

# Montenegro: New Legislation on Financial Leasing, Factoring, Purchase of Receivables and Microcredit and Credit-Guarantee Operations

NOVEMBER 2017

---

The Montenegrin Parliament adopted the Act on Financial Leasing, Factoring, Purchase of Receivables, Microcredit and Credit-Guarantee Operations on 25 October 2017. The new legislation will come into effect on 11 May 2018, regulating for the first time in Montenegro financial leasing, factoring, and purchase of receivables.

Companies currently engaged in the business of financial leasing, factoring or purchase of receivables, other than Montenegrin banks whose license already covers these activities, are obliged to file applications to obtain relevant licenses from the Central Bank until 11 December 2018.

## Financial leasing

The new legislation makes financial leasing regulated activity that may be pursued by: (i) licensed leasing companies, (ii) banks, if their license includes financial leasing services, and (iii) other companies authorized to engage in financial leasing under special regulations. License to leasing companies and banks is granted by the Central Bank of Montenegro.

The minimum share capital of leasing company is EUR 125,000. Acquisition of more than 10% of shares in leasing company is deemed qualified holding and requires a prior approval from the Central Bank. New approval is required for further acquisitions totalling in a shareholding in excess of 20%, 33%, or 50%.

Lessor's right to terminate financial leasing agreement for lessee's breach is liberalized by abolishment of a mandatory 90-day grace period that exists under the current legislation.

In lessee's insolvency, lessor has the status of a separation creditor with respect to the leased asset. Insolvency proceedings against the lessor do not affect continuing validity of the financial leasing agreement and the leased asset is not part of the lessor's bankruptcy estate unless the possession

over the asset is transferred back to the lessor in accordance with the agreement.

## **Factoring**

Factoring is now regulated for the first time in Montenegro. Factoring is defined as a transaction where the factor purchases undue, short-term (up to one-year maturity), current or future, total or partial, receivables arising from sale of goods or provision of services. The legislation distinguishes between (i) non-recourse factoring and recourse factoring, depending on whether factor assumes credit risk, and (ii) domestic and international factoring, depending on whether the receivables are cross-border or not. A special form of factoring is reverse factoring, where the factoring agreement is entered into between factor and debtor.

Factoring activities may be carried out by: (i) licensed factoring companies, (ii) banks, if their license covers factoring services, and (iii) other companies authorized under special regulations. Factoring license is issued by the Central Bank.

Minimum share capital requirement for factoring company is EUR 125,000. The rules regarding qualified holding described above with respect to financial leasing apply to factoring companies as well.

Creditor from the underlying transaction is obliged to notify its debtor on the sale of receivables to factor, and deliver to the factor original or notarized copies of the underlying agreement and/or relevant invoices, and any other document evidencing the receivables. After being notified on the sale of receivables, debtor can validly discharge the debt only to factor.

## **Purchase of receivables**

The new law also regulates purchase of receivables from banks, other legal entities or natural persons, save for short-term receivables which do not qualify as factoring arrangement, when such purchase is pursued as business activity.

The business activity of purchase of receivables may be carried out by: (i) companies licensed for this activity, (ii) banks, if their license covers this activity, and (iii) other companies authorized under special regulations. License for purchase of receivables is issued by the Central Bank.

The minimum share capital of a company registered for purchase of receivables is EUR 200,000. Acquisition of qualified holding, i.e. holding in excess of 10%, 20%, 33% and 50% thresholds, must be approved by the Central Bank.

## **Microcredit operations**

Micro finance institutions already exist in Montenegro. The new legislation increases the minimum share capital requirement for micro finance institutions from EUR 100,000 to EUR 125,000. The activities that may be pursued by micro finance institution are: (i) granting microloans, (ii) issuing guarantees, and (iii) providing consultancy services.

Microloan is: (i) earmarked retail loan in the amount of up to EUR 20,000, (ii) earmarked loan to registered entrepreneurs in the amount of up to EUR 30,000, and (iii) earmarked or non-earmarked loan to micro, small, and medium company in the amount of up to EUR 50,000.

#### BDK Serbia



Majke Jevrosime 23

11000 Belgrade

Tel: +381 11 3284 212

Fax: +381 11 3284 213

[office@bdkadvokati.com](mailto:office@bdkadvokati.com)

#### BDK Montenegro

Cetinjska 11, The Capital Plaza

81000 Podgorica

Tel: +382 20 230 396

Fax: +382 20 230 396

[office.cg@bdkadvokati.com](mailto:office.cg@bdkadvokati.com)

#### BDK Bosnia and Herzegovina

(Advokat Dijana Pejić u

saradnji sa BDK Advokati AOD)

Gundulićeva 6

78000 Banja Luka

Tel: +387 51 250 641

Fax: +387 51 250 642

[office.banjaluka@bdkadvokati.com](mailto:office.banjaluka@bdkadvokati.com)

