

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

## **DECREE PROMULGATING THE DEPOSIT PROTECTION LAW**

**(“Official Gazette of Montenegro” no. 072/19 as of 26/12/2019)**

I hereby promulgate the Deposit Insurance Law passed by the 26<sup>th</sup> Parliament of Montenegro at the Sixth Sitting of the Second Ordinary (Autumn) Session in 2019 on 2 December 2019.

**No: 01-2116/2**

**Podgorica, 6 December 2019**

**The President of Montenegro,**

**Milo Đukanović, m. p.**

Pursuant to Article 82 item 2 and Article 91 paragraph 1 of the Constitution of Montenegro, at the sixth sitting of the second ordinary (autumn) session in 2019 held on 2 December 2019, the 26<sup>th</sup> Parliament of Montenegro adopted

## **DEPOSIT PROTECTION LAW**

### **I. BASIC PROVISIONS**

#### **Subject Matter**

##### **Article 1**

This law regulates the insurance of deposits in credit institutions, the status, powers and operation of the Deposit Protection Fund (hereinafter: the Fund), and other issues of importance for deposit insurance.

#### **Objectives of Deposit Protection**

##### **Article 2**

The objectives of the deposit insurance scheme are the following:

- 1) protection of depositors against the loss of their deposit in case of a protected event occurrence;
- 2) maintaining depositor confidence, and
- 3) contributing to the stability of the banking system and the financial system as a whole.

#### **Principles of Deposit Protection**

##### **Article 3**

The deposit insurance scheme shall cover euro and/or other currency deposits placed with a credit institution prior to or at the protected event date and which payout is guaranteed under this law.

A credit institution with a head office in Montenegro, which has been licensed by the Central Bank of Montenegro (hereinafter: the Central Bank), is obliged to participate in the deposit insurance scheme as provided for in this Law.

A branch of a Member State credit institution with a head office in Montenegro shall participate in the deposit insurance scheme regulated herein, provided that the branch is not a member of the deposit insurance scheme in the host Member State.

A branch of a third-country credit institution with a head office in Montenegro shall participate in the deposit insurance scheme regulated herein, provided that the branch is not a member of the deposit insurance scheme in that third country.

## Definitions

### Article 4

For the purpose of this Law, the following definitions shall apply:

- 1) **deposit** is a credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions and which a credit institution is required to repay under the legal and contractual conditions applicable, including a fixed-term deposit and a savings deposit, but excluding a credit balance where:
  - a) its existence can only be proven by a financial instrument as defined in the law governing capital markets, unless it is a savings product which is evidenced by a certificate of deposit made out to a named person; or
  - b) its principal is not repayable at par value; or
  - c) its principal is only repayable at par value under a particular guarantee or agreement provided by the credit institution or a third party;
- 2) **credit institution** means an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account;
- 3) **branch** means a legally dependent organisational unit of a credit institution without the status of a legal person, which carries out all or some of the transactions inherent in the business of that credit institution;
- 4) **deposit insurance scheme** means a set of rules and procedures existing in the legal systems of various countries; in Montenegro, it is the deposit insurance scheme regulated herein;
- 5) **designated authority** means a body which administers a deposit insurance scheme in a country; in Montenegro, it is the Deposit Protection Fund;
- 6) **competent authority** means a national competent authority in charge of credit institutions in operation in a country; in Montenegro, this authority is the Central Bank;
- 7) **unavailable deposit** means a deposit that is due and payable but that has not been paid by a credit institution under the legal or contractual conditions applicable thereto;
- 8) **joint account** means an account opened in the name of two or more persons or over which two or more persons have rights that are exercised by means of the signature of one or more of those persons;
- 9) **depositor** means a natural or legal person that is a holder or, in the case of a joint account, each of the holders of a deposit;
- 10) **Member State** means an EU Member State and a party to the EEA Agreement;
- 11) **home Member State** means an EU Member State and a party to the EEA Agreement in which a foreign credit institution has been licensed, and in which the credit institution has a branch;
- 12) **host Member State** means a Member State which is not a country in which a credit institution has been granted authorisation but in which it has a branch or in which it provides services;
- 13) **third country** means any foreign country until Montenegro's accession to the European Union, and after Montenegro joins the EU, any country other than the EU Member States and parties to the EEA Agreement;
- 14) **strategic plan** is a document regulating the basic guidelines for a long-term development, in accordance with changes in the environment that have occurred or will occur, and possible courses of action aimed at achieving the set goals.

## **II. DEPOSIT INSURANCE**

### **Protected Event Occurrence**

#### **Article 5**

A protected event shall occur on the day when the Central Bank Council passes a decision on:

1. unavailability of deposit; or
2. initiating bankruptcy proceedings against the credit institution.

The Central Bank Council shall pass a decision on unavailability of deposit when it has determined that the credit institution is unable for the time being and has no prospects of being able to repay the deposit for reasons which are directly related to its financial circumstances.

When it has determined the existence of the conditions under paragraph 2 above, the Central Bank Council may pass a decision on unavailability of deposit also for deposits placed with the credit institution subject to the liquidation proceedings, unless otherwise stipulated by the law.

The Central Bank is obliged to pass the decision on unavailability of deposit immediately or no later than within five working days following the day when it has determined that the credit institution had failed to repay deposits.

The Central Bank shall furnish the Fund with the decision on unavailability of deposit or the decision on initiating bankruptcy proceedings against the credit institution immediately and no later than the following working day.

Guaranteed deposits shall be reimbursed by the Fund, in accordance with this Law.

### **Eligible deposit**

#### **Article 6**

Eligible deposits within the meaning of this Law shall be considered all deposits held by depositors in a credit institution other than deposits which are not considered eligible deposits in line with paragraph 2 below.

Deposits which are not considered eligible deposits are:

- 1) deposits by insurance and reinsurance undertakings, in line with the law governing insurance and reinsurance business;
- 2) deposits by public authorities and local government authorities and/or other form of local self-government;
- 3) deposits by occupational health care and pension and disability insurance schemes, in line with the law governing the mandatory health, pension and social insurance;
- 4) deposits by personal pension funds and their management companies, in line with the law governing personal pension funds;
- 5) deposits by investment funds, in line with the law governing the capital market;
- 6) deposits by investment funds and their management companies, in line with the law governing the capital market;
- 7) deposits by other credit institutions, regardless of their head office, made out to their name and held for their account;
- 8) deposits by financial institutions within the meaning of the law governing the taking up and pursuit of business of credit institutions;
- 9) deposits by persons holding, either directly or indirectly, 10% or more capital or voting shares in that credit institution;

- 10) deposits by persons who are members of managing bodies and/or standing bodies of the credit institution that have exercised these tasks as at the protected event date or in the period of 12 months preceding the protected event date;
- 11) deposits by a superordinate credit institution, affiliated and subsidiary undertakings with which the credit institution, in relation to which the protected event occurred, comprises a group;
- 12) deposits by persons responsible for the auditing of the credit institution's financial reports over the past 36 months prior to the protected event occurrence;
- 13) deposits by collective investment undertakings in line with the law regulating the capital market;
- 14) deposits arising out of transactions in connection with which there has been a criminal conviction for money laundering or terrorism financing;
- 15) deposits by persons specified in the Central Bank report to have contributed to deterioration of financial position of the credit institution;
- 16) anonymous deposits and/or deposits the holder of which has never been identified before the protected event occurrence (non-nominative deposits);
- 17) obligations arising from securities and other financial instruments issued by a credit institution or which payout is guaranteed by the credit institution in relation to which the protected event occurred;
- 18) claims of clients of investment undertaking, clients of a credit institution on whose behalf the credit institutions provides some investment services, and clients of asset management company when this company provides investment services, which are included in the investor protection scheme pursuant to the law regulating the capital market;
- 19) instruments of depositors of a credit institutions in relation to which the protected event occurred and which are included in own funds in line with the law governing the taking up and pursuit of business of credit institutions.

## **Guaranteed deposit**

### **Article 7**

Guaranteed deposit is a part of eligible deposit with a credit institution that shall not exceed the level of coverage stipulated herein.

Guaranteed deposit shall be determined for every individual depositor by reducing due liabilities of a depositor with a credit institution from their aggregate deposits, including any accrued interest as at the protected event date, placed by the depositor with the same credit institution.

Accrued interest referred to in paragraph 2 above shall be considered interest accrued over the period from the last regular calculation until the protected event date by applying the contract interest rate, without the requirement to reach full contractual maturity.

The Fund shall calculate and perform the payout of guaranteed deposits up to the amount of EUR 100,000 per depositor, regardless of the number and amount of deposits held by a depositor with the credit institution in relation to which the protected event occurred.

By way of exception from paragraph 4 above, deposits representing a temporary high balance shall be insured for additional EUR 30,000 for six months after the amount has been credited or from the moment when such deposits become legally transferable.

Deposits representing a temporary high balance within the meaning of paragraph 5 above shall be considered deposits resulting from:

- 1) real estate transactions relating to private residential properties,
- 2) transactions that are linked to: marriage, divorce, retirement severance pay, dismissal, invalidity or death;

- 3) the payment of insurance benefits or compensation for criminal injuries or mistakes made by judicial authorities, government authorities, public administration bodies, and local government authorities.

A decision verifying the fulfilment of requirements for the payout of deposits representing the temporary high balance shall be passed by the Director General of the Fund.

An administrative dispute may be carried out against the decision under paragraph 7 above.

The Fund shall regulate the manner of evidencing the criteria under paragraph 6 above.

### **Right to Guaranteed Deposit Payout**

#### **Article 8**

The right to guaranteed deposit payout shall have depositors holding deposits representing eligible deposits in line with Article 6 paragraph 1 of this law placed with a credit institution in relation to which the protected event occurred, prior to or at the protected event date, up to the amount of coverage specified in Article 7 paragraphs 4 and 5 herein.

The right to payout under paragraph 1 above shall not have depositors holding deposits which are not considered eligible deposits in accordance with Article 6 paragraph 2 herein.

Guaranteed deposits shall be paid out in euros, and deposits in currency other than euro shall be translated to euros at the exchange rate announced by the Central Bank as at the protected event date.

The right to guaranteed deposit payout shall not have a depositor that had been paid out the amount equal to the guaranteed deposit during the liquidation proceedings against the credit institution that was subject to the bankruptcy proceedings following such a payout.

The right to guaranteed deposit payout shall be subject to the statute of limitations with the lapse of three years following the protected event date.

### **Right to Guaranteed Deposit Payout in Exceptional Cases**

#### **Article 9**

The right to guaranteed deposit payout shall be determined for each owner of a joint account according to the total amount of their aggregate deposits placed with the credit institution in relation to which the protected event occurred, prior to or at the protected event date.

The share of all depositors in funds held in the joint account shall be calculated equally among the account owners, unless the owners of such account submit the evidence proving that their shares are not equal.

When calculating the amount of guaranteed deposit, deposits by a natural person held in his/her accounts opened for the purpose of pursuing independent activity shall be included in the total calculated amount for that natural person, up to the coverage limit specified in Article 7 paragraphs 4 and 5 of this law.

A deposit by a depositor, within the meaning of this law, shall be considered funds in all accounts of a company without the status of a legal person, all accounts of an intestate or all accounts of co-ownership associations.

If a depositor has acted as a representative for the account of a third party, the right to guaranteed deposit payout shall be determined with regard to that third party and in line with total deposits of the represented party placed with the credit institution in relation to which the protected event occurred, provided that the credit institution has verified and confirmed the identity of that party before the protected event occurrence.

A deposit that is the subject of lien shall be included in the calculation of guaranteed deposit of a depositor, provided that the depositor may not dispose of the part of the guaranteed deposit that is the subject of the lien as long as those funds are encumbered.

If a deposit or a part of a deposit is subject to restrictive measure imposed by the competent authority, it shall be included in the calculation of guaranteed deposit of a depositor, provided that the depositor may not dispose of that part of the guaranteed deposit as long as such measure is in effect.

The Central Bank shall regulate the manner of record keeping for the purpose of establishing beneficial owners and the amount of funds referred to in paragraphs 3 and 5 above.

## **Participation of Credit Institution in the Deposit Insurance Scheme**

### **Article 10**

Credit institution shall pay the deposit insurance premium for the participation in the deposit insurance scheme, in accordance with this law.

Only a credit institution that is a member of the deposit insurance scheme may accept deposits.

A licensed credit institution shall be included in the deposit insurance scheme upon the payment of the initial premium.

Participation in the deposit insurance scheme and the premium payment obligation shall cease upon the revocation of licence from a credit institution.

The Central Bank shall inform the Fund on credit institution licensing immediately but no later than the following working day.

When a credit institution fails to pay the deposit insurance premium, the Fund shall inform the Central Bank thereof.

## **Branch of a Member State Credit Institution**

### **Article 11**

Deposits placed with a branch established by a credit institution with a head office in a Member State shall be protected in accordance with the regulations applicable in the home Member State.

In case of the protected event occurrence, guaranteed deposit payout to depositors of the branch referred to in paragraph 1 above shall be made by the Fund on behalf and for the account of the designated authority in the home Member State of which the credit institution concerned is a member.

The Fund shall repay guaranteed deposits referred to in paragraph 2 above on the basis of a cooperation agreement to be concluded between the Fund and the designated authority in the home Member State.

The Fund shall repay guaranteed deposits referred to in paragraph 2 above on the basis of detailed instructions from the designated authority that manages the deposit insurance scheme in the home Member State, provided that it has received the necessary financial means to reimburse the depositors of the branch referred to in paragraph 1 above.

The Fund shall not be held liable for any acting in accordance with the instructions given by the designated authority in the home Member State.

The Fund shall pay out deposits under paragraph 2 above even if it has not concluded any cooperation agreement with the designated authority in the home Member State.

The designated authority in the home Member State shall incur costs related to the acting pursuant to paragraph 2 above.

The provisions of this law shall apply to a branch under paragraph 1 above which is a member of the deposit protection scheme in Montenegro.

## **Information Exchange**

## **Article 12**

The Fund shall cooperate and exchange data and information required for the payout of guaranteed deposits to depositor referred to in Article 11 paragraph 1 herein with the designated authority in the home Member State of which that credit institution is a member.

The exchange of information on depositors shall be in line with provisions of the law governing personal data protection.

The Fund shall inform the European Banking Authority on any cooperation agreement entered into with the designated authority in the home Member State.

If the Fund and the designated authority in the home Member State cannot reach an agreement or if there is a dispute regarding the interpretation of the agreement, either party may refer the matter to the European Banking Authority.

## **Branch of a Third-Country Credit Institution**

### **Article 13**

A branch of a third-country credit institution in Montenegro shall be included in the officially recognized deposit insurance scheme in the third country where this credit institution has its head office, provided that this deposit insurance scheme ensures deposit protection that is at least equivalent to the one provided for in this law in terms of the amount and extent of coverage.

If the deposit insurance scheme in a third country in which the branch under paragraph 1 above participates has ceased to provide coverage equivalent to the deposit insurance scheme provided for in this law in terms of the amount and extent of coverage, the branch of the third-country credit institution shall join the deposit insurance scheme in Montenegro.

The branch under paragraph 1 above shall inform the Fund and the Central Bank immediately and no later than within three working days about any change in the amount and/or coverage referred to in paragraph 2 above.

In case of the protected event occurrence, guaranteed deposit payout to depositors of the branch of the third-country credit institution shall be made by the Fund on behalf and for the account of the designated authority in the third country of which the credit institution concerned is a member.

The Fund shall repay guaranteed deposits referred to in paragraph 4 above only on the basis of a cooperation agreement to be concluded between the Fund and the designated authority in the third country.

The Fund shall repay guaranteed deposits referred to in paragraph 4 above on the basis of detailed instructions from the designated authority in the third country, provided that it has received the necessary financial means to pay out depositors of the branch of the third-country credit institution.

The Fund shall not be held liable for any acting in accordance with the instructions given by the designated authority in the third country.

The designated authority in the third country shall incur costs related to the acting pursuant to paragraph 4 above.

## **Premium Contribution**

### **Article 14**

If a branch of a credit institution operating in the host Member State ceases to be a member of the deposit insurance scheme in Montenegro and joins another deposit insurance scheme in the host Member State, premiums paid during the 12 months preceding the end of the membership, with the exception of the extraordinary contributions under Article 38 of this law, shall be transferred to the other deposit insurance scheme in proportion to the amount of guaranteed deposits.

If activities of a credit institution are transferred to a Member State credit institution due to a merger, division or separation and thus become subject to another deposit insurance scheme, the premiums of that credit institution paid during the past 12 months preceding the transfer, with the exception of the extraordinary premiums in accordance with Article 38 herein, shall be transferred to the other deposit insurance scheme in proportion to the amount of guaranteed deposits transferred.

The credit institution shall furnish the Fund and the Central Bank with at least six-month notice of its intention specified in paragraphs 1 and 2 above and it shall continue to pay the premiums to the Fund in accordance with Articles 35 and 38 of this law until the termination of membership.

## **Information on Deposit Insurance Scheme**

### **Article 15**

A credit institution shall make available the information on the deposit insurance scheme of which it is a member to all actual and intending depositors.

A credit institution shall communicate the information under paragraph 1 above to a depositor before concluding a deposit agreement with the depositor using the prescribed form.

Depositors shall acknowledge the receipt of the information specified in paragraph 2 above.

A credit institution shall furnish depositors with information on the deposit insurance scheme referred to in paragraph 2 above at least on annual basis, and it shall mark eligible deposits of a depositor on all bank statements of the depositor.

If a depositor uses the internet banking service, the information on the deposit insurance scheme under paragraph 2 above may be communicated by electronic means, unless the depositor requests the information to be communicated on paper.

The information under paragraph 1 above shall be clear and comprehensible, easily available in the Montenegrin language in each representative office, branch and on the website of the credit institution.

Credit institution shall also make the information under paragraph 1 above available to a branch operating in a Member State or a third country in the official language of the country in which the relevant branch operates.

Credit institution may not use its membership of the deposit insurance scheme for its own advertising purposes.

Credit institution shall provide the information under paragraphs 1 and 2 above free of charge, and it shall provide any additional information on the deposit insurance scheme and the conditions and procedure of the guaranteed deposit payout, as requested by actual or intending depositors.

The Fund shall regulate in more detail the manner of providing information to actual and intending depositors on the membership of deposit insurance scheme and the content of the form used to communicate the information under paragraphs 1 and 2 above.

## **Information on Status Changes of Credit Institution**

### **Article 16**

Credit institution shall inform its depositors about a merger, division or separation at least 30 days before the transaction takes legal effect, unless the Central Bank allows a shorter deadline at the request of the credit institution on the grounds of trade secrecy or protection of financial stability.

Depositors shall be given a three-month period following the notification of the merger, division or separation to withdraw or transfer to another credit institution, without incurring any penalty, their eligible deposits, including all accrued interest and benefits in so far as they exceed the coverage level under Article 7 paragraph 4 herein at the time of contract termination.

Obligations under Article 15 paragraphs 1 to 9 and paragraphs 1 and 2 above shall also apply to branches of a Member State credit institution or a third-country credit institution which operate in Montenegro, provided that such branches shall clearly indicate in which deposit insurance scheme they participate and inform depositors about that deposit insurance scheme.

### **III. THE FUND**

#### **Status of the Fund**

##### **Article 17**

The Fund is an independent and non-profitable legal person having the rights, obligations and responsibilities as provided for in this law and the Fund's By-law.

The registered office of the Fund is in Podgorica.

The Fund is not registered in the Central Registry of Commercial Entities.

#### **Competences of the Fund**

##### **Article 18**

The Fund shall ensure the protection of depositors against a loss of part or all of their deposits and promote the deposit insurance scheme, in accordance with this law.

In exercising its competences, the Fund shall:

- 1) establish the regular premium rate;
- 2) establish the rate for the extraordinary premium calculation;
- 3) collect the premiums;
- 4) invest its funds;
- 5) calculate and perform the payout of guaranteed deposits;
- 6) pass general acts for which it is authorized under this law;
- 7) perform stress tests of the deposit insurance scheme and the ability of credit institutions to submit information and repay guaranteed deposits;
- 8) perform other activities in accordance with the law.

#### **Operation of the Fund**

##### **Article 19**

The Fund shall operate through an account opened with the Central Bank.

The audit of the Fund's financial statements shall be performed by an auditing firm (hereinafter: the auditor) in line with the law regulating auditing.

#### **The Fund's Bodies**

##### **Article 20**

The Fund's bodies shall be the Managing Board of the Fund (hereinafter: the Managing Board) and the Director General.

#### **The Fund's Governance**

##### **Article 21**

The Fund shall be governed by the Managing Board.

The Managing Board shall have five members.

Members of the Managing Board shall be appointed by the President of Montenegro, provided that one member shall be nominated by the Ministry of Finance (hereinafter: the Ministry), one member

shall be nominated by the Central Bank, one member shall be nominated by the Association of Montenegrin Banks, one member shall be nominated by the Chamber of Economy, and one member shall be nominated by the President of Montenegro.

The Chairman of the Managing Board shall be designated in the decision on the appointment of the Managing Board members.

### **Eligibility to Serve on the Managing Board**

#### **Article 22**

A person to be appointed a member of the Managing Board of the Fund shall be a person holding a university degree equivalent to the level VII-1 of the undergraduate classification system and having at least five years of working experience in the financial sector.

A member of the Managing Board may not be:

- 1) an employee in a credit institution, a member of the managing body and/or standing bodies of a credit institution or a credit institution consultant;
- 2) a person holding, whether directly or indirectly, at least 5% of shares in a credit institution;
- 3) a person who was a member of the managing body or held a managerial position in a bank as at or over the period of 12 months prior to the date of initiation of bankruptcy proceedings against the credit institution;
- 4) a person who has been convicted to an unconditional prison sentence or has been convicted for acts that make them unworthy to serve on the Managing Board;
- 5) a person being a spouse or a relative in the straight or lateral lines of kinship, up to and including the second degree of kinship, of another member of the Director General or a member of the Managing Board of the Fund.

### **Decision Making and Responsibilities of the Managing Board**

#### **Article 23**

The Managing Board shall take decisions at meetings to be held at least once every three months and decisions shall be rendered by the majority vote of all members.

The Chairman of the Managing Board shall convene and chair the Managing Board meetings. The Director General of the Fund shall attend the Managing Board meetings, without the right to vote.

The modus operandi and decision making of the Managing Board shall be regulated in the rules of procedure of the Fund.

The Managing Board shall be responsible for the exercising of the Fund's functions.

Members of the Managing Board shall be entitled to remuneration in accordance with the Fund's financial plan.

The amount of remuneration referred to in paragraph 6 above may not exceed the average salary of an employee in the Fund.

### **Conflict of Interest**

#### **Article 24**

Members of the Managing Board shall discharge their duties in such a manner to ensure that their personal interests do not affect impartiality in the discharge of their duties.

A member of the Managing Board having a personal interest or parties related to him or who are in any other way, either directly or indirectly, connected to the subject matter of decision-making shall disclose such interest at the beginning of the Managing Board meeting and they shall not participate in

the discussions and voting on any issues related to the subject matter concerned, unless otherwise decided by the Managing Board.

A member of the Managing Board and the Director General may not become an employee in a credit institution within the period of one year following the expiry of their term of office in the Fund.

### **Term of Office of a Managing Board Member**

#### **Article 25**

Members of the Managing Board shall be appointed to a four-year term of office and they may be reappointed for two consecutive terms.

A member of the Managing Board may be relieved of duty before the expiry of their term of office:

- 1) at the member's personal request;
- 2) if the member has permanently lost his/her capabilities for discharging his/her duty;
- 3) if he/she has violated the Code of Ethics;
- 4) if the member has been unjustifiably absent from the three consecutive meetings of the Managing Board;
- 5) if the member has ceased to meet the requirements specified under Article 22 herein;
- 6) if the member discharges his/her duties in an unprofessional and unconscientious manner;

The President of Montenegro shall determine, at the Managing Board's proposal, the existence of circumstances under paragraph 2 above and pass a decision on the relieving of duty of such member of the Managing Board.

In parallel with the relieving of duty of such member, the President of Montenegro shall appoint a new member of the Managing Board.

The term of office of the member under paragraph 4 above shall last until the expiry of the term of office of the member being relieved of duty.

### **Powers of the Managing Board**

#### **Article 26**

The Managing Board shall:

- 1) appoint the Director General of the Fund;
- 2) pass the By-law of the Fund;
- 3) pass general acts for which it is authorized under this law;
- 4) pass a decision on the amount of regular premium rate;
- 5) pass a decision on the introduction of the extraordinary premium and establish the calculation rate of the extraordinary premium;
- 6) pass the financial plan;
- 7) adopt annual financial reports and consider the report and opinion of the auditor;
- 8) adopt the annual activity report of the Fund;
- 9) establish the investment policy and take investment decisions;
- 10) decisions on lending to a deposit insurance scheme in a Member State;
- 11) appoint the auditor;
- 12) pass the rules of procedure of the Managing Board;
- 13) pass the Strategic Plan of the Fund;
- 14) consider whether the deposit insurance scheme achieves the public policy objectives, consider the ratio of the target level to the extent of coverage and the coverage level on regular basis, at least once every three years;
- 15) perform other activities specified under this law and the By-law of the Fund.

General acts of the Fund shall be published in the "Official Gazette of Montenegro".

### **Reporting on the Fund's Operations**

#### **Article 27**

The Managing Board shall adopt the annual activity report of the Fund.

The report referred to in paragraph 1 above shall be submitted to the President of Montenegro and the Central Bank for information purposes, and to the Montenegrin Government and Parliament for consideration, no later than by 31 May of the current year.

### **Director General of the Fund**

#### **Article 28**

Director General of the Fund shall:

- 1) organise the Fund's work and operations;
- 2) represent and act on behalf of the Fund and be responsible for the legality of the Fund's operations;
- 3) propose the Fund's By-law and general acts;
- 4) propose the regular premium rate;
- 5) propose a decision on the introduction of the extraordinary premium and its calculation rate;
- 6) propose the financial plan of the Fund;
- 7) propose annual financial statements of the Fund with the auditor's report and opinion;
- 8) propose the annual activity report of the Fund;
- 9) propose the investment policy of the Fund;
- 10) implement decisions passed by the Managing Board;
- 11) decide on the investment of the Fund's resources up to the amount specified under the By-law of the Fund;
- 12) decide on depositors' complaints to the calculated guaranteed deposits;
- 13) pass decisions referred to in Article 49 herein;
- 14) decide on the rights, obligations, and responsibilities of the Fund employees;
- 15) take care of the utilisation of funds for covering operating expenses of the Fund;
- 16) perform other tasks in line with the law and the By-law of the Fund.

The Managing Board shall appoint the Director General of the Fund, as per the job vacancy announcement, to a four-year term and he/she may be reappointed.

The person to be appointed the Director General shall be a Montenegrin citizen holding a university degree equivalent to the level VII-1 of the undergraduate classification system and having at least five years of working experience in the financial sector.

The Director General of the Fund may not be:

- 1) an employee of a credit institution, a member of the managing body and/or standing bodies of the credit institution or a consultant for a credit institution;
- 2) a person holding, whether directly or indirectly, at least 5% of shares in a credit institution;
- 3) a person who was a member of the managing body or held a managerial position in a bank as at or over the period of 12 months prior to the date of initiation of bankruptcy proceedings against the credit institution;
- 4) a person who has been convicted to an unconditional prison sentence or has been convicted for acts that make them unworthy for the position of the Director General;
- 5) a person being a spouse or a relative in the straight or lateral lines of kinship, up to and including the second degree of kinship, of a member of the Managing Board.

During his/her term of office, the Director General shall enjoy the rights provided for in the general labour regulations.

During his/her term of office, the Director General may not perform any other professional duty or any other activity other than those involving scientific and research work.

## **Legal Protection**

### **Article 29**

In the implementation of their legally prescribed powers, members of the Managing Board, the Director General, and employees of the Fund shall not be held liable for any damage which could arise during the performance of their duties in accordance with the law and regulations passed on the basis of the law, unless it is proved that the specific activity has been performed in bad faith or as an act of gross negligence.

The Fund shall bear the costs of defending the persons under paragraph 1 above in litigations disputing the performance of duties in accordance with the law and regulations passed on the basis of the law.

## **By-Law of the Fund**

### **Article 30**

The By-law of the Fund shall regulate in detail the Fund's governance, powers of the Director General, the procedure of passing regulations under the Fund's competence, the basis of internal organisation, the manner of work, transparency and other issues related to the Fund's operations.

The By-law of the Fund shall be published in the "Official Gazette of Montenegro".

## **The Fund's Resources**

### **Article 31**

The Fund's resources shall be provided from the following:

- 1) revenues from collected initial premiums;
- 2) revenues from collected regular premiums;
- 3) revenues from invested funds;
- 4) revenues from the indemnification of the Fund in bankruptcy and resolution proceedings;
- 5) donations;
- 6) other proceeds in accordance with the law.

In case the resources under paragraph 1 above are insufficient for the Fund's liabilities arising from the deposit insurance scheme, the Managing Board may decide the lacking funds to be provided from the following:

- 1) charging the extraordinary premium;
- 2) taking loans from credit institutions and financial institutions;
- 3) issuing securities;
- 4) borrowing from deposit insurance schemes in the Member States, and
- 5) borrowing from the Budget of Montenegro.

The Fund may borrow from other deposit insurance schemes in the Member States only if:

- 1) the borrowed fund will be used to settle liabilities arising from Article 32 paragraph 1 herein;
- 2) the collection of the extraordinary premium pursuant to Article 38 paragraph 1 of this law is insufficient to allow the Fund to meet its obligations;
- 3) it lacks available funds to meet its obligations pursuant to Article 45 paragraph 2 of this law;

- 4) it is not currently subject to an obligation to repay a loan to other deposit insurance schemes;
- 5) the total borrowed amount does not exceed 0.5% of guaranteed deposits of the deposit insurance scheme in Montenegro;
- 6) the proceeds from the collection of regular and extraordinary premiums allows it to repay the loan and interest within five years.

In the event of borrowing specified in paragraph 3 above, the Fund shall ensure that the premiums levied are sufficient to reimburse the amount borrowed and to re-establish the target level specified in Article 37 paragraph 1 herein as soon as possible.

The Fund shall inform the European Banking Authority of the requested amount of borrowing and the reasons why the conditions have been met for the borrowing from other deposit insurance schemes in accordance with paragraph 3 item 3 above.

The Fund shall inform the European Banking Authority no later than by 31 March of the current year on the amount of guaranteed deposits and the balance of financial means of the Fund available as at 31 December of the previous year.

## **Use of the Fund`s Resources**

### **Article 32**

The Fund`s resources shall be used for the guaranteed deposits payout and the following:

- 1) payment of expenses arising from the procedure of guaranteed deposit payout;
- 2) payment of expenses related to the investment of funds;
- 3) repayment of principal and interest on loans and borrowings made by the Fund for the purpose of payout of guaranteed deposits;
- 4) payment of liabilities arising from issued securities;
- 5) funding of resolution of a credit institution pursuant to Article 50 herein;
- 6) costs of employee salaries and fringe benefits;
- 7) financing of the Fund`s current and other expenses, in accordance with the Fund`s financial plan.

The Fund may lend available funds to deposit insurance schemes in the Member States when such schemes have encountered circumstances referred to in Article 31 paragraph 3 of this law.

The Managing Board of the Fund may pass a decision on extending a loan to a deposit insurance scheme in a Member State on the basis of request of the designated authority managing the deposit insurance scheme in the Member State.

Decision referred to in paragraph 3 above shall be passed in the expedited procedure, subject to the prior consent of the Central Bank.

The Fund shall inform the European Banking Authority of the decision on extending the loan to the deposit insurance scheme in the Member State, including the initial interest rate and the duration of the loan.

The loan interest may not be lower than the marginal lending facility rate of the European Central Bank.

The interest shall be due at the time of repayment and the loan may be repaid in annual instalments.

## **Investment of Resources**

### **Article 33**

The Fund`s resources may be invested in the following:

- 1) securities issued by Montenegro, a Member State or their central banks or securities guaranteed by Montenegro or a Member State;

- 2) securities issued by a credit institution, a financial institution and/or a country other than those specified in point 1) above, and which hold high ratings assigned by an internationally recognized rating agency;
- 3) deposits in central banks and foreign credit institutions holding high ratings assigned by an internationally recognized rating agency;
- 4) other assets in accordance with the Fund's investment policy.

With a view to preserving the value of assets and limiting the risk of loss on investments, the Fund's resources shall be invested in low-risk assets and in a sufficiently diversified manner.

More detailed conditions and manner of investing funds shall be specified in the Fund's By-law and Investment policy.

### **Initial Premium**

#### **Article 34**

A licensed credit institution shall pay the initial premium in the amount of EUR 50,000 to the Fund's account before the commencement of its operations.

### **Regular Premium**

#### **Article 35**

Credit institutions shall pay the regular premium in accordance with the provisions of this law.

Regular premium referred to in paragraph 1 above shall be calculated as the product of the premium base, the premium rate, and the degree of risk of a credit institution.

The premium base for the calculation of the premium under paragraph 2 above shall comprise of the average amount of guaranteed deposits in the previous quarter, which is calculated as the average balance as at the last day in each month of the quarter.

The premium rate under paragraph 2 above shall amount to 0.30% per quarter.

For the purpose of calculating the degree of risk of individual credit institutions, the Central Bank shall furnish the Fund with the information for the calculation of risk profile of individual credit institutions on the basis of their audited statements for the previous business year.

Information referred to in paragraph 5 above shall be submitted no later than by 31 May of the current year.

Credit institutions shall pay the regular premium on quarterly basis, no later than eight days following the receipt of invoice.

When calculating the regular premium, the Fund shall also take due account of the phase of the business cycle and the impact of procyclical premiums on the amount of charge for the members of the deposit insurance scheme.

### **Methodology for Regular Premium Calculation**

#### **Article 36**

Regular premium under Article 35 paragraph 1 herein shall be calculated in line with the methodology for the calculation of risk-based premium for individual credit institutions which is established by the Managing Board, subject to the prior approval by the Central Bank.

The Fund is obliged to submit the Methodology referred to in paragraph 1 above to the European Banking Authority.

### **Target Level**

#### **Article 37**

The Fund shall ensure that its funds reach the target level of no less than 10% of total guaranteed deposits of all credit institutions.

Should the funds under Article 31 paragraph 1 items 1, 2, 3, 4, and 6 herein exceed the minimum target level of 10% of total guaranteed deposits of all credit institutions, the Managing Board shall pass a decision to reduce the regular premium and/or temporarily discontinue its collection.

In the event the Fund's resources fall below 6% of total guaranteed deposits of all credit institutions, the regular premium shall be set at a level allowing the minimum target level to be reached within six years.

When the Fund participates in the resolution specified in Article 50 herein, those funds shall not be included in the calculation of the target level referred to in paragraph 1 above.

The Fund shall inform the European Banking Authority no later than by 31 March of current year on the total amount of guaranteed deposits in Montenegro and the balance of the Fund's resources as at 31 December of the previous year.

### **Extraordinary Premium**

#### **Article 38**

In case the Fund's resources are insufficient for guaranteed deposit payout as at the protected event occurrence, the Managing Board may pass a decision introducing the extraordinary premium that shall not exceed 0.5% of guaranteed deposits of the members of the deposit insurance scheme in the current year.

In the event that the lacking funds for the payout of guaranteed deposits in the manner specified in Article 31 paragraph 2 points 2 to 5 herein cannot be provided within the prescribed deadline, the Managing Board may require a higher extraordinary premium, subject to the Central Bank's approval.

The Central Bank may defer, in whole or in part, a credit institution's payment of extraordinary premium if that would jeopardise the liquidity or solvency of the credit institution.

The deferral decision shall be passed at request of the credit institution and it may be granted for a period that shall not exceed six months but it may be renewed for the same period in exceptional circumstances.

The extraordinary premium shall be paid before the expiry of the deadline under paragraph 3 above when such payment no longer jeopardises liquidity or solvency of the credit institution.

Credit institution shall pay the extraordinary premium within eight days following the invoice receipt.

### **Irrevocability of Paid Premiums**

#### **Article 39**

Premium paid by a credit institution for deposit insurance may not be recovered.

### **Furnishing Data and Information**

#### **Article 40**

Credit institutions shall provide the Fund with data and information necessary for the performing of the Fund's activities.

The Fund may at any time request that credit institutions provide information on the number of depositors, the amount of available deposits per depositors and their due liabilities for the purpose of performing stress tests.

Credit institutions shall mark in their records the depositors, deposits, and due liabilities in a way that allows their immediate identification.

Credit institutions shall be responsible for the accuracy of data and information furnished to the Fund.

The Fund shall specify the type of data and information under paragraph 1 above, including the deadlines and manner of their submission, the manner of marking depositors, deposits, and due liabilities referred to in paragraph 3 above.

## **Stress Tests**

### **Article 41**

The Fund shall perform stress tests of the deposit insurance scheme and the ability of credit institutions to submit the information on depositors, deposits and their due liabilities, and their ability to assume the role of the payout bank and compensate guaranteed deposits in case this is needed.

Stress test referred to in paragraph 1 above shall be performed in every credit institution at least once in every three years.

The Fund shall use the data and information collected for the purpose of performing stress tests of the deposit insurance scheme only for the purpose for which they have been collected and it shall keep such information no longer than is necessary for that purpose.

The Fund shall furnish the European Banking Authority with the information on results of conducted stress tests of the deposit insurance scheme, ensuring the confidentiality of information representing trade secret in accordance with the law.

## **Control of Data and Information**

### **Article 42**

The Fund may request the Central Bank to perform the supervision of credit institutions regarding the data and information specified under Article 40 paragraphs 1 to 3 of this law.

The Central Bank shall inform the Fund about the results of the supervision under paragraph 1 above without delay, but no later than within three working days following the completion of supervision.

## **Cooperation with Other Bodies and Institutions**

### **Article 43**

In exercising its powers and obligations specified herein, the Fund shall cooperate with the Central Bank, the Ministry, other government bodies and organisations, and other designated and competent authorities and international organisation, in accordance with the law and concluded cooperation agreements.

The Central Bank shall inform the Fund without delay, and no later than within three working days, about any problems in a credit institution which could lead to the occurrence of protected event.

The exchange of information for the purpose of cooperating with the entities specified in paragraph 1 above shall not be deemed to be a disclosure of trade secret.

## **Trade Secret**

### **Article 44**

A member of the Managing Board, the Director General of the Fund, employees of the Fund, a person hired to perform the Fund related activities shall deem all data on the operations of credit institutions and/or the Fund which they have obtained during the performance of these activities as trade secrets.

Trade secret obligation under paragraph 1 above shall remain in effect five years following the termination of term of office, employment or activities which the person has been hired to do.

By way of exception from paragraph 1 above, information representing trade secret may be made available to the competent government authorities in accordance with the law.

## **IV. GUARANTEED DEPOSIT PAYOUT**

### **Obligations of the Fund in Case of Protected Event Occurrence**

#### **Article 45**

The Fund shall inform depositors about the occurrence of the protected event and prepare the guaranteed deposits payout.

The Fund is obliged to make guaranteed deposits available to all depositors no later than within seven working days following the protected event date.

The Fund shall, without delay but no later than within two working days following the protected event date, announce the information about the protected event occurrence, the Fund's obligation to execute the payout of guaranteed deposits, the manner of calculation and the amount of guaranteed deposits in at least two print media distributed in the territory of Montenegro and on its website.

The Fund shall pass a decision on the selection of one or more credit institutions for the payout of guaranteed deposits (hereinafter: the payout bank) no later than within five working days following the protected event date.

The procedure for the selection of the payout bank shall not be subject to the law governing public procurement.

The Fund shall announce the information on the payout bank(s), place and date of commencement of payout of guaranteed deposits in at least two print media distributed in the territory of Montenegro and on its website.

All written correspondence between the Fund and depositors shall be in the Montenegrin language. In exceptional cases and if the Fund agrees, the correspondence may be in English.

The deadline referred to in paragraph 2 above may be extended up to 90 days in the event specified in Article 9 paragraph 5 of this law.

The deadline under paragraph 2 above may be extended if:

- 1) it cannot be determined whether a certain person is entitled to the payment of the guaranteed deposit or the deposit is the subject of a litigation;
- 2) there is a measure of restricted disposal of deposit imposed by the competent authority in Montenegro or an international body;
- 3) the amount that is to be repaid is considered a temporary high balance referred to in Article 7 paragraph 5 of this law;
- 4) the amount of guaranteed deposit is to be repaid through the deposit insurance scheme in the host Member State;
- 5) the amount of guaranteed deposit is to be repaid through the deposit insurance scheme in the third country in which the credit institution has a branch.

#### **Complaints**

#### **Article 46**

A depositor may file a complaint with the Director General regarding the calculation of their guaranteed deposit within eight days following the receipt of the calculation.

The Director General shall decide on the complaint referred to in paragraph 1 above no later than within 15 days following its receipt.

Depositors whose claims on the credit institution in relation to which the protected event has occurred exceed the amount of their guaranteed deposits shall settle this difference in the bankruptcy proceedings.

## **Calculation and Payout of Guaranteed deposits**

### **Article 47**

The credit institution in relation to which the protected event has occurred shall submit to the Fund without delay, but no later than within three working days following the protected event date, both on paper and in electronic format, data and other documents necessary for the calculation and payout of guaranteed deposits under this law.

On the basis of data and documents under paragraph 1 above, the Fund shall calculate and establish the amount of the guaranteed deposit for every individual depositor and furnish the payout bank(s) with these data.

The payout bank(s) shall compensate guaranteed deposits to every individual depositor on the basis of data under paragraph 2 above.

Depositors shall acquire the right to dispose of their guaranteed deposits as at the payout date.

The Managing Board shall pass a decision regulating detailed conditions on the manner and procedure of the guaranteed deposits payout.

## **Right of the Fund to Indemnification**

### **Article 48**

Claims of depositors on the credit institution in relation to which the protected event has occurred shall be transferred to the Fund as at the payout date.

During a bankruptcy proceeding initiated against the credit institution, the Fund shall report all claims in the amount of its total liability for the guaranteed deposits made available to depositors, regardless of whether all depositors have already been compensated at the moment of reporting.

The Fund shall be entitled to the settlement of funds from the bankruptcy estate up to the reported amount under paragraph 2 above, taking the claim settlement priority in accordance with the law governing bank bankruptcy and liquidation.

## **Special Procedure to Exclude a Depositor**

### **Article 49**

The Fund shall pass individual decisions to depositors under Article 8 paragraph 2 herein.

The procedure under paragraph 1 above shall be subject to a simplified procedure.

An administrative dispute may be initiated against the decision referred to in paragraph 1 above.

## **Funding Support to Resolution of Credit Institutions**

### **Article 50**

The Fund's resources may also be used to finance resolution of credit institutions in line with the law governing the resolution of credit institutions.

The Central Bank, as the resolution authority, shall determine the amount to be used for funding the resolution of credit institution after consulting with the Fund.

The maximum amount of the Fund's resources that may be used for funding the resolution of a credit institution may not exceed the amount of loss that the Fund would incur if bankruptcy proceedings has been initiated against the credit institution.

The Fund's liability shall not exceed the amount equal to 50% of the target level specified in Article 37 paragraph 1 of this law.

If the assessment made in line with the law governing the resolution of credit institutions has established that the Fund's contribution would exceed a net loss that would be incurred in bankruptcy proceedings, the Fund shall be entitled to the indemnification of the difference from the Resolution Fund in accordance with the law governing the resolution of credit institutions.

If the Fund has made payouts during the resolution of credit institution under this Article, it shall be entitled to the settlement of funds from the credit institution up to the amount equal to those payments.

## **V. PENALTY PROVISIONS**

### **Penalties for Credit Institutions and Responsible Persons**

#### **Article 51**

A pecuniary fine ranging from EUR 2,500 to EUR 20,000 shall be imposed on a legal person - a credit institution if:

- 1) it has failed to provide and/or has charged the information on the deposit insurance scheme to actual and intending depositors (Article 15 paragraphs 1 and 2);
- 2) it has used its participation in the deposit insurance scheme in advertising its banking products (Article 15 paragraph 8);
- 3) it has charged a fee for providing the information on the deposit insurance scheme to its actual and intending depositors (Article 15 paragraph 9);
- 4) it has commenced its operations prior to the payment of the initial premium (Article 34);
- 5) it has failed to pay the regular premium payment within eight days following the invoice receipt (Article 35 paragraph 7);
- 6) it has failed to pay the extraordinary premium within eight days following the invoice receipt (Article 38 paragraph 6);
- 7) it has failed to submit or has not timely submitted data and information required for the performance of the Fund's activities (Article 40 paragraph 1);
- 8) it has failed to submit or has not timely submitted data and information specified in Article 40 paragraph 2;
- 9) it has failed to mark depositors, deposits, and due liabilities in the manner to allow their immediate identification (Article 40 paragraph 3);
- 10) it has failed to furnish, both on paper and in electronic format, data required for the calculation and payout of guaranteed deposits immediately but no later than within three working days following the protected event date (Article 47 paragraph 1).

A pecuniary fine ranging from EUR 550 to EUR 2,000 shall be imposed on the responsible person in the legal person - the credit institution for the violations under paragraph 1 above.

### **Penalties for the Managing Board Members and the Director General**

#### **Article 52**

A pecuniary fine ranging from EUR 550 to EUR 2,000 shall be imposed on a member of the Managing Board and the Director General if they have become an employee in a credit institution before the expiry of twelve months following the expiration of his/her term of office in the Fund (Article 24 paragraph 3).

## **VI. TRANSITIONAL AND FINAL PROVISIONS**

### **Deadline for the By-Law Harmonisation**

#### **Article 53**

The By-law of the Fund shall be brought in line with this law within 90 days following the entry into force of this law.

### **Passing of Enabling Regulations**

#### **Article 54**

Enabling regulations necessary for the implementation of this law shall be passed within six months following the entry into force of this law.

Enabling regulations adopted on the basis of the Deposit Protection Law (OGM 44/10, 40/11 and 47/15) shall apply until the passing of regulations referred to in paragraph 1 above.

### **Amount of Guaranteed Deposit in Transitional Period**

#### **Article 55**

By way of exception from Article 7 paragraph 4 of this law, the Fund shall calculate and pay out guaranteed deposits up to the amount of EUR 50,000 per depositor, regardless of the amount and size of deposits held by a depositor with a credit institution from the enactment date of this law until Montenegro's accession to the European Union.

### **Regular Premium and Extraordinary Premiums**

#### **Article 56**

The provisions of Articles 35 and 38 of this law shall apply as of 1 January 2021.

### **Commencement of Payout in the Transitional Period**

#### **Article 57**

By way of exception from Article 45 paragraph 2 herein, the Fund shall make guaranteed deposits available to depositors:

- as of the day of entry into force of this law until 31 December 2020, no later than within 15 working days following the protected event date;
- in the period from 1 January 2021 until 31 December 2023, no later than within 10 working days following the protected event date.

### **Continuation of the Fund**

#### **Article 58**

The Fund established under the Deposit Protection Law (OGRM 40/03 and 65/05) shall continue operating in accordance with this law.

### **Appointment of the Fund's Bodies**

#### **Article 59**

The President of Montenegro shall appoint members of the Managing Board under this law within 30 days following the entry into force of this law.

The Managing Board shall appoint the Director General of the Fund within 60 days following the appointment of the Managing Board.

### **Functioning of the Fund's Bodies until the Appointment**

#### **Article 60**

The Chairman and members of the Managing Board appointed pursuant to the Deposit Protection Law (OGM 44/10, 40/11 and 47/15) shall continue their terms of office until the appointments in accordance with this law.

The Director General of the Fund appointed in accordance with the Deposit Protection Law (OGM 44/10, 40/11 and 47/15) shall perform the duties of the Director General of the Fund until the appointment of the Director General in accordance with this law.

### **Deferred application**

#### **Article 61**

Provisions of Articles 11, 12, and 14, Article 26 paragraph 1 point 10, Article 31 paragraph 2 point 4 and paragraphs 3 to 6, Article 32 paragraphs 2 to 7, Article 36 paragraph 2, Article 37 paragraph 5, Article 41 paragraph 4, and Article 45 paragraph 9 point 4 herein shall apply as of Montenegro's EU accession date.

### **Informing the European Banking Authority on the Fund's Identity**

#### **Article 62**

The Central Bank shall inform the European Banking Authority on the identity of the Fund as at Montenegro's EU accession date.

### **Repeals**

#### **Article 63**

The following shall be repealed on the day of entry into force of this law:

- Deposit Protection Law (OGRM 44/10 and 47/15), except for Articles 28 and 31 that shall be repealed on 31 December 2020; and
- provisions of Article 125 of the Law Amending the Law on Pecuniary Fines for Misdemeanours (OGM 40/11).

### **Entry into Force**

#### **Article 64**

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

**Number: 09-1/19-2/4**

**EPA 817 XXVI**

**Podgorica, 2 December 2019**

**The 26<sup>th</sup> Parliament of Montenegro**

**President,**

**Ivan Brajović, m. p.**