

**CLIENT BRIEFING**  
**MONTENEGRO MEASURES IN RESPONSE TO THE COVID-19 CRISIS**

In response to the Covid-19 pandemic, the Government of Montenegro has, along with the Central Bank of Montenegro and other relevant state authorities, brought decisions and temporary measures in order to mitigate the impact of Covid-19, aid the domestic economy and facilitate the lives of the local citizens, as well as a series of other means for the prevention of transmission and spread of the infectious diseases.

**Tax Liabilities**

- By means of temporary economic measures, the Government of Montenegro has envisaged options for up to 90-days delay for the due date for the submission of taxes and contributions pertaining to all kinds of income reported through the IOPPD form (i.e. any personal reimbursements received by employees for their work or the work-related income, including secondary employment, service agreements, property related revenues and property rights), taxable for personal income tax and mandatory social contributions; the measures further envisage the delay of such tax liabilities under the Law on Restructuring of Tax Liabilities<sup>1</sup>.

This entails that the taxpayers shall be obligated to file their tax reports (IOPPD forms) within the legally foreseen deadlines via ePrijava web portal, and simultaneously decide on the potential delay of their tax liabilities. These measures, however, do not include postponing any other tax liabilities (profit tax, VAT, etc.).

- The Government has approved a 15-days extension for the submission of financial reports and annual profit tax reports for 2019, otherwise expiring on 31 March 2020. In such manner, all reports filed before 15 April 2020, exclusively online applications, shall be deemed duly and timely filed. According to the Regulation on the deferred corporate profit tax, the taxpayers shall be entitled to settle their profit taxes in 6 equal monthly installments. On the other hand, taxpayers settling their profit tax liabilities within the regular legally prescribed deadlines – shall deserve a 6% discount.

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<sup>1</sup> <http://www.gov.me/vijesti/223087/Vlada-CG-donijela-vise-ekonomskih-mjera-Cilj-je-olaksavanje-zivota-gradanima-i-pomoc-privredi-u-vrijeme-pandemije-koronavirusa.html>

## **Economic Support Plan**

- The Government of Montenegro has announced new credit lines of the Investment and Development Fund (IRF) intended for the advancement in liquidity of entrepreneurs, micro-, small and medium sized companies in the maximum amount of EUR 3mil per beneficiary. The credit applications and procedures shall be simplified; they shall not require administrative loan approval fees, while the loans shall be granted at 1,5% rate. It was further published that such funds shall be designated for the companies engaging in the procurement of medicines, medical equipment and vehicles, tourism and hospitality industries, transportation, services, as well as food production and processing.

In line with the measures promulgated by the government, IRF further brought a decision on a fresh credit line intended as aid to solvency issues of existing entrepreneurs, micro-, small and medium sized companies, arising as repercussion of the Covid-19 epidemic<sup>2</sup>. Granted credit funds may be used solely for the procurement of stock of goods, raw and production materials, intermediate goods, as well as for the settlement of net salaries for the employees throughout the course of the protective measures, meaning for 3 months.

Such IRF credit line shall be granted exclusively to the business organisations which have been directly affected by the coronavirus pandemic, as follows: (i) companies specialising in the procurement of medicines, medical equipment and vehicles, (ii) companies engaging in the production, processing and procurement of food and means of hygiene, (iii) hospitality companies, artisans, taxi drivers, small transporting companies, boutiques, hairdressing salons, private kindergartens, small shops, and (iv) any other business organisations forced to suspend the salaries pay-outs, or to lock down their objects due to the current epidemic.

Loans may go as high as EUR 3mil, whereas the IRF shall conduct their evaluation of each individual application depending on the circumstances, needs of the applicant, complexity of the situation, and in line with the mentioned needs, the loans may be granted for a repayment period of up to 8 years (with the grace period of 2 years). For the funds from the European Investment Bank (EIB), the loans shall be granted at an annual interest rate of 1,5%, while the funds from other sources shall be granted at 2% annual interest rate.

IRF shall accept a variety of loan security instruments, including promissory notes, guarantees, real estate mortgages, banking guarantees and other common security instruments regularly accepted in the banking industry, all in compliance with the decisions of the IRF management, brought in light of support of the measures introduced to alleviate the repercussions of the Covid-19 pandemic.

The loans shall be granted without administrative fees, which shall enable the business organisations to apply already as of 26 March 2020 for loans and file their applications electronically or via registered mail.

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<sup>2</sup> <https://www.irfcg.me/me/2019-11-08-13-51-22/program-podrske-likvidnosti>

The loans shall be granted until the mentioned decision may be amended or annulled following the developments in Montenegro during the Covid-19 pandemic.

- As a mechanism of support to resolving the Covid-19 epidemic and the respective consequences, the European Union (EU) has donated EUR 3mil to Montenegro as means of emergency aid for the health sector, plus additional EUR 50mil for a long-term program, dependant on the needs and requirements, mostly for the health care system, economy and entrepreneurship<sup>3</sup>.

Additionally, the EU has, in cooperation with the state authorities, commenced the preparations for a EUR 50mil worth long-term program for relief of the consequences caused by the current crisis. These funds are intended for the health sector, and the mitigation of, both, social and economic effects of the coronavirus crisis. The planned programme shall offer a long-term support for the health care system, endorse the economy, uphold the entrepreneurs, secure means for the most vulnerable groups, and back other pandemic-struck sectors. The program shall be implemented through the restructuring of the already available pre-accession funds allocated for Montenegro.

The Government of Montenegro and the EU have agreed on the expedited implementation of the already running joint EUR 18mil worth program, which funds had already been granted. This particular program shall cover employment, education and social aid issues, and shall be available as start-up capital for entrepreneurs, unemployed persons, and other vulnerable groups as non-refundable aid. The program shall additionally be used to mitigate the Covid-19 induced crisis.

- With a view to securing liquidity and continuity of works, the governmental agencies, Public Works Administration and Transport Administration, shall secure advanced payments for any already started capital projects, for all service providers and contractors (providing banking guarantees equalling the advanced amount), for the projects, which do not aggravate the common health.

The already operating capital projects shall not be suspended. They include the Bar-Boljari highway, Cmiljaca cableway and ski-tracks development, construction of accessory roads to Cmiljaca, Zarsko and Hajla, projects of base stations, projects of interconnecting Kolasin 1600 and Kolasin 1450 skiing centres etc.

The set of measures further includes the postponement of lease payment for the state-owned real estate for a period of 90 days, starting on 1 April 2020.

The Government of Montenegro has further adopted a measure providing for the lessees to delay their maritime zone fees/rental fees for up to 90 days, as of 1 April 2020. Beneficiaries and lessees whose usage/rental fees become due during the 90-days period, starting from 1 April 2020, may send an electronic request for the delay in the payment of their liabilities for the cited period.

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<sup>3</sup> [https://eeas.europa.eu/delegations/montenegro/76509/eu-stoji-uz-crnu-goru-u-borbi-protiv-covid-19\\_me](https://eeas.europa.eu/delegations/montenegro/76509/eu-stoji-uz-crnu-goru-u-borbi-protiv-covid-19_me)

## **Banking and Finances**

- The General Council of the Central Bank of Montenegro introduced a set of interim measures making all loan and leasing beneficiaries (including legal entities, natural persons, entrepreneurs and other loan beneficiaries) granted by all commercial banks, microcredit institutions, IRF, eligible for a moratorium to all payment liabilities arising from such loans for up to 90 days (main debt, interest, fees etc.).

During the moratorium, the banks shall not charge default interest on outstanding loan receivables, shall not initiate enforcement proceedings or enforced collection, or undertake other legal actions to collect receivables, and shall not calculate past due days. After the expiry of the moratorium, loan beneficiaries shall continue to repay their loans for a period extended for the duration of the moratorium, without additional interests for the period of three months. The repayment term shall be extended to additional three months, while the regular interest the bank shall calculate during the moratorium term shall be all ascribed to the debt and distributed equally to the remaining repayment period, including the moratorium extension term.

Loan beneficiaries who do not need a moratorium may exercise such right at any future time during the validity term of the decision, while the banks shall be obligated to act upon any request within 5 business days as of the receipt of such request<sup>4</sup>.

- The General Council of the Central Bank has further restricted the banks from paying dividends to shareholders, except for the case that the payment is made by bank shares.
- For as long as the temporary measures listed in the decision of the General Council of the Central Bank of Montenegro are still in effect, the bank may, with prior approval of the Central Bank, grant a loan or other exposure to a person or a group of affiliated persons, so that the total exposure to such person or the respective group shall exceed the limit mentioned in Article 58 of the Law on Banks. Along with the request for the issuance of the exposure approval, the applicant shall provide a detailed information on the reasoning for the increased exposure value, with the amount of the exceeded limit, and the time limit within which the bank shall reduce such exposure to the prescribed limit.
- Through their long-distance operations, the banks have further committed to the development of card systems and e-banking services for their clients, which shall influence the reduction of cash flow.

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[https://www.cbcbg.me/slike\\_i\\_fajlovi/eng/fajlovi/fajlovi\\_brzi\\_linkovi/propisi/fin\\_stability/odluka\\_privremene%20mjere\\_korona\\_virus\\_eng.pdf](https://www.cbcbg.me/slike_i_fajlovi/eng/fajlovi/fajlovi_brzi_linkovi/propisi/fin_stability/odluka_privremene%20mjere_korona_virus_eng.pdf);

[https://www.cbcbg.me/slike\\_i\\_fajlovi/fajlovi/fajlovi\\_brzi\\_linkovi/propisi/fin\\_stabilnost/odluka\\_privremene%20mjere\\_korona\\_virus.pdf](https://www.cbcbg.me/slike_i_fajlovi/fajlovi/fajlovi_brzi_linkovi/propisi/fin_stabilnost/odluka_privremene%20mjere_korona_virus.pdf).

## **Tourism and Hospitality**

- The Government of Montenegro has adopted numerous measures relative to the limitations and restrictions in the business operations for tourism and hospitality objects. These include: (i) ban on hospitality services in hotels, except for registered guests, (ii) closure of disco-clubs, night clubs and bars, (iii) closure of hospitality objects, cafes, coffee shops, restaurants and bars, except for the objects specialising in delivery of food, and such enabling personal takeover of prepared food and meals (whereby customers shall be prohibited from remaining in the premises), (iv) restaurant and cafes owners and lessees shall be obligated to make their outdoor café furniture unavailable for customers, (v) restriction of all commercial and hospitality services in shopping malls, and (vi) prohibition of wedding organisations.
- The municipal police forces in local municipalities were granted the powers to file criminal reports intended to establish criminal responsibility due to the failure of hospitality object owners to comply with the above listed measures.  
Despite the fact that the measures have not strictly included beach bars, they shall nevertheless be encompassed by such criteria, given that the local regulations do define these as hospitality objects.

## **Restriction of Movement and Border Regime**

- The Government has imposed a ban on the entry for all foreigners, save for those with permanent or temporary residence in Montenegro.

The Government has introduced a series of measures aimed at the limitation of movement, with the recommendation of 2 meters physical distance on all public surfaces, and in the objects, which operations had not been prohibited (grocery shops, pharmacies, banks, gas stations, kiosks and objects specialising in delivery of food). All private and public gatherings in the residential objects shall be prohibited for all persons, who are not members of a family household. All individual sports and recreational activities such as running are allowed with the obligation to respect the physical distance. The sport fishing is allowed with a special licence from the Ministry of Agriculture and Rural Development, when performed on public surfaces with the exception of national parks. Individuals shall be prohibited from visiting and staying at beaches (including river banks, lake shores and sea line), as well as cultivated and un-cultivated bathing and excursion sites.

A curfew is in effect every day from 11 p.m. through 5 a.m. of the following day, which means that it is forbidden to leave the residential housing facilities. Exceptions shall include children with autism spectrum disorder, persons using disability wheelchairs with one companion, as well as persons allowed to walk their pets on public surfaces for maximum 60 minutes. This restriction shall not refer to persons undertaking their regular work assignments and rendering services of public interest, being indispensable in the lives and work of citizens (health system, inspection bodies, police force, military, fire-fighting services, public utility services, media, including persons appearing as guests in media shows, agricultural activities in households etc.).

No more than one person shall be allowed to be present or to linger on a public surface area, except for children below the age of 12, children with autism spectrum disorder, and other developmental difficulties, persons using disability wheelchairs, each escorted by one parent, guardian or companion, with mandatory adherence to the 2-meter-distance rule.

- All visits to hospitals, social and children welfare institutions and prisons have been prohibited. Additionally, there is a limit of two adults per vehicle, except for the members of one household, and the vehicles used for business purposes and transportation of employees to their work sites.

The Government has recommended the performance of only essential and pressing obligations.

- Expired permanent and temporary residence permits, as well as temporary working permits for foreigners shall be considered effective until 25 April 2020.
- Persons, who are obliged to the measure of self-isolation in their homes due to their previous contact with persons infected with Covid-19, or persons returning from infected areas, shall not leave their self-isolation locations. Such measure shall remain in force until the obliged was tested negatively for Covid-19; persons who have not taken the test to Covid-19 shall remain in their homes until the expiration of the term during which the virus symptoms would be expected to appear. As a method of combat against non-conforming citizens, the Government has published a list of persons prescribed with the measure of self-isolation; the list is being updated on daily basis.
- All borders have been closed, except from the following: (i) Dobrakovo and Dracenovac (to the Republic of Serbia); (ii) Nudo, Ilino brdo and Krstac (to Bosnia and Herzegovina); (iii) Debeli brijeg (to Croatia) and (iv) Bozaj (to Albania). Other remaining border crossings have all been closed. International air traffic, railway and bus traffic has been suspended.
- All cruising ships and yachts shall be banned from sailing into the ports of Bar, Budva, Kotor, Kumbor-Portonovi, Tivat (Jetty I and II) and Zelenika, until 17 April 2020.
- The Capital of Podgorica brought an ordinance on the closure of all parks and park-forests: Karadjordjev and Krusevac, Tolosi, Gorica and Ljubovic respectively. Previously, all parks with playground equipment for children's entertainment have been timely closed: the children's park in the vicinity of the Clinical Centre of Montenegro, and the King's Park at the town centre.
- The Budva Municipality adopted an order prohibiting the use of all promenades, as well as the use of all beaches, squares, parks and public surfaces suitable for gatherings, including the Old Town of Budva. This may be used exclusively by housing owners and people living or working in the Old Town, in compliance with the orders issued by the competent state authorities.
- The Municipality of Bar brought an order on the closure of all public playgrounds and parks, including such located in school areas.

- The Municipality of Ulcinj brought a decision on the prohibition of the use of all promenades in their municipality.
- The Municipality of Niksic adopted a ban pertaining to the visit of all parks and public areas intended for sports and recreation.

### **Accountability for violation of provisions, decisions and orders**

#### ***Criminal liability***

- The Criminal Code of Montenegro stipulates sanction of up to 12 years of imprisonment for all persons arriving from coronavirus epidemic countries, failing to comply with the orders of the Ministry of Health on the mandatory quarantines, and persons not adhering to the self-isolation decision.

Furthermore, Articles 287 and 288 of the Montenegrin Criminal Code prescribe monetary fines or up to 3-years imprisonment for persons not complying with the regulations, decisions, ordinances or orders for the suppression or prevention of a hazardous infectious disease, and the respective spread.

Sanctions for grave consequences of failure to comply with the health orders aimed at suppression of a communicable disease have been provided in Article 302 of the Criminal Code of Montenegro, defined as Serious Offences against Human Health: (i) where an offence set forth in Article 287 shall result in severe bodily injury or damage to a person's health, the perpetrator shall be sanctioned by one to eight years of imprisonment, and (ii) where an offence referred to in Article 287 resulted in the death of one or more persons, the perpetrator shall be sanctioned by two to twelve years of imprisonment.

In a considerable number of cases of such criminal offence (failure to comply with health orders for the suppression of a hazardous communicable disease from Article 287 of the Criminal Code of Montenegro), the state prosecutors propose, according to Article 300 of the Criminal Procedure Code, a plea bargaining, imposing for the accused the measure of house arrest, plus a monetary fine.

#### ***Misdemeanour liability***

- The Law on Protection of the Population against Communicable Diseases stipulates monetary fines ranging from EUR 100 to 2.000 for natural persons failing to report daily during the health monitoring period either to the Institute of Public Health or to the competent health care institution, for the purpose of monitoring their condition, or failing to comply with the orders of the Ministry of Health relative to the quarantine measures.



### ***Courts and State Prosecutions Working Regime***

- The Supreme Court of Montenegro, as well as the Supreme State Prosecutor's Office, brought decisions introducing a special working regime for the period from 16 March 2020 through 30 March 2020. By virtue of new decisions, such regime was extended from 30 March 2020 until subsequent decisions.

Courts of all instances in the territory of Montenegro shall continue their panel work, whereas oral hearings shall be postponed for the mentioned period. Exceptions include urgent and extraordinary cases.

All prosecutors' offices shall resume their work in all cases. The hearings of persons shall be conducted with the mandatory 2-meters distance between all attendances.

### **Covid-19 Impact on Contracts and Torts**

- Restrictive measures imposed by the Government of Montenegro in pursuance of protection from Covid-19 pandemic may impact the compliance with contractual obligations, taking into account the disarrangement in business due to force majeure events.
- Under the general rules of the Law on Contracts and Torts, in the event of failure of one party to comply with its contractual obligations within the agreed term, the other party shall be entitled to require, in addition to the fulfilment of such obligation, the indemnification for the incurred damages, and possibly be able to terminate the agreement. The situation is different, however, if the failure to comply with a contractual obligation was caused by an outside event beyond the influence of the parties, the occurrence of which could not have been prevented, avoided or relieved, meaning the force majeure event (*vis major*).
- The law does not provide a legal definition of the term of force majeure. In practise it is recognised as a state caused by war, pandemic, natural disaster and similar events. Agreements often envisage through certain provisions the rights of the parties in occurrence of force majeure events, and regularly include the right to release of obligations under such conditions for a certain time period. If the effect of force majeure is long continuing or even permanent, the agreements often provide for the parties' right to terminate the agreement.

Hence, if the agreement does not expressly provide for force majeure events, the agreement should be analysed in order to determine whether the Covid-19 pandemic can otherwise be subsumed under its provisions. Further steps would require the analysis of the impact of the Covid-19 pandemic to the status of the particular contract.

- If the agreement does not include provisions for events commonly deemed as force majeure events, the Law on Contracts and Torts or another agreed regulation applies.

The Montenegrin Law on Contracts and Torts provides for the possibility of amendments to or the termination of the agreement by the court upon a relevant request of a party, if one of the following circumstances occur following the conclusion of the agreement: (i) circumstances



which could not have been predicted, (ii) which hinder the performance of the obligation of one party to such extent that the performance of the obligation would be too burdensome or would incur a too large loss to such party, or (iii) if the altered circumstances occurred at the moment or during the time such party was obligated to comply with their envisaged obligations. This means that, in case of default of a party prior to the occurrence of the altered circumstances, such party shall not be entitled to refer to the altered circumstances or require amendments to or the termination of the agreement. Even though the agreement would be terminated before the competent court, in practice the parties may form a mutual extrajudicial proposal for the amendment to the agreement, which refers to the altered circumstances.

Other laws include similar contractual rights. This includes the failure to comply with the contractual obligations beyond the fault of a party, and the debtor's relief from obligations due to circumstances emerging upon the conclusion of the agreement, which the debtor could not have prevented. If a party is unable to fulfil its obligations due to an event beyond the fault of a contractual party, the obligations of the other party shall cease, whereby the parties shall return their respectively received gains. In case of a partial prevention from the fulfilment of an obligation, the performing party may terminate the agreement, if the partial fulfilment does objectively not meet its requirements. Otherwise, the agreement shall remain in force, and the other party shall be entitled to require a proportionate reduction of its own obligations.

Thus, even though the Covid-19 pandemic would be considered as an extraordinary event according to the former practice of the Montenegrin courts, there is yet no general legal view as to how the Covid-19 pandemic may impact the rights and obligations of contractual parties, or whether the pandemic may be deemed as extraordinary circumstances causing the parties' failure to comply with their obligations. This depends on the provisions of each individual agreement, the individual circumstances, and in what way the individual circumstances lead to the failure to fulfil the contractual obligations.

## **Labour Issues**

- With a view to protecting the population from the Covid-19 spread, the Montenegrin Ministry of Health ordered the temporary suspension of educational activities in all public and private educational institutions, the closure of hospitality objects (see detailed review under *Tourism and Hospitality*), the prohibition of services in all commercial and hospitality objects in shopping malls, the closure of playrooms, fitness centres, of outdoor and indoor objects for sports, recreations and pools, the closure of casinos and bookmakers, the closure of hair and beauty studios, the prohibition of work for all commercial objects, save for pharmacies and objects engaging in the trade of food, drinks, means of hygiene, motor fuels, construction materials, means of protection and fertilisation of plants and propagating materials, animals nutrition and medication, baby equipment, press, agricultural machines and funerary equipment. Additionally, public transportation and taxi services<sup>5</sup> were suspended. All employers were recommended to consider and enable their employees to work from home, to any possible

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<sup>5</sup> <http://www.gov.me/en/News/222873/Temporary-measures-against-spread-of-coronavirus-are-taken.html>; <http://www.gov.me/en/News/223008/New-measures-are-ordered-New-recommendations-to-protect-citizens-from-coronavirus-are-published.html>; [www.gov.me/en/News/223059/New-measures-to-protect-citizens-from-coronavirus-closure-of-most-commercial-facilities-suspension-of-taxi-services.html](http://www.gov.me/en/News/223059/New-measures-to-protect-citizens-from-coronavirus-closure-of-most-commercial-facilities-suspension-of-taxi-services.html)

extent. The new circumstances opened numerous issues relative to labour law, not only for employers, but also the employed.

- The employers, who had to suspend their business activities due to the measures adopted by competent authorities, shall be obligated to pay out reduced salaries for their employees. Namely, according to the Labour Law of Montenegro and the General Collective Agreement, the employees absent from work due to the suspension of business operations subsequent to other circumstances (which, *inter alia*, includes the suspension due to the prohibition of business incurred by a competent state authority) shall deserve as much as 70% of their average salaries received during previous 6 months, whereas such amount shall not go below the minimum wage in Montenegro, which is currently EUR 222,-.

The Branch Collective Agreement, or the employer's collective agreement or the employment agreement respectively, may determine the remuneration at a higher rate. In case of suspension of work, the employer is obligated to adopt an act stating the reasoning for such suspension, the duration of suspension and the amount of remuneration. Under the Labour Law, such paid leave may not exceed 4 months.

- If the employees were enabled to work from home, according to the official recommendations, there shall be no grounds for the payment of reduced salaries. Naturally, the employer may at this time initiate the amendments of the agreed terms of employment, and define the reduction of salary by offering to the employee an annex employment agreement amending the main employment agreement in the segment defining the salary, but taking into account the adherence to the legally stipulated procedures for the amendments of the employment agreement, and providing appropriate reasoning for the required reduction of salary.
- Another measure imposed by the Government of Montenegro – simultaneously with the order on the temporary closure of educational institutions – was the paid leave for one of the parents of children below 11 years of age, during the period the child is not attending school or kindergarten (parents employed with the state authorities and health care institutions, however, shall not deserve this right). In order for an employee to exercise its right to a paid leave, the employee has to place a written request to the employer, providing a proof of age of the child, and evidence that the other parent is not exercising the same right. The paid leave shall not be automatically considered as annual leave, unless all steps from the legally prescribed procedure relative to the annual leave schedule and plan had been fulfilled (annual leave decision, compliance with deadlines, etc.).

Legal entities and entrepreneurs engaging in construction activities shall be obligated to display on a visible location at the construction site a notice on the temporary measures of prevention and suppression of Covid-19, and ensure that these will be adhered to (for instance, provide personal protection equipment, including masks and gloves, as well as ensuring the safe distance between the employees; at the constructions sites engaging 40 employees or more, the employers shall organise work in groups of 20 or less persons, whose composition shall not be altered). Additionally, the employers shall provide for the employees the delivery of food at the construction site, transportation to and from the construction site, making sure that the recommended physical distance is secured at all times.