MONTENEGRO
Capital Market Authority

Pursuant to Article 50, paragraph 5 of the Law on Capital Market ("Official Gazette of Montenegro" No. 01/18), the Capital Market Authority (hereinafter referred to as: the Authority), at its 30th session held on 19 October 2018 has issued the

RULES
on the manner of registration of private placement of securities in cases when securities are not issued through an initial public offering and/or are not admitted to trading

Article 1

These Rules shall prescribe in detail the manner of registration of private placements of securities in cases when securities are not issued through an initial public offering and/or are not admitted to trading, as well as the contents of the documentation when applying for registration of sealed bids to the Authority.

Article 2

When issuing securities through private placement, buyers from the issue may solely be as follows:

1) existing shareholders on the basis of preemptive rights;
2) founders when simultaneously establishing a joint stock company;
3) accredited (qualified) investors;
4) not more than 30 persons clearly identified in advance who committed to buy the entire issue, and who are well aware of investment risks and performance of the issuer;
5) persons not identified in advance in the case when value of the issue does not exceed EUR 40,000.

Private placement of securities, except for the offer addressed only to existing shareholders, founders in the simultaneous establishment of a joint stock companies and accredited (qualified) investors shall not be addressed to more than 30 persons clearly identified in advance.

In the case of a private placement of securities to existing shareholders on the basis of preemptive rights, the existing shareholders may acquire shares only in proportion to the number of shares they already hold.

In the case of limited number of buyers referred to in the paragraph 1, item 4) of this Article, any natural or legal person shall be considered to be a single person. When a natural or legal
person appears as a buyer on behalf of multiple legal and/or natural persons, when setting limits on the number of buyers, any legal and/or natural person on whose behalf a legal or natural person acts shall be counted separately.

Article 3

The issuer who offers securities through a private placement (hereinafter referred to as: the issuer) shall submit the application for registration of a prospectus for private placement of securities (hereinafter referred to as: a private placement memorandum (also referred to as PPM).

The application for registration of a private placement memorandum shall be submitted on forms available on the Authority's website.

Along with the request referred to in paragraph 1 of this Article, the issuer shall submit the following documents to the Authority:

1) incorporation document (incorporation agreement or decision of incorporation);
2) Articles of Association, i.e. another general act on organization;
3) a copy of the certificate of registration in the Central Register of Commercial Entities (hereinafter referred to as: the CRCE) and the decision of the authorized authority on issuance of a license and a permit for the establishment;
4) a copy of the decision of registration into the Registry of issuers kept by the Authority;
5) decision on the issue of securities, provided that, if it is about the issue of shares, the decision shall particularly contain the established deadline during which the existing shareholders can exercise their preemptive right;
6) shareholders' list from the Central Clearing and Depository Company (hereinafter referred to as the CCDC) with indication of a number of shares for whose payment shareholders are entitled in proportion to their share in the capital of the issuer (with the percentage the share and a number of shares to which a single shareholder is entitled) , which is an integral part of the decision on the issue, when applicable;
7) Minutes of the Shareholders' meeting, i.e. of the other competent authority, where the decision on the issue of securities was made, which states majority votes by which the above decision was made;
8) a public notice of registration of a private placement memorandum, if applicable;
9) agreement/ agreements or other legal act regulating mutual rights and obligations of the issuer and a potential buyer regarding the issue, if applicable;
10) Draft private placement memorandum;
11) balance sheet and income statement for the previous business year with the certified auditor's report, and when issuers are banks, also the last periodic report on operations submitted to the Central Bank of Montenegro, in accordance with regulations;
12) the report of payment transactions holder where the issuer has an account on the balance of the business account of the issuer for the last 60 days before submission of the application and on the movement of issuer's liquidity, i.e. on accrued liabilities at the date of submission of the application and on the number of days in blocked period in the previous and in the current year to the date of submission of the application;
13) a responsible person’s statement that the issue is based on legal regulations and that the information provided in private placement memorandum are credible and legally valid;
14) authorization and information about the person with whom the Authority will cooperate in the process of considering an application for registration of the private placement memorandum;
15) a proof of payment of the prescribed fee to the Authority.

When the issue of securities through private placement is addressed to not more than 30 persons clearly identified in advance, the issuer shall, along with the documentation referred to in paragraph 3 of this Article, submit a proof of identity of persons clearly identified in advance and the statements of those persons that they are very well aware of investment risks and performance of the issuer and that they are obliged to buy the entire issue.

The issuer who does not issue shares through private placement addressed to founders when simultaneously establish a joint stock company, does not submit appendices referred to in paragraph 3 items 3) to 12) of this Article.

When the issuer issues shares through private placement addressed to founders when simultaneously establishing a joint stock company, the issuer shall, along with the documentation referred to in paragraph 3 of this Article, also submit the list of buyers of shares and (the initial) public offering with a specified number of shares bought by every single buyer and a bank certificate on the payment of funds for each single buyer.

The issuer shall submit appendices referred to in paragraph 3 items 1) to 4) of this Article to the Authority when submitting the first application for registration of a public placement memorandum, and during subsequent application for registration of a private placement memorandum, the issuer shall only submit to the Authority only changes and amendments of those documents or a responsible person’s statement that such changes and amendments have not occurred.

The Authority may require the issuer to submit also other documents, except for documents referred to in paragraphs 3, 4, 5 and 6 of this Article, which it deems necessary to decide upon the application for registration of a public placement memorandum.

Notwithstanding paragraph 3 of this Article, in cases when applicants referred to in paragraph 1 of this Article are Montenegro or local self-government units, the Authority may require these issuers to submit other appropriate documentation, in accordance with the specificities of budget funding.

Article 4

The issuer shall submit to the Authority the application for registration of a private placement memorandum not later that within the deadline required to determine by the decision on issuance of securities.

If the issuer fails to submit the application within the period referred to in paragraph 1 of this Article, the issuer may submit the application for registration of a private placement memorandum when a new decision on the issue of securities is made.
Article 5

The decision of issuer’s competent authority on the issue of securities through public placement shall contain:

1) name and address of the issuer;
2) registration number of the issuer in the Registry of issuers kept by the Authority;
3) name of the authority that issued the decision;
4) place and date of the decision;
5) designation of the type and class of securities;
6) serial number of the issue and the total number of issued securities of the same class;
7) number and the initial, i.e. nominal (par) value of securities, if determined;
8) rights attached to securities;
9) a manner of securities sale;
10) start and end time of subscription and a list of places for subscription and payment of securities;
11) an indication of the issuer's retained right to terminate a subscription and payment of securities prior to the expiry of the established deadline;
12) first and last name and a position of the persons authorized by the issuer to implement the issue of securities;
13) an explicit provision on the intended issuance of securities through private placement;
14) deadline within which the application to the Authority will be submitted;
15) specified number of securities necessary to subscribe and pay in order to consider issue of shares successful;
16) deadline within which the existing shareholders may buy shares in proportion to their share in the capital of the issuer, in the case of shareholders exercising preemptive right;
17) deadline for payment of other securities, other than shares;
18) explicit and unambiguous identification of persons who will be addressed a private placement of securities, except in the case of issue of securities whose value does not exceed EUR 40.000 and which is addressed to non-identified person;
19) way of communication with potential buyers (by publishing a private placement memorandum or delivering a private placement memorandum to these persons);
20) form and the amount of contribution of persons to whom private placement of securities is addressed, except in the case of the issue of securities whose value does not exceed EUR 40.000 and which is addressed to non-identified persons.

Article 6

When securities are issued through private placement the issuer shall draw up a private placement memorandum which must contain accurate and complete information about the issuer and the rights attaching to securities, in accordance with the law and the Authority's regulations.
Notwithstanding paragraph 1 of this Article, when issuing securities through private placement addressed to founders for simultaneous establishment of a joint stock company, the issuer is not required to draw up a private placement memorandum.

When securities are issued through private placement the issuer is not required to draw up a private placement memorandum.

The issuer may publish or deliver to potential investors a private placement memorandum for inspection after the registration of the prospectus by the Authority.

If the issuer publishes a private placement memorandum, it must clearly state that the publication of that prospectus does not constitute a public offering of securities, but only notice on a private placement of securities.

A private placement of securities submitted to buyers for inspection must be in all identical to the Draft private placement memorandum submitted to the Authority when applying for registration of a private placement memorandum.

Changes and amendments to the approved private placement memorandum can be made only with the prior registration with the Authority, following the same procedure it when registering the original private placement memorandum. In the case of changes and amendments to a private placement memorandum, the investor has the right to withdraw from the previous subscription and the right to refund of funds paid.

**Article 7**

A private placement memorandum shall mandatory include information about:

1) securities, as follows:
   - the scope and series of issue of securities;
   - a designation of type and class of securities, their total number, initial or nominal (par) value and the description of rights attached to those securities;
   - a period in which the subscription and payment of securities are opened, place, manner and time of that subscription and payment;
   - a number of shares required for subscription and payment in order to consider the issue of shares successful;
   - an indication of the issuer's retained right to terminate subscription and payment of securities prior to the established deadline;
   - preemptive rights, beneficiaries and a scope of that right, if any;
   - restriction of purchase, a scope of restriction and the persons to whom it relates, if any;
   - restriction on transactions, if any;
   - for long-term debt securities issued, a method of calculation of interest and the period in which they will be paid (e.g., semi-annually, on maturity, an indication of whether the interest calculation involves the actual number of days in a given period of time, including or excluding the last day following the maturity date of the last interest rate, the date when the first payment of interest will be paid and the like.).
- for long-term debt securities long-term debt securities holder's rights in the event of delay in payment interest and a method of calculation of the statutory default interest in the case of issuer's delay in payment of interest;
- for long-term debt securities, the issuer's right to early redemption of long-term debt securities and the conditions under which the issuer has the right to early redemption of long-term debt securities, or an indication that the issuer has no right to early redemption of these securities;
- for long-term debt securities, the right to early repayment of long-term debt securities and the conditions under which the holder of long-term debt securities may require the payment before the maturity date (in the case of late payment interest, violations of obligations under guarantee, the deadline necessary to elapse from the first day of maturity so that a holder of long-term debt securities can acquire the right to early repayment of long-term debt securities and the like);
- for long-term debt securities, name and address of the institution through which the issuer settles its obligations to buyers of securities;
- a statement of investment where the information about the issuer's intent with respect to the objectives and a manner of usage of capital which will be obtained by selling long-term debt securities;
- for long-term debt securities, if one or more persons issued a guarantee for the fulfillment of obligations related to long-term debt securities to which a private placement memorandum relates, a private placement memorandum must also contain information about the guarantor, such as: binding statements of the guarantor; information whether a guaranty is provided by joint or several guarantor; a deadline within which guarantors are required to pay the cost of long-term debt securities on maturity; an indication that liabilities of guarantors relate to all bond holders, as well as an indication that all long-term debt securities holders are authorized to place a request for payment to all guarantors, if a severally liability is provided; an indication that joint and several liability shall remain in force until all liabilities of the issuer arising from long-term debt securities are not fully met, as well as that they contain liabilities of complements, and not a substitute for any other rights that the holder could have on the basis of long-term debt securities; when and in what sequence the holder of long-term debt securities may refer to rights attached to a guarantee (after or without a prior request for the implementation of any right and without taking any action or procedures towards the issuer); data contained in the guarantor’s balance sheet and income statement along with reports on audit performed, for the last business year;

2) legal status and capital of the issuer, as follows:
- name and a registered office address, legal form and the date of establishment, number of decision on registration with the CRCE and TIN;
- registration number in the Registry of issuers kept by the Authority;
- the amount of the total and the amount of equity capital as of three days before submission of application;
- ownership structure of the capital as of the day on the decision on the issue;
- number of shares of each class of equity capital, initial, i.e. nominal (par) value of such shares, if determined, and the amount paid for such shares;
- capital relationship with other legal persons;
3) issuer’s business activity, as follows:
   - description of activity, i.e. subject matter of operations according to registration, stating the dominant activity on the basis of which statistical classification of the issuer was performed;
   - an overview of major current investments;
   - factors related to business operation risk (e.g. non certified products, cash flow or liquidity problem, dependence of the main supplier or customer, nature of business, the lack of market, etc.) which influence realization of investment from operations or the achievement of an appropriate outcome from an investment;
   - court or other disputes or any other legal actions which may significantly affect the financial status;
4) issuer’s financial position, as follows:
   - data from the balance sheet and income statement for the last business year, with the certified auditor's opinion;
   - legal person's name and first name and last name of a person who performed the audit, and if that person refused to perform or to sign the audit or included some reservations the audit, those fact must be stated along with reasons that led him to do so;
5) issuer’s responsible persons, as follows:
   - first and last names, addresses and professional qualifications of the Executive Directors and members of the Board of Directors of the issuer, i.e. other responsible persons of the issuer;
   - data on past work experience;
   - equity participation of responsible persons in the issuer or other joint stock companies, with the number and type of shares and percentages of equity participation;
6) statement of investment containing:
   - investment objectives’ description;
   - a manner of using capital to be raised by the issue;
   - expected effects of investment, and
   - description of the basic investment risks related to issuer's business operations, the nature of securities or other factors;
7) a statement which points out that private placement is addressed exclusively to the existing shareholders on the basis of preemptive right; or founders in the simultaneous establishment of a joint stock company, or accredited investors; or to not more than 30 persons clearly identified in advance who committed to buy the entire issue, and who are well aware of investment risks and performance of the issuer, i.e. that the issue which does not exceed EUR 40,000 is addressed to persons not identified in advance;
8) data on a buyer clearly identified in advance or a potential investor, as follows:
   - first and last name and unique master citizen number for a natural person, i.e. name, address, registration number and date of registration in the appropriate register for a legal person;
   - identified buyer or a professional investor;
   - number of shares initial, i.e. nominal (par) value of shares, if determined, and the value of equity participation in the issuer owned by the buyer by the issue concerned (expressed in absolute and relative values);
- data on number of shares bought by buyers from this issue.

When the issuer is the bank it shall be required to submit, in addition to the data referred to in paragraph 1, item 4) of this Article, the following information:

1) Return on Assets ratio (RoA);
2) Return on Equity ratio (RoE);
3) earning assets to total assets ratio;
4) loan to deposit ratio;
5) number of large exposures to a single counterparty or group of connected counterparties;
6) the sum of large exposures in relation to first class capital;
7) total provisions for potential credit losses;
8) total provisions to other assets;
9) investments of the bank in other legal persons.

When determining the accuracy of the data referred to in paragraph 2 of this Article, the Authority shall cooperate with the Central Bank of Montenegro.

A private placement memorandum shall mandatory contain the acknowledgement signed by the responsible person of the issuer which reads:

"In accordance with information and data at our disposal we hereby declare that all information in this private placement memorandum constitutes a full and truthful presentation of assets and liabilities, profit and losses, financial position and results of operations of the Issuer and of the rights contained in the securities to be issued, as well as that the facts that could affect the completeness and veracity of this private placement memorandum have not been omitted."

The Authority may require the issuer to enter also another information in a private placement memorandum, other than information referred to in paragraph 1 of this Article, which it estimates necessary to be stated when deciding on the registration of a private placement memorandum.

**Article 8**

The Authority may approve not to enter information in a private placement memorandum, whose entry is otherwise required in accordance with these Rules, if it considers that:

1) the disclosure of such information would be contrary to the public interest;
2) information is of little importance, and it is unlikely that may affect evaluation of issuer's rights and obligations, financial position, profits and losses and prospects of the issuer; or
3) the disclosure of such information would be detrimental to the issuer, but it is unlikely that its omission would indicate an investor to erroneous conclusions regarding the facts and circumstances necessary for evaluation of securities.

**Article 9**

When the issuer, in the same calendar year, repeatedly issue securities through private placement on the same basis, it is required to submit to the Authority a private placement
memorandum drawn up in accordance with these Rules for the first issue in that year (the base private placement memorandum), while, for the subsequent issues in that year it is required to submit a private placement memorandum containing only differences arose from the publication of the base private placement memorandum, and which may affect the value of securities (private placement memorandum supplement), provided that the base private placement memorandum is enclosed to that private placement memorandum supplement.

Article 10

In the case of receiving incomplete or untimely applications for registration of a private placement memorandum, the Authority shall, within a reasonable time, in writing, ask the issuer to rectify the deficiencies identified.

The issuer shall, within a period specified by the Authority, resolve identified deficiencies and provide the Authority with the required documentation.

The Authority shall decide on the application within the period of 30 days following the receipt of a duly submitted application.

If the issuer does not correct the deficiencies within the given deadline, the Authority shall issue the decision rejecting the application submitted.

In the case referred to in paragraph 4 of this Article, the issuer cannot resubmit the application for registration of a private placement memorandum to the Authority relating to the issue of the same type of securities prior to expiration of three-month period following the date of the decision issued by the Authority referred to in paragraph 4 of this Article.

Article 11

The Authority shall, within the period of 30 days following the receipt of duly submitted application for registration of a private placement memorandum, issue the decision on registration of a private placement memorandum or the decision rejecting the application.

The Authority shall reject the application especially in cases when:

1) it finds that the data in the application and documents enclosed to the application are not in compliance with the law and these Rules;
2) it finds that the issuer raises capital for another person in order to avoid that person to appear as the issuer;
3) it considers that the issuance of securities jeopardizes public interests.

If the case of rejection of the application referred to in paragraph 1 of this Article, the issuer may submit to the Authority the application for registration of a private placement memorandum relating to the issue of the same type of securities after expiry of six-month period following the date of decision on rejection of the application.
Article 12

The issuer shall, within the period of three days following the receipt of the Authority's decision on registration of the issue of shares on the basis of preemptive right, publicly inform the existing shareholders about the fact that they can take advantage of preemptive right within the period specified in the decision on issue of shares.

Article 13

The issuer of shares shall, not later than eight days after the deadline for registration and payment of shares, notify the Authority of the value and number of shares sold, in order to determine the successfulness of issue of shares issued through private placement.

Notwithstanding paragraph 1 of this Article, the issuer who issues shares to founders during simultaneous establishment of a joint stock company shall not submit the notification referred to in paragraph 1 of this Article.

Article 14

When the issuer withdraws from the issue of securities with the issuance of a private placement memorandum or when such issue of shares does not succeed, the issuer shall notify the Authority thereof within the period of eight days following the date of the decision to withdraw from the issue, i.e. following the date of expiry of the deadline for subscription and payment of shares.

In the cases referred to in paragraph 1 of this Article, the Authority shall issue the decision on annulment of the decision on registration of a private placement memorandum.

Article 15

A private placement memorandum has the same legal effect in terms of meeting the requirements for the admission of the issued securities to listing as a prospectus approved for a public offering of securities.

Article 16

Trading in securities which are the subject matter of these Rules shall not be carried out on the securities markets, i.e. it shall be carried out over-the-counter - directly between the seller and the buyer of these securities.

The buyers shall pay the funds for the purchase of securities issued through private placement to a separate bank account opened by the issuer for this purpose, and the funds for purchase of other securities the buyers shall directly pay to the issuer's business account.
Article 17

The issuer of shares shall submit to the Authority, along with the request to determine the successfulness of the issue of shares through private placement, the list of buyers of such shares, specifying the number of shares bought by individual buyer and a certificate, issued by the bank, of payment of funds for purchased shares for each individual buyer.

The issuer that issues shares through private placement addressed to founders in the simultaneous establishment of a joint stock company shall submit documents referred to in paragraph 1 of this Article together with the application for registration of the initial public offering in the simultaneous establishment of a joint stock company.

The Authority shall make the decision on determining successfulness of the issue of shares issued through private placement.

The Authority shall submit the decision referred to in paragraph 3 of this Article, together with the list and evidence referred to in paragraphs 1 and 2 of this Article, to the CCDC.

The documentation referred to in paragraph 1 of this Article shall be the basis for the CCDC for transferring ownership of shares issued through private placement.

Article 18

The issuer of other securities issued through private placement, except for shares shall submit to the Authority and the CCDC directly, the information on buyers, such as: first and last name i.e. name and registered office of the buyer and the number of securities bought by individual customer, submitting also a proof of payment for the securities purchased by each individual buyer, no later than the next business day following the date of receipt of the payment of funds by the securities buyer.

The Authority shall make the decision on determining successfulness of the issue of shares issued through private placement, and submits the same to the CCDC.

The decision referred to in paragraph 2 and documentation referred to in paragraph 1 of this Article shall be the basis for the CCDC for transferring ownership of shares issued through private placement.

Article 19

These Rules shall enter into force on the eighth day of its publication in the "Official Gazette of Montenegro".

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