

Legal 500

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Montenegro

Doing Business In

Contributor

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This country-specific Q&A provides an overview of doing business in laws and regulations applicable in Montenegro.

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Montenegro: Doing Business In

1. Is the system of law in your jurisdiction based on civil law, common law or something else?

The legal system in Montenegro is a civil law system.

2. What are the different types of vehicle / legal forms through which people carry on business in your jurisdiction?

The Montenegrin Company Law recognizes following legal forms:

- Partnership (Montenegrin: *"Ortačko društvo"*) is a company founded by two or more partners (natural or legal person) to carry out activities under a common name and is established by concluding a partnership agreement. Partners are jointly, severally, and unlimitedly liable with their personal assets for the company's obligations with their entire assets.
- Limited partnership (Montenegrin: *"Komanditno društvo"*) is a company of one or more persons called general partners and one or more persons called limited partners. The general partners are jointly severally, and unlimitedly liable with their personal assets for all the company's obligations, while the limited partners are not liable for the company's obligations, except in cases expressly determined.
- Joint stock company (Montenegrin: *"Akcionarsko društvo"*) is a company whose founding capital is divided into shares that are owned by one or more members of the company – shareholders. The assets and liabilities of the company are separated from shareholders.
- Limited liability company (Montenegrin: *"Društvo sa ograničenom odgovornošću"*) is a commercial company founded by one or more legal or natural persons by investing monetary or non-monetary assets for the purpose of carrying out activities under a common name, whose founding capital is divided into shares that do not have the characteristics of securities. A company may have up to 30 members whose liability is limited to the amount of registered share capital.
- Entrepreneurship (Montenegrin: *"Preduzetnik"*) is a natural person who is engaged in economic activity and does not perform this activity for the account of another. An entrepreneur does not have the status of a legal entity and is unlimitedly liable with own assets.
- Branch of the foreign company (Montenegrin: *"Dio stranog društva"*) is a part of a company that was founded and registered outside of Montenegro and that performs activities on the territory of Montenegro.

3. Can non-domestic entities carry on business directly in your jurisdiction, i.e., without having to incorporate or register an entity?

Montenegrin legal system stipulates that foreign legal entity or organization that performs activities or generates income in Montenegro is required to file registration with the competent authority. Depending on frequency of carrying business activities previous may include appointing a tax representative, establishing a branch or permanent business unit.

4. Are there are any capital requirements to consider when establishing different entity types?

The minimum founding capital for Joint stock company is 25,000 euros in cash and for the Limited liability company is 1 euro.

For specific business activities, law may provide other amounts for minimum founding capital (investment companies, banks etc.)

5. How are the different types of vehicle established in your jurisdiction? And which is the most common entity / branch for investors to utilise?

All forms shall be registered with Central registry of business entities of Montenegro ("CRBE"). The most used form by investors is the Limited liability company.

To establish a Limited liability company, the founder shall sign decision/agreement to open the company. A public notary must notarize such documents. Founders must also adopt Articles of Association and Decisions on the appointment of the executive director or board of directors. Administrative fees for opening the Limited liability company are 5 and 3 euros. Once submitted to the CRBE it takes 7 to 10 days for the company to be registered.

6. How is the entity operated and managed, i.e., directors, officers or others? And how do they make decisions?

The management of a Joint stock company can be organized as single-tier or dual-tier system. In single-tier management of a joint-stock company, the bodies are: (i) Shareholders' Assembly; (ii) Board of Directors; (iii) Executive Director. In dual-tier management the organs are: (i) Shareholders' Assembly; (ii) Supervisory Board; (iii) Management Board.

Shareholders' Assembly is constituted of all shareholders with authorities to: elect and dismiss members of the Board of Directors, or members of the Supervisory Board, appoint and dismiss an auditor; enacts Articles of Association and other authorities in accordance with the Company law and Articles of Association.

In general a quorum of the Shareholders' Assembly consists of shareholders who own more than half of the total number of voting shares, who are present or represented by proxy, or who have voted by ballot.

The Board of Directors has management function and provides guidance to the executive director regarding the conduct of the company's business; establishes the business strategy; supervises the operations of the company; determines the amounts of dividends that belong to individual classes of shareholders, as well as the manner and procedure for their payment, appoints the executive director etc. While the Executive director represents the company, concludes contracts in its name, organizes and manages the affairs of the company, manages the assets of the company; executes decisions of the Board of Directors etc.

The Supervisory Board, in general, supervises the management of company's business and appoints members and the chairman of the management board. The Management Board manages the affairs of the company and executes the decisions of the Shareholders' meeting and decisions of the Supervisory Board.

In the Limited liability company mandatory bodies are the Shareholders' Assembly (if there is more than one founder) and the Executive director. Executive director is appointed by the shareholders and have broad authorizations in representing company, concluding contracts and making financial disposal. His authorizations may be limited in the Articles of Association or by countersignature of Authorized representative. Shareholders may also appoint one or more Authorized representatives to be collectively authorized or individually.

7. Are there general requirements or restrictions relating to the appointment of (a) authorised representatives / directors or (b) shareholders, such as a requirement for a certain number, or local residency or nationality?

In general, there are no restrictions, but the Executive director must be employed in the company and have work/residence permit if a non-national.

8. Apart from the creation of an entity or establishment, what other possibilities are there for expanding business operations in your jurisdiction? Can one work with trade /commercial agents, resellers and are there any specific rules to be observed?

One may form business relations based on various types of contracts recognized by the Montenegrin Law on Contract and Torts (agent agreement, commission agreement etc.).

9. Are there any corporate governance codes or equivalent for privately owned companies or groups of companies? If so, please provide a summary of the main provisions and how they apply.

There are no specific corporate governance codes, but mandatory provisions and procedures for privately owned companies are prescribed in the Company law. Certain and relevant provisions are provided within the other answers.

10. What are the options available when looking to provide the entity with working capital? i.e.,

capital injection, loans etc.

In the Limited liability company, the basic capital may be increased (i) new stage of existing members or members joining the company; (ii) by converting company reserves or profits into basic capital; (iii) by converting (conversion) claims against the company into basic capital; (iv) status changes resulting in an increase in the basic capital.

Likewise, the basic share capital of a joint-stock company can be increased by (i) additional contributions of existing or new shareholders; (ii) conversion of receivables and exchangeable securities into shares; (iii) from reserves and retained earnings of the company; (iv) restructuring the company.

In addition, the company may also be financed by loans from shareholders or third parties. It is to be noted that when the loan is given between connected persons the annual interest determined in accordance with the arm's length regulations.

11. What are the processes for returning proceeds from entities? i.e., dividends, returns of capital, loans etc.

The shareholders have the right to participate in the distribution of company profits in the form of dividends once a decision on the distribution of profits is made.

In the Joint stock company, shareholders of preferred shares have the right to dividend payment in a pre-determined monetary amount or percentage of the nominal value of the preferred share, which is paid before the dividend is paid to the owners of ordinary shares.

The dividend is paid in cash, but it can also be paid in the form of company shares or other securities.

12. Are specific voting requirements / percentages required for specific decisions?

The two-thirds majority of the Shareholders attending the Assembly decides on: (i) election of the company's management body and auditor; (ii) approval of contracts and other obligations assumed in the procedure and for the purposes of establishing the company; (iii) adoption of the company's articles of association.

For enacting some decisions, it is necessary that are enacted on assembly attended by shareholders who own at least two-thirds of the shares for deciding on the: pre-

emption right, decision on issuing convertible bonds, increase or decrease of the share capital.

Some decisions may also be adopted only if passed by a two-thirds majority vote of the shareholders: when a Limited liability company tends to acquire a share from one or more members of the company; decision to liquidate the company.

13. Are shareholders authorised to issue binding instructions to the management? Are these rules the same for all entities? What are the consequences and limitations?

Management of the company shall generally comply with the decisions of the Shareholders' assembly enacted within their authorizations and scope of decisions.

14. What are the core employment law protection rules in your country (e.g., discrimination, minimum wage, dismissal etc.)?

Minimum wage in Montenegro currently amounts 450,00 €.

The Labor Law contains provisions regarding the prohibition of discrimination, prohibition of work harassment, and special protection of people with disabilities, youth, women and legal guardians of children.

In addition to that there are Law on prohibition of discrimination, Law on prohibition of discrimination of people with disabilities and Law on prohibition of work harassment.

The Labor Law lists as unjustified reasons for dismissal: refusal of the employee to accept the offer of the annex to the contract; temporary inability to work due to illness, injury at work or professional disease; use of absence to maintain pregnancy, due to maternity, parental, adoptive parental, foster parental and absence from work due to care for the child or special care for the child; discriminatory grounds, such as membership of a political organization, trade union, difference based on a personal characteristic of an employee; acting as a representative of the employees in accordance with the law; if the employee contacts the trade union or the authorities responsible for the protection of rights on the basis of employment; if the employee informs the responsible state authorities of the justified suspicion of corruption; if the employee contacts or informs the employer or the relevant state authorities about risks for environment related to the operations of the employer.

15. On what basis can an employee be dismissed in your country, what process must be followed and what are the associated costs? Does this differ for collective dismissals and if so, how?

The Labor Law prescribes that the employer can dismiss the employee through individual dismissal or by pronouncing the measure for the breach of duty at work (disciplinary procedure).

The Labor Law is very strict on the justified reasons for individual dismissal (e.g. failure to achieve the results of work, abuse of the right to absence, criminal offence committed during or in relation to work). Individual dismissal is conducted in a procedure based on the Law which implies that the employer is obliged to give the employee a written warning notice that contains justified reasons for individual dismissal. The employee must be given a deadline of at least 5 working days for the reply to the warning notice, after which the employer makes the final decision.

For a serious breach of work duty (e.g. failure to achieve work duties, harassment, improper handling of entrusted funds) the employer is entitled to a measure of termination of employment through a disciplinary proceedings. This procedure may involve an oral hearing in front of the competent body of the employer to prove whether the employee has breached work duties that they are charged off.

In case the employee is dismissed, they have the right to initiate the proceedings against the employer's decision. The procedure is commenced in front of the Agency for peaceful labor dispute resolution, Center for alternative dispute resolution or the the competent court.

The collective dismissal of the employees is conducted when the employer dismisses at least 20 of the employees in a period of 90 days. Before making the final decision, the employer must consult with the employee representatives and notify the Employment Agency. Employees dismissed due to collective dismissal have a right to severance pay determined by the law and collective agreements.

16. Does your jurisdiction have a system of employee representation / participation (e.g., works councils, co-determined supervisory boards, trade unions etc.)? Are there entities which are exempt from the corresponding regulations?

Labor Law determines the right of the employees to freely establish trade unions. The employer must provide the trade union with conditions which enable them to conduct their activities efficiently. The employer has to notify the trade union about ongoing matters and to consider the trade union's opinion before making decisions regarding important professional and financial decisions which concern the employees, collective dismissal and job classification. On behalf of the employees, representative trade unions are entitled to negotiate and conclude Collective Agreements on all levels (general, sector-level and collective agreement at the workplace). These provisions refer to all the employers.

17. Is there a system governing anti-bribery or anti-corruption or similar? Does this system extend to nondomestic constellations, i.e., have extraterritorial reach?

The anti-corruption regulations are included in the Law on Prevention of Corruption and its provisions refer to corruption in context of functions exercised by the public officials.

The Law on Prevention of Corruption does not contain provisions on extraterritorial reach.

18. What, if any, are the laws relating to economic crime? If such laws exist, is there an obligation to report economic crimes to the relevant authorities?

Criminal offences against payment transactions and commercial activity are listed in a separate section in the Criminal Code. This section includes some of the offences related to economic crime e.g. evasion of taxes and contributions, smuggling, money laundering, passive and active bribery in commercial activities etc.

Montenegro has the Law on liability of legal entities for criminal offences which provides that both legal entities and authorized person in the legal entity will be charged for criminal offences determined by the Criminal Code of Montenegro. The legal entity can succumb to monetary fine and cessation of legal entity.

The Criminal Code provides for a general obligation to report the preparation of any criminal offence which is punishable by a prison sentence of five or more years. Some of the offences against payment transactions and commercial activity fall within the scope of the obligation to report preparation of the criminal offence, such as

money laundering, passive and active bribery, etc. If the person is aware of the preparation of the criminal offence and fails to report it to the competent authorities, this represents a criminal offence of its own.

19. How is money laundering and terrorist financing regulated in your jurisdiction?

The Law on money laundering and terrorist financing contains provisions on measures and actions taken to prevent and detect money laundering and terrorist financing, as well as the tasks, competence, and mode of operation of the financial intelligence unit within the organizational unit of the state administration authority responsible for internal affairs performing police duties and other significant matters.

Money laundering and terrorist are also defined as offences in the Criminal Code.

20. Are there rules regulating compliance in the supply chain (for example comparable to the UK Modern Slavery Act, the Dutch wet kinderearbeid, the French loi de vigilance)?

Montenegro does not have a special law or any kind of special act regulating compliance in the supply chain. However, the listed examples are prohibited by different regulations.

21. Please describe the requirements to prepare, audit, approve and disclose annual accounts / annual financial statements in your jurisdiction.

Obligation related to financial reporting differs in relation to the group of the legal entity (micro, small, medium, large). In any case, legal entities and entrepreneurs must submit an annual financial report to the Tax Authority for the reporting year.

Legal entities shall submit financial and management reports in written and electronic form to the Tax Authority no later than 31 March of the following year and submit the consolidated financial statements and the consolidated management report no later than May 31. The entrepreneurs shall submit their annual financial report no later than 30 April.

The audit is mandatory for subjects of public interest; medium legal entities; parent legal entities, which together with dependent legal entities fulfil the conditions for classification in the group of medium legal entities;

parent legal entities, which together with dependent legal entities fulfil the conditions for classification in the group of large legal entities; investment companies; investment funds; investment fund management companies; voluntary pension funds; voluntary investment fund management companies; and other collective investment schemes.

Medium-sized legal entities are not micro and small legal entities and do not exceed two of the following three criteria: average number of employees in the business year up to 250; total annual income up to €40,000,000.00; total assets up to €20,000,000.00.

22. Please detail any corporate / company secretarial annual compliance requirements?

Company Law prescribes that the Shareholders adopt annual financial statements and reports on the company's operations.

23. Is there a requirement for annual meetings of shareholders, or other stakeholders, to be held? If so, what matters need to be considered and approved at the annual shareholder meeting?

The Shareholders' Assembly shall be held once a year, within six months from the end of each business year, except for the first year after the company was founded (ordinary). Assembly may also be extraordinary.

The Ordinary discusses proposals and the adopted agenda, which generally includes discussing the financial reports and statements.

24. Are there any reporting / notification / disclosure requirements on beneficial ownership / ultimate beneficial owners (UBO) of entities? If yes, please briefly describe these requirements.

The Register of Beneficial Owners is an electronic database in which information on the beneficial owners is maintained and is operated by the CRBE.

Invoked forms of legal entities are obliged to enter data on beneficial owners and changes in beneficial owners in the Register of Beneficial Owners within eight days from the date of their registration in the CRBE or the Register of Taxpayers, i.e. within eight days from the change of data on the beneficial owner.

25. What main taxes are businesses subject to in your jurisdiction, and on what are they levied (usually profits), and at what rate?

The entity which in the last 12 months has turnover exceeding 30,000 euros shall calculate and pay Value Added Tax. The general VAT rate is 21%.

Rates for Corporate Income Tax are progressive. Tax rates on the amount of taxable profit amount to 1) up to EUR 100,000.00 9%; 2) from EUR 100,000.01 to EUR 1,500,000.00: EUR 9,000.00 + 12% on the amount over EUR 100,000.01; 3) over 1,500,000.01 euros: 177,000.00 euros + 15% on the amount over 1,500,000.01 euros.

The company shall also pay contributions for compulsory social insurance and unemployment insurance for its employees.

26. Are there any particular incentive regimes that make your jurisdiction attractive to businesses from a tax perspective (e.g. tax holidays, incentive regimes, employee schemes, or other?)

Tax benefits are provided for companies that are established in underdeveloped municipalities. Corporate Profit Tax Law states that the calculated profit tax for the first eight years is reduced in the amount of 100% for a newly established legal entity that performs activities in economically underdeveloped municipalities. The total amount of tax exemption for a period of eight years cannot exceed EUR 200,000.00

In addition, taxpayer who has established company in underdeveloped municipalities and who employs a person for an indefinite period of time or at least for five years, is released from the obligation to pay the calculated and withheld income tax for that employee, for a period of four years from the date of employment.

27. Are there any impediments / tax charges that typically apply to the inflow or outflow of capital to and from your jurisdiction (e.g., withholding taxes, exchange controls, capital controls, etc.)?

Legal entity (resident or nonresident) is obliged to calculate, withhold and pay withholding tax on income paid on the basis of: dividends and profit shares paid to resident and non-resident legal entities; interest, compensation for copyright and other intellectual property rights, capital gains, compensation for lease of

movable and immovable property, compensation for consulting services, market research services and audit services, which are paid to a non-resident legal entity; distribution of the liquidation balance to legal entities, at the rate of 15%.

28. Are there any significant transfer taxes, stamp duties, etc. to be taken into consideration?

Real estate transfer taxes are progressive and for the amount up to 150.000,00 euros tax rate is 3%. Rate of 5% shall be calculated on the amount that succeeds 150.000,01 euros, and rate of 6% shall be calculated to an amount over 500,000.01 euros.

29. Are there any public takeover rules?

Yes. The threshold for a mandatory takeover bid is 30% voting rights. Takeover rules are provided for Joint-stock companies. The squeeze out right is set at 95%.

30. Is there a merger control regime and is it mandatory / how does it broadly work?

There is an obligation on the participants to notify the Competition Protection Agency on the concentration if and when (i) the combined total annual income of at least two participants in the concentration achieved on the Montenegrin market is greater than five million euros in the previous financial year; (ii) the joint total annual income of the participants in the concentration achieved on the world market in the previous financial year is greater than 20 million euros, if at least one of the participants in the concentration achieved one million euros of income in the territory of Montenegro in that period.

31. Is there an obligation to negotiate in good faith?

Yes, in establishing contractual relations and exercising rights and obligations from those relations, the parties are obliged to adhere to the principles of conscientiousness and honesty.

32. What protections do employees benefit from when their employer is being acquired, for example, are there employee and / or employee representatives' information and consultation or

co-determination obligations, and what process must be followed? Do these obligations differ depending on whether an asset or share deal is undertaken?

There are no specific rules and obligations in the case of share or asset acquisition.

If there is a change of employer or part of the employer due to a corporate statutory change (e.g. merger) the successor employer takes over the employees from the predecessor employer and is obliged to respect all the rights and obligations of the employees from the employment relationship valid on the day of the takeover, as well as to enable trade union activity.

Employers shall notify the employee of the acquisition at least 15 days before the acquisition date and the employee who is against the takeover has the right to severance pay. They also shall notify the trade union 30 days before acquisition.

33. Please detail any foreign direct investment restrictions, controls or requirements? For example, please detail any limitations, notifications and / or approvals required for

corporate acquisitions.

In general, there are no restrictions or controls. There are requirements for notifying the Central Bank of FDIS, but only for statistical purposes.

34. Does your jurisdiction have any exchange control requirements?

No.

35. What are the most common ways to wind up / liquidate / dissolve an entity in your jurisdiction? Please provide a brief explanation of the process.

The most common way to dissolve an entity is the procedure of voluntary liquidation, which can be a long or short procedure. The short procedure includes a statement of the founder's responsibility for all the company obligations for three years from the date of liquidation. A long procedure would include notifying creditors and tax control of the company's and records.

A company may also be dissolved in bankruptcy proceeding when over indebted.

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