardless of the conduct and overall performance of the employee."*

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17 Paragraph 2 provisions that an employer cannot conclude one or more Work Agreements with the same employee, as provisioned in the Paragraph 1 of this Article, if their overall duration is, continuously or with interruptions, longer than 24 months. Paragraph 3 (interruption shorter than 60 days shall not be deemed interruption as provisioned in the Paragraph 2) is totally useless as the previous Paragraph clearly states that fact as being irrelevant.

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*“...in order to achieve a true compromise in this issue that works for the benefit of both the employees and the employer it is necessary to, simultaneously, introduce more up-to-date and flexible regulation on termination of the work agreement.”*

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However, it must again be emphasized that in order to achieve a true compromise in this issue that works to the benefit of both the employees and the employer it is necessary to, simultaneously, introduce more up-to-date and flexible regulation on termination of the work agreement.

## TOTAL COST OF EMPLOYMENT

With the latest increase of tax from 9 to 15% for above-average salaries, the total cost of employment, previously also very high, has been increased to unsustainable levels. In order to hire an employee on an average Montenegrin salary of €479, an employer has to pay a total of €726.<sup>18</sup>

In practice this creates a two-fold issue:

- Most of the tax burden falls on the largest companies and those who work legally, thus essentially punishing law-abiding companies.
- Other companies usually fall back to the grey zone, either paying only a partial amount of taxes and contributions or failing to register the employees completely – distorting the competition and rewarding unlawful behaviour.

The approach to alleviating the challenges brought about by an unrealistically and unsustainably high cost of employment two stage approach is in order<sup>19</sup>:

- **(R55)** The first step would be to increase the tax base through better enforcement of the existing rules which would eliminate the fear of fiscal concerns that may be caused by decreasing taxes and contributions.
- **(R56)** Only after this effort, which demands strong action and will, would it be prudent to decrease taxes and contributions in the first stage to 40% of the net salary. This would still be a relatively high rate, however, it would most certainly broaden the tax base and thus enable a second round of decreasing taxes and contribution to a level acceptable to both employees and employers on the one hand, and the government and the society it represents on the other.

Stimulating measures combined with stronger enforcement will contribute to an overall increase of employment and fiscal revenues. Decisive and immediate action is a must if we are to accomplish this goal.

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<sup>18</sup> According to Monstat data: <http://www.monstat.org/userfiles/file/zarade/2014/Bruto%20i%20neto%20zarade%202010-2013%20po%20sektorima%20djelatnosti%20nace%20rev%202.xls>

<sup>19</sup> Out of somewhat over 170,000 employed people, approximately 50,000 are employed by the government (according to Monstat, <http://www.monstat.org/userfiles/file/zarade/2014/Zaposleni%20po%20sektorima%20djelatnosti%202010-2013.xls>). It is more than clear that this is an unsustainable burden for such a small economy as Montenegro, and that reforms in this sector are long overdue.

## GENERAL COLLECTIVE AGREEMENT (GCA)

The issue of the General Collective Agreement (GCA) has caused numerous issues for business especially concerning the matter of disciplinary rules of procedure and the violation of working duties. However, regardless of the fact that the lack of an in-force GCA has caused these regulatory gaps, it is the very existence of the document that is questionable.

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*"...the General Collective Agreement is completely redundant. The Document is outdated and as such is not recognized in any contemporary legal system."*

*Position Document, American Chamber of Commerce in Montenegro*

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**(R57)** As stated in the Position Document by the Labour Relations Committee of the American Chamber of Commerce in Montenegro: *"AmCham members believe, and that is clearly evident from all the proposals given within this Document, that the General Collective Agreement is fully redundant. It is the Document which is clearly outdated and as such is not recognized in any contemporary legal system."* The MFIC members share the opinion by a large majority.

## 5.2. PROPERTY DEVELOPMENT

According to Doing Business 2014, Montenegro made significant progress in one of the most criticized areas, construction permits, moving up to 106<sup>th</sup> from 176<sup>th</sup> the year before.

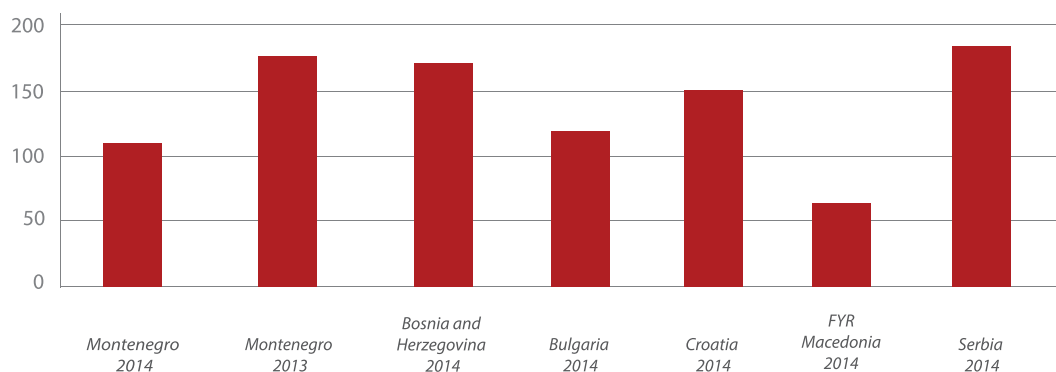


Figure 7: Doing Business 2014; Regional Comparison in rankings for Dealing with Construction Permits.

This is a reflection of positive developments in this area over the past year, welcomed by the MFIC members. We hope this is a beginning of a positive trend in this important aspect of property development.

However, construction permits are the final step in a process that requires more attention by the Government of Montenegro. Here we would like to offer our perspective on how to further improve the business environment in this sense, and better utilize the potential this area holds for boosting Montenegro's economy:

### ESTABLISH A GENUINE RELATIONSHIP BETWEEN PLANNING DOCUMENTS AND MARKET OPPORTUNITY

**(R58)** Just as any other product, real estate development projects need to find "buyers", and unless a particular project corresponds to a particular demand in the market, it will likely remain just another wasted opportunity. This relationship has to be established in the highest ranking planning documents.<sup>20</sup>

<sup>20</sup> The established zoning system in Montenegro is such that even when an investor finances development of a planning document, those urban spatial parameters that would meet the investor's requirements in accomplishing project feasibility often cannot be introduced due to the limitations of a planning document of a higher rank, limiting urban parameters. This is why it is necessary precisely and in great detail to standardize and regulate economic and market analysis which would be designed during the stages before adopting a planning document of a higher or lower rank. Such an analysis is mentioned in the Law on Spatial Planning and Construction and the accompanying rulebook, but it has not been standardized. In this way economic and market analysis would become a standard for the market valuation of the planner's solution, making planning documents and the projects therein more competitive and attractive for investors. In addition, it is even more important to accomplish a realistic basis for a quick start-up of projects planned in such a way. The basic condition for this is to provide for implementation of this approach in practice through higher-rank plans.

In order to accomplish this in a most effective way, and take advantage of the increasing pool of investments capital increasingly available after the recovery from the 2008/2009 financial crisis, Montenegro needs to stay ahead of fierce competition. **(R59)** To get that extra edge, it would be recommendable to hire international consulting companies who specialize in this field. Such an investment would pay itself off multiple times over through direct revenue generated by projects and an indirect, trickledown effect that would be felt in the whole of Montenegro.

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### **DEVELOP DETAILED PROJECTS INCORPORATING THE MARKET COMPONENT**

**(R60)** The faster an investor can begin a development project, the better the chances are to attract them. This means less work sifting through administrative hurdles, which would enable an investor to have his or her focus immediately on the important part – the investment.

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### **STRENGTHENING THE RULE OF LAW IN PROPERTY DEVELOPMENT ISSUES**

**(R61)** Issues caused by the process of restitution pose a threat to further real estate development, as procedures with former owners last far too long from the perspective of a potential investor. We were all witnesses of real-life examples of major investment projects being delayed, or altogether abandoned due to the undefined and unpredictable situation in this regard.

The government recognized this issue and promised that if an investor is interested in a piece of land currently under restitution procedure, such a case would be given priority.

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### **REAL ESTATE APPRAISAL**

There are currently no standards implemented in practice, due to a lack of regulation in this important field. **(R62)** The introduction of internationally recognizable standards would enable a better foundation for further growth and development in the real estate market.

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### **CADASTRAL PRACTICES**

**(R63)** It would be recommendable for the Real Estate Directorate to hire private, licensed geodetic companies, to make changes in the cadastral records on behalf of the Directorate. This would contribute to increasing the limited capacities of the Real Estate Directorate.

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### **LOW FIXED FEES FOR PROPERTY TRANSFERS**

When transfer fees and taxes are too high, even registered property might quickly become informal if subsequent transactions are not registered. This not only weakens the protection of property rights, it also reduces potential revenue from property taxes. **(R64)** Therefore it is necessary to set low and fixed fees for various services offered by the cadastre.



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## REAL ESTATE ADMINISTRATION'S DATABASE UPDATES

**(R65)** The Real Estate Administration's database should be updated on a daily basis instead of once a month or even more rarely. In addition, the possibility to download the title deed and pay for all the fees electronically would be a welcome change that would significantly reduce part of the procedure.

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## RANKING OF MORTGAGE RIGHTS / PENDING INDEX

Article 324 of the Law on Ownership Rights stipulates that in case there are several mortgages on the same immovable property, the priority of a mortgage shall be established according to the moment of submission of the request for its registration. The chief issue with the implementation of this provision in practice is that in the Deed of Title there is no information regarding pending requests with precise date and time of their submission. The bank as mortgage creditor is running the risk that some other creditor or business partner has already submitted a request for registration of the mortgage (even a few of minutes before the request of the bank is submitted) or for the sale of the real estate but the decision is still not registered on the Deed of Title. Additionally, in the Decision of the Land Registry the ranking of the registered mortgage is not included, thus even after the mortgage right of the bank is registered in the Deed of Title does not have any security that later on other mortgage rights with priority ranking will not be registered.

### Proposal:

**(R66)** Change of the Article 53 paragraph 2 of the Law on State Survey and Cadastre is needed, in a way that part of the content of the Deed of Title will list all pending requests. Pending requests should be entered immediately in the Deed of Title upon their submission with the subject of the request, and date and time of the submission.

## 5.3. INFRASTRUCTURE

This hugely important area remains underdeveloped, and is one of the major limiting factors in the development of the whole country. For the last two years, primarily due to a lack of funding, no major projects were initiated that could improve the situation in this regard.

**(R67)** The MFIC encourages the government to invest additional efforts in commencing construction projects primarily in the area of traffic infrastructure and energy as soon as possible.

## 5.4. TAXATION

Montenegro is generally recognized as being a low-tax area. This is a very good image to have in the business community; however, this is just part of the story as the 9% corporate tax rate is not the only consideration to take into account when talking about the tax environment.

Here we would like to discuss a topic that entered into focus during the previous year and is related to a significant step back in the area of taxation.

### PREDICTABILITY

During 2013, businesses were “surprised” twice with increases in the two most significant tax rates: VAT was increased from 17 to 19%, and income tax from 9 to 15% for above-average salaries (above €480).

These are not the only increases in fees during 2013:

*One of our members planned to pay €150 000 this year on water, but due to an increase in the price, the plan must be revised to as much as €250 000. In tourism, more is yet to come, as the so-called ecological tax paid per guest will now be €2.50 for five-star hotels, up from €1.*

## 5.5. CORPORATE GOVERNANCE

In this report we outline several components of corporate governance that still require significant improvement, while listing concrete solutions to issues that are impeding the development of this area and the economy as a whole.

### 5.5.1. FINANCIAL REPORTING

The quality of financial reporting remains an area with huge potential for improvement. Even though there are several exceptions, the overall quality is still not at an acceptable level. Some of our members are working with their clients on producing financial reports that would enable them to access a wider pool of financing options available outside Montenegro. **(R68)** However, this creates only a limited impact on the system as a whole, and the MFIC considers it would be crucial for the relevant authorities to improve not only control, but also education in this area.

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### 5.5.2. AUDIT PRACTICES

*“Little progress was made in the field of company law. New amendments to the Law on Accounting and Auditing, establishing an independent public oversight body for auditors and a related quality control system, have yet to be adopted. Overall, preparations remain moderately advanced.”<sup>21</sup>*

In the previous editions of the White Book, we discussed the issues related to harmonization of Corporate Income Tax (CIT), Value Added Tax (VAT) with the EU, and the financial reporting framework. We touched upon VAT and listed some recommendations in the chapter on MFIC members’ recommendations for improving the regulatory environment. **(R69)** Even though very limited progress has been noted in these areas, this time we will not be repeating all the issues noted earlier, encouraging the government to once more look into the WB2012 and the recommendations we presented in it.

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### 5.5.3. BANKRUPTCY REGULATION

Our introductory assessment from the WB2012 is still valid: *“The current Law on Bankruptcy regulates in detail all aspects of the bankruptcy procedure. However, the problem with the bankruptcy procedures is not in the legal framework, but in their implementation. Montenegrin courts and judges have not yet built a clear position and legal practice regarding the application of the Law on Bankruptcy and the introduction of modern concepts of bankruptcy law to Montenegro.”<sup>22</sup>*

#### UNGROUNDING CHALLENGING OF THE REPORTED CLAIMS IN BANKRUPTCY PROCEEDINGS

A reported monetary claim is determined and deemed to be approved if it is not challenged by the bankruptcy manager or by any other creditor. Unfortunately in practice, this right is often subject to abuse, where groundless challenges to the reported claims are made by other creditors, so they have a privileged position, or by the bankruptcy manager who usually acts in favour of the debtor whereas the Law stipulates that it should act independently. What is even more serious is that the bankruptcy manager does not have the obligation to explain the reasons why certain claims are defined as disputed even though the submission of the creditor contains clear records (signed loan agreements, utilization requests signed by the debtors, signed transfer orders, analytical cards, etc.). Compared to such objective evidence the other party has no obligation to prove its statements with underlying documents.

After the claim is challenged in the bankruptcy proceeding, the creditor is referred to start the litigation process to prove its right which usually takes a long time.

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<sup>21</sup> Montenegro 2013 Progress Report, European Commission

<sup>22</sup> For example, financial transactions such as loans to financial derivatives, which is the ability to charge in bankruptcy using the newly introduced provisions such as those of setoff, the right to choose, and the like.

**Proposal:**

**(R70)** Change to the Bankruptcy Law is needed in such a way that the bankruptcy manager needs to share the opposing records with the creditor whenever the bankruptcy manager declares a claim to be disputed. Furthermore, the deadlines should be defined by the Law, on the basis of which the bankruptcy judge must act in litigations to determine the challenged claim, bearing in mind the urgency of bankruptcy proceedings.

## **VOTING RIGHTS IN CASE OF REORGANIZATION**

Process of voting on a reorganization plan does not take into account the amount of the creditors' claims but the overall decisions are made solely on the separate decisions of the creditor classes. This usually leads to the adaptation of the reorganization plans by negatively discriminating against the banks as the largest overall creditors in most cases.

**Proposal:**

**(R71)** Change to the Bankruptcy Law would be desirable in such a way that it includes provisions stipulating the right of veto of a creditor whose claim exceeds 50% of the total reported claims so that it could vote against the reorganization plan if it is against its interest.

## **REVIEW OF THE SUBMITTED REORGANIZATION PLAN**

The Bankruptcy Law stipulates that the reorganization of the company can be approved only if it provides a more favourable settlement and recovery for the creditors compared to liquidation through the sale of the assets. It means that the main assumption behind the approval of a reorganization plan should be the evidence that there are economically justifiable and realistically achievable reasons for the continuance of the debtor's business activity. As opposed to this principle in practice, reorganization plans are usually proposed by the debtors, and the court does not check the quality and the realistic background of the plans but accepts it as it is submitted, without questioning or analysing it further. This action puts the debtor in an extremely favourable position since it may submit completely unrealistic reorganization plans for approval. In several cases these reorganization plans entirely lack any grounds and business rationality or reality.

**Proposal:**

**(R72)** Change to the Bankruptcy Law is needed in such a way that will include a provision that prescribes the obligation for the bankruptcy judge, before voting on the reorganization plan, based on the request of one or more creditors with a minimum 30% share in the reported claims, to appoint an independent external financial advisor or financial expert whose costs are to be borne by the debtor who submitted the reorganization plan, to review the feasibility of the proposed plan, the reality of the applied assumptions and the sustainability of the proposed measures for the settlement of the creditors' claims.

## 5.6. RULE OF LAW

Generally, our members consider that even though Montenegro is making progress on its EU reform agenda, there are still issues that are a cause of concern in this area, primarily the fight against corruption and reinforcing the rule of law.

In the 2013 report by Property Rights Alliance, International Property Rights Index (IPRI), Montenegro is ranked 72<sup>nd</sup> out of 131 countries surveyed, coming in second in the region (see Figure 8 below). In this extremely important area that has a high correlation with economic development and growth, as the report noted:

*“Between 2009 and 2013, the overall IPRI score for Montenegro increased by 1.5%. After three years at 5.2, IPRI fell by 0.1 points to 5.1 in 2013. “Between 2012 and 2013, Legal and Political Environment decreased by 0.1 points. This decrease is mostly attributable to a 0.4 point decline in Judicial Independence. Furthermore, Intellectual Property Rights decreased by 0.1 points which was caused by a 0.1 point decline in Protection of Intellectual Property Rights. During this same period, Physical Property Rights did not vary: it remained at 6.4.”<sup>23</sup>*

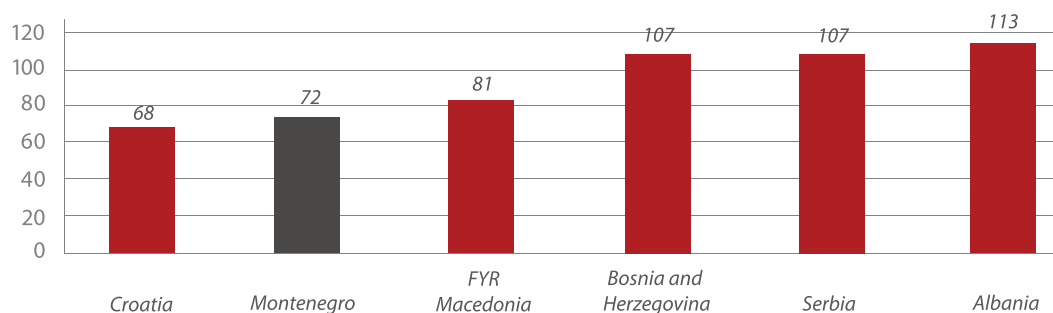


Figure 8: Property Rights Index Ranking out of 131 countries; International Property Rights Index - 2013 Report, produced by Property Rights Alliance

As the Heritage Foundation noted in its Index of Economic Freedom 2014:

Corruption remains pervasive in the executive and judicial branches and is partly a legacy of the struggle against the Milošević regime in the 1990s, when the small republic turned to various forms of smuggling to finance government operations. Although the European Commission cited progress on judicial reform in 2012, the constitutionally independent judiciary remains inefficient and subject to political interference.

Heritage Foundation, Index of Economic Freedom 2014

<sup>23</sup> <http://www.propertyrightsalliance.org/userfiles/2013%20International%20Property%20Rights%20Index-PRA.pdf>

## LONG-LASTING “OUT OF COURT SALE” PROCEDURES

In the process of “out of court” or extra-judicial foreclosure the mortgage creditor is facing a quite long-lasting process of registration of the notices in the Deed of title, despite the fact that in the Law on State Survey and Cadastre it is stipulated that the deadline for the registration is 15 days from the moment of submission. This deadline is hardly ever met by the Land Registry Offices. In addition, the execution process is often delayed by the debtors who manage to avoid the delivery of default notices by fictitious leases in case of residential properties. Given the current practice, often almost six months or even more passes from the moment of the initiation of the out-of-court sale until the first public auction. This is an extremely serious problem that the banks are facing when it comes to the extra-judicial foreclosure of encumbered immovable assets mainly in terms of unenforceability.

### PROPOSAL

**(R73)** The supervision and the internal audit of the actions of the Land registries is inevitably needed for securing the prevention of the ungrounded breach of the deadlines prescribed by the law.

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### 5.6.1. JUDICIARY

Our members report limited or no progress at all when it comes to the issue of lengthy commercial disputes and court cases. Observations from the previous three issues of this document are still relevant: *“Lengthy court proceedings can render the intent of the petitioner completely pointless, thus jeopardizing the very foundations of the rule of law.”*

*EVEN THOUGH PROGRESS IS NOTABLE, IT IS NECESSARY TO FURTHER SIMPLIFY COMPLICATED AND EXPENSIVE ADMINISTRATIVE PROCEDURES AND ELIMINATE EMERGING FORMS OF BUREAUCRATIC AUTOCRACY – ESPECIALLY AT LOCAL LEVELS. (R74) THE ONE-STOP-SHOP SYSTEM SHOULD BE EXTENDED ACROSS THE RANGE OF SERVICES IN THIS AREA, INCLUDING ISSUING BOTH WORKING AND RESIDENCE PERMITS TO FOREIGNERS THAT ARE EMPLOYED IN MONTENEGRO.*

### 5.6.2. PERMITS AND LICENSES

Noting some progress in this area, our members are unanimous that administrative procedures required for issuance of various permits and licenses remain expensive and time-consuming. One of the most criticized areas of administrative procedures required for business operations is the area of issuing permits and licenses.

## 5.7. PREDICTABLE BUSINESS ENVIRONMENT

One of the defining characteristics of the year 2013 was the unpredictable business environment, caused not only by the forces driving the free market, which are unpredictable by their nature, but very much added to by the frequent regulatory changes and, primarily, increases in the tax rates and other fees payable to the government.

Since many of our members pointed to this as the number one concern for their business and further investment plans, we felt compelled to introduce it as an additional point to our Focus Issues section of the FDI in Montenegro publication.

The following example serves well to illustrate the point:

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*One of our members in 2009 paid a total of €3.2 million in various taxes, fees and charges for infrastructure services in total to both local and national governments. With approximately the same revenue, as the growth was impeded by the global and local negative economic circumstances, in 2013 this figure reached a stunning €4.5 million – an increase of almost 50% in total taxes, fees, contributions and all other payments due to the government on various accounts, including services related to infrastructure. Regardless of how we choose to name these fees, this is an unsustainable trend of increase.*

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In 2014 we are facing even more increases – the price of water in the coastal region, ecological tax, etc. In addition to 2013 increases of VAT from 17 to 19%, and a partial increase of the income tax rate from 9 to 15%.

Another example comes from the telecom industry, with the “one euro” tax and an attempt at further increasing the taxes for this industry by trying to introduce a so-called “cinematographic tax”:

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*According to a version of the draft of the new Law on Cinematography that was later on abandoned, internet providers were included in the group of taxpayers liable to contribute to the “Film Fund” in the amount of 0.2% of annual income. The very fact that a movies can be found on internet hardly qualifies an internet provider as a movie distributor. This provision did not make it to the final draft, but only after a strong reaction by the industry members, who were never consulted or warned to begin with.*

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**(R75)** Changes are inevitable, but the way that these changes are managed and implemented into the regulatory environment is what makes the difference between a stable, predictable environment that enables companies to plan ahead and invest and an environment in which investors take conservative investment decisions, not being able to tell how much, or if they will profit at all.



## 6. INDUSTRY OVERVIEW

### 6.1. TOURISM



#### INTRODUCTION

Montenegro is becoming a worldwide tourist destination with high potential for further development. Tourism holds special significance for Montenegro's economy and is considered to be of strategic importance for the country's development.

According to World Travel and Tourism Council (WTTC)<sup>24</sup>, the following are the key data presenting Montenegrin tourism:

#### GDP: DIRECT CONTRIBUTION

The direct contribution of Travel & Tourism to GDP was €348.7m (9.8% of total GDP) in 2013, and is forecast to rise by 12.6% in 2014, and to rise by 8.6% p.a., from 2014–2024, to €892.4m (17.7% of total GDP) in 2024.

#### GDP: TOTAL CONTRIBUTION

The total contribution of Travel & Tourism to GDP was €714.2m (20.0% of GDP) in 2013, and is forecast to rise by 13.2% in 2014, and to rise by 8.8% p.a. to €1,877.3m (37.2% of GDP) in 2024.

#### EMPLOYMENT: DIRECT CONTRIBUTION

In 2013 Travel & Tourism directly supported 14,500 jobs (8.8% of total employment). This is expected to rise by 14.0% in 2014 and rise by 5.9% p.a. to 30,000 jobs (16.1% of total employment) in 2024.

#### EMPLOYMENT: TOTAL CONTRIBUTION

In 2013, the total contribution of Travel & Tourism to employment, including jobs indirectly supported by the industry, was 18.3% of total employment (30,500 jobs). This is expected to rise by 14.4% in 2014 to 35,000 jobs and rise by 6.2% p.a. to 64,000 jobs in 2024 (34.5% of total).

#### VISITOR EXPORTS

Visitor exports generated €699.8m (51.4% of total exports) in 2013. This is forecast to grow by 10.0% in 2014, and grow by 7.9% p.a., from 2014–2024, to €1,641.0m in 2024 (50.9% of total).

<sup>24</sup> [http://www.wttc.org/site\\_media/uploads/downloads/montenegro2014.pdf](http://www.wttc.org/site_media/uploads/downloads/montenegro2014.pdf)



**INVESTMENT**

Travel & Tourism investment in 2013 was €208.3m, or 28.0% of total investment. It should rise by 14.3% in 2014, and rise by 8.7% p.a. over the next ten years to €549.6m in 2024 (52.3% of total).

**WORLD RANKING (OUT OF 184 COUNTRIES) ACCORDING TO THE RELATIVE IMPORTANCE OF TRAVEL & TOURISM'S TOTAL CONTRIBUTION TO GDP:**


Our members noted that Montenegro is being positioned as a tourist destination better each year with concrete steps being taken to further improve its image.

**RECOMMENDATIONS**

Montenegro's potential has been given concrete guidelines in the Montenegro Tourism Development Strategy to 2020 which aims to position the country as "a destination with all-year-round tourism, with picturesque landscapes and protected biodiversity".<sup>25</sup>

- **Regions**

**(R76)** To achieve the goal quoted above, Montenegro needs to position itself first in terms of the level of tourism it wishes to attract, which the Strategy has defined to a certain extent. It cannot only be high-end tourism, and therefore a mix, strategically designed, would be the best way forward. In that sense, the regions, well defined in the Strategy, need to have their position and level in the general picture of Montenegro as one destination. However, these ideas are yet to be implemented.

<sup>25</sup> <http://www.mrt.gov.me/ResourceManager/FileDownload.aspx?rid=89273&rType=2&file=01+Montenegro+Tourism+Development+Strategy+To+2020.pdf>

- **Infrastructure**

**(R77)** In order for Montenegro to be more accessible, easy, cost-effective access from major European capitals needs to be encouraged. In this sense, the airport infrastructure also needs an upgrade, especially when it comes to Tivat Airport. In this sense, the efforts the government is investing in projects aimed at improving the road infrastructure are welcome and necessary.

- **Yachting**

**Paragraph 2 of the Article 27 of the Law on Yachts** alternatively stipulates a possibility of filling out the “crew list” fully or by adding information, but the Port Authority does not allow adding information which makes both the Port Authority’s and the yacht owner’s job significantly easier. **(R78)** Previously this has been allowed, and now it is only necessary to apply the existing law.

**The definition of a proxy/ authorization given by the owner of a yacht to the skipper/**

**captain** should be harmonized by a legislative or a less formal act. The Port Authority insists on a proxy that has been certified by a notary (or another similar institution) even when the owner of a yacht is present. **(R79)** We believe it would be enough to have a proxy that is not necessarily notarized, but is signed by the captain as a guarantee of authenticity with accompanying penalty provisions to be applied to a person who verifies the authenticity of a copy where they know or must know it is not identical to the original.

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*According to the Regulation on Conditions to be Met by Ports Categorized According to the Type of Maritime Traffic and Purpose ports are required to have berth (Article 2, paragraph 1, point 1). One of our members has several times sent a request for mapping of a space which could be used for such a purpose, however no response has been received to date. What this means in practice is that skippers anchor the boat in a space they themselves determine while waiting for fuel and the Port Authority issues a fine for doing so.*

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**(R80)** It is necessary to harmonize the **Law on Yachts and the Law on Border Controls** or issue a mandatory interpretation defining which of the two laws takes precedence over the other when regulating the same matters, such as leaving the country and deadlines.

**(R81)** It would be recommendable to revoke the requirement to return the “Shore Pass” to the police, since the police issues this document and can at any time check it against their records.

**(R82)** It is necessary to allow a request for a berth to be signed by a Ship Master not only by the Agent. There are no regulations that would make it mandatory for a yacht owner to hire an agent, and this practice therefore does not make sense.

## 6.2. PRODUCTION/ENERGY

### INTRODUCTION

In a service-based economy, such as Montenegro's, the export potential of heavy industry has special significance.

According to the Central Bank data<sup>26</sup> in 2013, year-on-year, the industrial output registered an increase of 10.6%. Production growth was recorded in electricity, gas and steam supply by 38.7%, while production declined by 1.4% in mining and quarrying, and 5% in manufacturing industry.



The highest decline was recorded in production of primary metals (-37.3%), while the lowest decline was in production of beverages (-2.5%).

### REMAINING ISSUES AND RECOMMENDATIONS

Our members this year noted limited positive developments, pointing out the inflexibility in the Labour Law and other regulations in this field. These seriously hamper Montenegro's potential in the real sector, and impede the initiated restructuring process.

In addition, the issue of state aid is affecting competition in this industry. One of the state-owned companies and a relevant player in this field, is receiving unknown amounts of money through subsidies given to another company owned by it. **(R83)** This situation needs to be resolved as quickly as possible as the rules of EU on protection of competition do not allow for such arrangements.

<sup>26</sup> [http://www.cb-mn.org/slike\\_i\\_fajlovi/fajlovi/publikacije/biltencbcg/2014/bilten\\_cbcg0114.pdf](http://www.cb-mn.org/slike_i_fajlovi/fajlovi/publikacije/biltencbcg/2014/bilten_cbcg0114.pdf)

## 6.3. TELECOMMUNICATIONS AND ICT



### INTRODUCTION

The ICT sector is being changed by outside forces and pressures such as the global economic crisis, the growing role of consumers in demanding and shaping services and of course the explosive emergence of new, powerful internet players, 'over-the-tops' or OTTs. Perhaps the biggest single change is in the way we choose to communicate with each other remotely – by data, not voice, and by text, not telephone calls.

To deal with the fast-paced technological changes and the way the information is being consumed, produced and transferred the ICT sector needs to look into new ways of finding revenue streams, new business models, and new markets. The telecommunications industry must continue to explore new ways to monetize the existing infrastructure and access investment to upgrade and expand that infrastructure, which is a particular challenge in Montenegro. All these goals can only be achieved by ensuring that outdated legislative and standardization frameworks are revised to fit the realities of the borderless broadband world.

### REMAINING ISSUES AND RECOMMENDATIONS

Several general issues that have been an impediment to the further development of this sector in Montenegro have already been mentioned in this document, whereas in this section we would like to list a few industry-specific recommendations:

- **(R84)** The observation that **infrastructure development via public/private partnerships** needs to be continued, remains valid. However, this is still jeopardized by far-too-low prices for infrastructure leases as determined by the Agency for Telecommunications.
- When it comes to infrastructure for mobile network base stations, positive improvement has been noticed with some local authorities such as in Podgorica, Cetinje and Berane, where the municipal authorities have been efficient in dealing with requests for obtaining building permits. On the other hand, our members faced significant negative trends in some coastal municipalities, going as far as a total lack of cooperation which caused delays of one year for plans for temporary buildings. **(R85)** Thus the issue of unbalanced criteria and an **unbalanced position among municipalities regarding procedures for obtaining building permits** is still a challenge to our members.

- Because of the current unfavourable situation in Montenegro's energy sector, telecommunications companies are also faced with the **challenge of electricity supply for the base stations. (R86)** Therefore, the use of alternative sources of energy to build energy systems for independent power base stations could be the optimal solution for this type of problem.
- Previously we noted that in order to fully take advantage of electronic commerce, provisions of the **Law on Electronic Commerce relating to distance selling need to be aligned with the Consumer Protection Law.** The Law on Electronic Communications foresees the possibility that the subscriber agreement may be concluded by means of remote communication as well as outside the business premises of the operator, in accordance with the laws regulating electronic signatures and protection of consumers (Article 153). **(R87)** In that sense the operator should define clear and unambiguous general terms for provision of services which particularly need to incorporate: a procedure for conclusion of agreements via the means of remote communication and agreements concluded outside the business premises of the operator, which must contain the provisions which are in accordance with the law regulating electronic signatures and protection of consumers (Article 148).
- Montenegro is unique when it comes to **calculation of electronic communications concerning units of measurement** (tariff interval) which is not subject to the laws on electronic communications in EU member states. In Montenegro, operators are required to include at least one tariff rate using 1 second as the unit of measure and 1 kilobyte (1KB) which also has to be applied in roaming which, for Montenegrin operators, means that in most countries roaming services are offered at their expense as, according to standard agreements on roaming, the tariff intervals are 60 seconds and 10 to 100 KB.
- Sometimes the issue lies in **interpretations of legal provisions.** To illustrate, Article 39 of the Law on Electronic Communications is a good example, as, according to our opinion, its interpretation is beyond the framework of the law itself: the operators are not allowed to, on the basis of commercial agreements, for the needs of their networks, provide the use of electronic communication infrastructure located outside of Montenegro. The explanation is that the equipment located outside of Montenegro cannot be controlled. We consider that such an interpretation is a barrier for operators and that in the end it is the users that are missing out since many of the services cannot be offered to them. **(R88)** We believe that the complete supervision over parts of the electronic communication networks, including the ICT systems installed outside of Montenegro is absolutely possible to conduct by means of remote access.

## 6.4. BANKING



### INTRODUCTION

At end-December 2013, total assets and liabilities of banks amounted to €2,959.2 million or 5.4% higher in relation to December 2012. In the structure of banks' assets in December 2013, loans and other receivables accounted for the main share (81.6%) followed by currency and deposits with central banks (13.2%).

Other banks' assets items accounted for the remaining 5.2%.

As for the structure of banks' liabilities and capital, deposits accounted for 70.9%, followed by capital (13.4%), while borrowings made up 10.9% and other banks' liabilities items 4.8%.

At the end of December 2013, total capital of banks amounted to €397.8 million recording 37.8% in relation to December 2012, which is a consequence of, primarily, the introduction of account for provisions for estimated losses under the regulatory requirement which records provisions for written-off loans from the off-balance and cancelled provisions for on-balance sheet items. In addition, growth of capital in 2013 resulted from the recapitalization of one bank at the end of December 2012 (€10.5 million), and two banks were recapitalized in 2013 (€12.4 million), while a positive financial result was recorded in the period 1 January–31 December 2013 at the system level (€2 million).<sup>27</sup>

### REMAINING ISSUES AND RECOMMENDATIONS

In this edition of the White Book, we have largely been focusing on some rather specific issues, without repeating all the issues from the previous editions. This section is no exception, although the issue of, for example, full compliance with the International Financial Reporting Standards (IFRS) and International Accounting Standards (IAS) is being discussed, the approach to it is qualitatively different and more detailed.

### DECISION ON MINIMUM STANDARDS FOR MANAGING CREDIT RISK IN BANKS; DECISIONS ON CAPITAL ADEQUACY OF BANKS

The Central Bank of Montenegro (CBCG) initiated implementation of new regulations in 2013, with the goal of fully implementing the International Financial Reporting Standards (IFRS). Prior to this, according to local regulations, when calculating potential loss provisions the collaterals that the banks secured in order to mitigate estimated credit risk when approving a loan were not taken into account, which had a direct negative impact on banks' business decisions, loan prices

<sup>27</sup> Data according to the Central Bank of Montenegro



and other conditions when considering new loans. At the same time, most of the banks needed to prepare two sets of financial statements, one that was used for the purposes of reporting to the CBCG and the other, in accordance with the IFRS for shareholders, creditors and potential investors.

However, regardless of the fact that commercial banks did have their representatives in the working group tasked with the introduction of the IFRS, it was only after the final publication of the regulation that the banks had a chance to see the new rules. Unexpectedly, the final regulations imposed new capital requirements which in turn brought about new and also unexpected expenses.

Here we list the regulations that are not harmonized with the IFRS:

- a) Decision on minimum standards for managing credit risk in banks (“Official Gazette of Montenegro”, No. 22/12)
- b) Decision on amendments to the Decision on minimum standards for managing credit risk in banks (“Official Gazette of Montenegro”, No. 55/12)
- c) Decision on amendments and additions to the Decision on the capital adequacy of banks (“Official Gazette of Montenegro”, No. 55/12)
- d) Guidelines on logging provisions for potential credit losses, correction of values and written-off items of balance sheet assets in establishing starting conditions in financial reports of banks for the year 2013 (“Official Gazette of Montenegro”, No. 61/12).

**(R89)** We consider that Article 49b of the Decision on amendments to the Decision on minimum standards for managing credit risk in banks (“Official Gazette of Montenegro”, No. 55/12) is not in accordance with the IFRS, as nowhere in the IFRS is it mentioned that the conditions have been met for recognizing a financial asset, and thus this article is an interpretation by the regulator which does not have precedent in EU member states.

Further on, this article introduces “internal records” used for the purposes of recording the written-off assets. It is unclear what the regulator is trying to introduce with this phrase, as in Article 49b it is stated that conditions have been met for ceasing to recognize a financial asset, and in the other part there is a request for keeping them in the “internal records”.

We consider that the banks have been practically forced, through the introduction of this article, to:

1. Favour debtors in default through write-offs,
2. Cause direct damage to themselves, their shareholders and other stakeholders,
3. Decrease the comprehensiveness and quality of data they have on debtors in default (since their debts have been written-off).

**(R90)** In addition, it remains unclear which type of records the banks should be using before the courts in procedures of proving the amounts of loans. In practice, the courts that have jurisdiction over the matters from this article have thus far shown inefficiency and sluggishness, making the process of collecting bad debts even harder.

When it comes to the Decision on amendments and additions to the Decision on the capital adequacy of banks and Guidelines on logging provisions for potential credit losses, correction of values and written-off items of balance sheet assets in establishing starting conditions in financial reports of banks for the year 2013 (“Official Gazette of Montenegro”, No. 61/12), banks were surprised by the introduction of the following notions not known in any IAS:

- a) Regulatory reserves – calculated on the basis of a qualification group of claims according to a percentage defined in Article 48 of the Decision on minimum standards for managing credit risk in banks.
- b) Required provisions for estimated losses – representing a positive difference between the provisions for losses and correction of value (Article 49a of the Decision on amendments and additions to the Decision on the capital adequacy of banks “Official Gazette of Montenegro”, No. 55/12).
- c) Special reserves – representing a difference in provisions for losses and corrections of value on the day the new regulations enter into force, 1 January 2013 (Guidelines on logging provisions for potential credit losses, correction of values and written-off items of balance sheet assets in establishing starting conditions in financial reports of banks for the year 2013 (“Official Gazette of Montenegro”, No. 61/12)).
- d) Missing reserves – representing a positive difference in loans/party between the provisions calculated for estimated losses according to regulatory demand, diminished for already formed special provisions (account balance 3025) and corrections according to those Guidelines on logging provisions for potential credit losses, correction of values and written-off items of balance sheet assets in establishing starting conditions in financial reports of banks for the year 2013 (“Official Gazette of Montenegro”, No. 61/12).

The IFRS strictly forbid any general provisions which cannot be related to the potential loan loss established on the basis of the applied IFRS methodology.

In doing so, the missing reserves are a deduction in calculating own assets for the requirements of capital adequacy. Also, the calculation required at the level of the party, and not the net difference between the total IFRS and local provisions, have a negative effect on decreasing own assets by forcing the bank to perform additional recapitalization.

Transition to new regulation does not explain the treatment of reservations from the perspective of the Law on Corporate Tax, with a position that is clear and approved by the Tax Administration, which is relevant for a proper implementation of the IFRS and appropriate IAS.

**(R91)** Unfortunately, we have to conclude that none of the expected benefits of the new banking regulation have been accomplished. The banks are still forced to prepare two sets of reports as noted above, while the expected capital requirements have not been decreased.



## 6.5. TRADE/RETAIL

### INTRODUCTION

In this industry our members report notable improvements, assessing that some challenges still do exist. In general, weak enforcement by the institutions remains to be an issue but the legislation and procedures have been very much improved.

### REMAINING ISSUES AND RECOMMENDATIONS

**(R92)** The MFIC encourages the government to ensure the equal treatment of businesses and equal application of the rules for all, including in the areas of social, pension and health insurance and contributions. These expenses comprise some 40% of employee-related costs and can dramatically impact the competitiveness of retail operations.

## 7. MFIC COOPERATION WITH THE GOVERNMENT



The good cooperation the MFIC has had with the government during the past four years continued throughout the previous period. The cooperation expanded beyond the Government's Council for Regulatory Reform and Improving the Business Environment which regularly reviews each issue of the MFIC's White Book. The MFIC is hopeful that the already fruitful cooperation will bring further improvements to Montenegro's business and investment environment, which is our common goal.

The MFIC is honoured by the support expressed by the highest government officials including Prime Minister Milo Đukanović, Deputy Prime Minister and Minister of Justice Duško Marković, and Minister of Sustainable Development and Tourism Branimir Gvozdenović who took part in sessions of the Montenegrin Foreign Investors Council.

These meetings present an important opportunity for the Council members to directly communicate with government representatives, present their views and suggestions towards improvement of business environment in terms of transparency, stability, efficiency and predictability. The feedback we received from our distinguished guests assured us that the work done by the MFIC is heading in the right direction.

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We are looking forward to continuing and intensifying the cooperation not only with the Montenegrin government, but with the diplomatic community in Montenegro, universities, civil society and other business organizations.

## 8. BUSINESS AND EDUCATION

The MFIC launched its first University Outreach Programme in 2013. The kickoff event was held at the University of Donja Gorica (UDG), where MFIC representatives met students and held a presentation with the inspiring title “Fear of profit vs. Perfect Investors’ Landscape”.

The panellists were Rüdiger J. Schulz, MFIC President and CEO of Crnogorski Telekom and Mr. Giulio Moreno, MFIC BoD member and Head of the EBRD Office in Montenegro.

The subject of the discussion was the Montenegrin Foreign Investors Council itself and the activities carried out by this organization in order to improve the environment its members operate in.

This is only the first step in what the MFIC is planning to do to give its contribution to what is the future of Montenegro and its economy – education. Education is, and in the future will be even more so, a leading source of innovation and thus of development. It can help shape the country’s success in attracting FDI and thus create a solid base for future development and increase in the standard of living.

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Since the first edition of the MFIC’s White Book issued in 2009, our members report that they are increasingly starting to feel positive developments in the area of education. However, the incremental improvements are not enough for Montenegro’s workforce to remain competitive in an increasingly global labour market. These challenges can be converted into opportunities in an ever more connected world, in which physical distances, although still important, are being diminished through the development of technology and this is where the MFIC will turn its focus more in the upcoming period.



## APPENDIX 1: OVERVIEW OF THE ACQUIS COMMUNAUTAIRE CHAPTERS

During the process of the enlargement of the European Union, the acquis was divided into 31 chapters for the purpose of negotiations between the EU and the candidate member states for the fifth enlargement (the ten that joined in 2004 plus Romania and Bulgaria which joined in 2007). For the negotiations with Croatia (which joined in 2013), Iceland, Turkey, Montenegro and in the future, with Macedonia, Serbia (candidate countries), the acquis was/will be split up into 35 chapters instead, with the purpose of better balancing between the chapters: dividing the most difficult ones into separate chapters for easier negotiation, uniting some easier chapters, moving some policies between chapters, as well as renaming a few of them in the process:

1. Free movement of goods
2. Freedom of movement for workers
3. Right of establishment and freedom to provide services
4. Free movement of capital
5. Public procurement
6. Company law
7. Intellectual property law
8. Competition policy
9. Financial services
10. Information society and media
11. Agriculture and rural development
12. Food safety, veterinary and phytosanitary policy
13. Fisheries
14. Transport policy
15. Energy
16. Taxation
17. Economic and monetary policy
18. Statistics
19. Social policy and employment
20. Enterprise and industrial policy
21. Trans-European networks
22. Regional policy and coordination of structural instruments
23. Judiciary and fundamental rights
24. Justice, freedom and security
25. Science and research
26. Education and culture
27. Environment
28. Consumer and health protection
29. Customs union
30. External relations
31. Foreign, security and defence policy
32. Financial control
33. Financial and budgetary provisions
34. Institutions
35. Other issues

APPENDIX 2: FULL MEMBERS OF THE COUNCIL

 <p>Hellenic Coca-Cola Passion for Excellence</p>	 <p>CKB CRNOGORSKA KOMERCIJALNA BANKA member of otp group</p>	 <p>European Bank for Reconstruction and Development</p>	 <p>ERSTE BANK</p>
 <p>AZMONT INVESTMENT</p>	 <p>HYPO ALPE ADRIA SA VAMA. UZ VAS. ZA VAS.</p>	 <p>Deloitte.</p>	 <p>T . . .</p>
 <p>EKO</p>	 <p>telenor</p>	 <p>UNIQA osiguranje</p>	 <p>TRIANGLE</p>
 <p>pwc</p>	 <p>LUŠTICA BAY <i>Montenegro</i></p>	 <p>PORTO MONTENEGRO</p>	 <p>m:tel Imate prijatelje!</p>
 <p>KPMG</p>	 <p>TREBIJESA MOLSON COORS COMPANY</p>	 <p>MONTENEGRO STARS HOTEL GROUP</p>	 <p>SIEMENS</p>
 <p>NLB Montenegrobanka</p>		 <p>SOCIETE GENERALE MONTENEGRO</p>	

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