

AMERICAN CHAMBER OF COMMERCE TO THE PRESIDENT OF THE BOARD OF GOVERNORS¹

Dear Ms. Bulatovic,

I thank you for your letter of May 16, 2016 and the earlier invitation to attend the Business Luncheon held on May 10.

I share your positive impressions from the aforementioned event and I consider it successful and very constructive from the aspect of contribution to the further improvement of the business environment in Montenegro.

I express my regrets that, due to the limited time, there was no opportunity to address other topics that were of interest to the AmCham members.

In line with what I have already said, we hereby submit the answers to questions that were planned to be posed by AmCham members during the event.

I hope you will find the answers adequate and I believe that AmCham members in cooperation with the Government and the other stakeholders, will continue to give significant contribution to the overall progress of the Montenegrin economy.

Respectfully,

Milo Đukanović

ANNEX: ANSWERS TO QUESTIONS POSED

- 1. In which part was the existing Company Law assessed by the Law proposer as fit for amending and thus, with what expectations did you assess the process of adoption of the new Company Law? What results has a working group of the Ministry of Economy achieved so far with regards to the Draft Law?**

RESPONSE: During the previous period there have been a certain interest from business associations, such as the American Chamber of Commerce, for amending the Company Law. The Ministry of Economy representatives have received certain comments that were carefully considered.

The Ministry of Economy has established an inter-sector working group and has almost finished working on the Draft Law, whose adoption is expected in IV quarter 2016. Additional consultations are being planned with all business

¹ Please note that this letter is a translation of the original letter in Montenegrin language, prepared by AmCham Montenegro

associations, prior to consulting the public with regards to the Draft Law, in order to provide an overall approach to this, perhaps, the most important systemic Law for business activities of enterprises.

The existing Law has been regularly aligned with the EU Company Law and Montenegro has achieved a high degree of conformity with the EU *acquis* in the area of the Company Law. It has been recognized by the European Commission as well.

However, due to some conceptual maladjustment, as well as to the legal and technical scheme, the text of the current Company Law is significantly burdened with numerous amendments. The field experts consider it is necessary to adopt a new and comprehensive Company Law.

In the current legislation there are no provisions on the cross-border merger, which is a logical consequence of the fact that cross-border merger is actually designed to encourage the development of a single EU market. Therefore, certain rules related to the cross-border merger will be a part of the new Law. These rules include the following: simplified rules on cross-border merger through acquisition by a company which holds all the shares of the company subject of takeover, a thorough investigation of the legality of cross-border mergers, as well as the participation of employees.

We made an insight into the possibilities for the inclusion of the provisions of the Statute of the European Society (*Societas Europaea*) or that of the European Economic Interest Grouping (EEIG) into the new Company Law. However, it is decided that this provision should be elaborated in more details through a Special Law. The introduction of these new forms of business organizations will enable all interested parties, especially those who come from the territory of another member state of the European Union, to realize the benefits that these two forms of transnational companies allow for cross-border economic activity.

In addition, we considered the abuses of founders of Limited Liability Companies or directors and we will try to legally define possibilities for sanctioning these abuses. Added value of the Law will be the fact that we incorporated the recommendations of the EU which are not binding, but which will significantly improve the Law. The matter, meaning the *acquis* of companies of the EU includes a number of directives which contain rules on the formation, registration, division of joint stock companies, domestic and cross-border mergers, takeovers of joint stock companies, shareholders' rights, linking of registers, requirements in terms of capital and requirements with regards to the transparency of operations.

Companies' rights relate also to recommendations on the policy of the remuneration for directors of joint stock companies, recommendations on the role of independent directors and members of the Controlling Board of joint stock companies, as well as to the Commission Committees of these companies. These recommendations represent desirable regulatory solutions for certain relationships in areas they regulate.

The key component of the work after drafting the Law shall be to ensure that all groups, which are in any way involved in the implementation, be trained and informed. Some of these activities, particularly with regards to the education of public, will be carried out in coordination with the American Chamber of Commerce and other business associations.

- 2. When it comes to the Law on Foreigners, the Government accepted the part of employers' suggestions regarding the liberalization of the process of regulating the temporary residence and working permit, which is a positive signal. However, there are some additional suggestions that have not been adopted and are recognized as essential to the overall business environment in Montenegro. With this regard, can we expect that in the coming period the Government will be ready to offer an opportunity to representatives of business associations to take participation in the preparation of legal solutions? We**

believe that our contribution can result in a better regulatory framework, as we possess extensive experience in the application of the Law.

RESPONSE: Since the beginning of the application of the Law on Foreigners (Official Gazette of Montenegro, no. 56/14), Articles 64 and 66 of the Law have been attracting serious attention, and for this reason in May 2015 the Parliament of Montenegro adopted the Law on Amendments to the Law on Foreigners (Official Gazette of Montenegro, no. 28/15), which postponed the application of Articles 64, 66 and 133 of the Law to November 1, 2015. Article 64 paragraph 1 of the Law reads that a temporary residence and work for employment and seasonal employment of a foreigner may be granted only if the Employment Agency of Montenegro did not register unemployed persons eligible for employment for jobs to which the license relates, or if the individual registered with the Employment Agency of Montenegro refused to be employed (all related to the Article 66 of the Law which stipulates that employer may provide a written offer of employment to a foreigner, after obtaining the confirmation of the Employment Agency of Montenegro that the Agency does not have any records of unemployed persons who meet conditions of employment on matters to which the job offer relates or the person with the employment Agency refused employment on these transactions).

However, after November 1, 2015, there were difficulties in the application of the Article 64 and 66 of the Law on Foreigners and for that reason, the Government of Montenegro at its session of September 28, 2015 adopted a Draft Law on Amendments to the Law on Foreigners, which was adopted by the Parliament and published in the Official Gazette of Montenegro, no. 16/16. Articles 64 and 66 of the Law on Foreigners were thus deleted. In this way, the question that raised a lot of issues was resolved.

According to the Program of the Government of Montenegro, the adoption of a new Law on Foreigners is envisaged for the fourth quarter of 2016. We expect that representatives of business associations will be actively involved in drafting this Law.

- 3. AmCham Members are very concerned about the abolition of the land for sites which have not yet been brought to their purpose, according to the Spatial Plan for the Coastal Area of Montenegro. If despite many objections by land owners, this drastic solution is adopted in the final document, is the Government of Montenegro planning through its budget an Indemnity Fund for those owners whose real estate - land will be devalued?**

RESPONSE: The special purpose Spatial plan for the coastal zone represents the first such planning document after the adoption of the Regional Spatial Plan of the Southern Adriatic (1968), which is integrally considering the coastal region of Montenegro. The adoption of this plan is a prerequisite for the development of Montenegro as a high quality tourism destination, since it favors the construction of new facilities for the basic tourist accommodation, primarily hotels. By its solutions, the Plan does not affect the acquired construction rights of land owners, which are achieved by obtaining a building permit. Therefore, an Indemnity Fund is not planned, since the plan respects the acquired rights to construction.

- 4. At the Government session held on February 21, the Government adopted the Draft Law on Amendments to the Labor Law in order to align it with the new Law on Administrative Procedure. This Draft Law has been negatively accessed by the business community in Montenegro, because, among other things, it diminished rules for the submission of acts to the employee, which is considered to be endangering the legal security of both employers and employees. Business associations have already addressed the Ministry of Labor and Social Welfare, as well as the Parliament of Montenegro, clearly pointing out to the problem with which we will be confronted if this proposal is adopted. We**

kindly ask you to highlight the position of the Government with regards to the withdrawal of the Law from the Parliamentary procedure and providing opportunities for social partners to agree on it, as they were not involved in the process from its preparation.

RESPONSE: The Administrative Procedure Law was adopted in the Parliament of Montenegro in December 2014.

The new Law has been harmonized with European principles and standards of good governance that ensure that the citizens and legal persons are freely exercising their rights in accordance with the Principles of the Public Administration produced through the SIGMA project of Public Administration Reform.

From the adoption of the Law on Administrative Procedure, to the beginning of its application in practice, it is necessary that the specific procedures get aligned with this Law, which represents an umbrella for administrative procedures. Administrative procedures in all countries represent one of the pillars for the proper functioning of the public administration. Thus, by harmonizing these specific individual procedures we reduce administrative obstacles and allow citizens to more easily exercise their rights.

As a proposer of the Law on Administrative Procedure, the Ministry of Interior Affairs did a preliminary analysis of 497 laws existing within the legal system of Montenegro. The analysis that was made in July 2014, according to the jurisdictions of the departmental ministries, showed that in 367 laws there are provisions which needed to be harmonized with the new Law on Administrative Procedure.

The Government of Montenegro instructed the Ministry of Interior Affairs to monitor and inform the Government about the dynamics of harmonization of special laws (among which is the Labor Law) with the new Law on Administrative Procedure.

Since the new Law on Administrative Procedure no longer recognizes the institute of applicability of the Law on Administrative Procedure, it needed to be deleted from all laws. It means that the new Law on Administrative Procedure will be directly applicable in terms of the rules of procedure including the rules for submitting acts to the employee. For this reason, there is no legal basis for threatening the legal security of the employer and employees by the adoption of amendments to the Labor Law. I use this opportunity to inform you that the Draft Law on Amendments to the Law on Administrative Procedure is in the Parliamentary procedure. It suggests the application of this Law as of January 1, 2017.

- 5. According to the latest Law on Health Insurance, in the part related to the financing of the compulsory health insurance, the Article 57 reads that funds are provided both from the budget and the other means regulated by the Law. According to the information we received from the Ministry of Health, it is planned that the new Law on Excise will define resources that could be separated for the treatment of rare diseases and program for organ transplants. Could you inform us when the Law on Excise will be adopted and specify when will these funds be available for the treatment of rare diseases?**

RESPONSE: According to the document “Structural Reforms of the Health Care System” with the Action plan 2015-2017 which the Government adopted in July 2015, it is planned the activity by the Ministry of Health for submission of following initiatives:

- Complement of the Law on Excise, in I quarter of 2017
- Complement of the Law on Concessions, in I quarter of 2017

The aforementioned will be proposed in order to set aside an appropriate percentage of revenue generated from excise goods, or from concession fees, as additional funds to finance the health care.

The reason for filing this initiative is based on the fact that in the field of the health promotion and prevention of diseases, excise goods that are consumed or are consumed in quantities higher than allowed, can be the cause for the deterioration of the citizens' health. The use of concessional resources restricts the use of certain natural resources, which can also have a negative impact on the health of the population.

Thus, there is a need for systematic solution to this problem through amendments to several legislative solutions. The Government will work on it through a wide consultative process in 2017.

6. In order to improve quality and availability of medicines, in 2014, Government of Montenegro has come to a decision and instructed Health Insurance Fund to agree with private pharmacies on validity of prescriptions and prescribed medicines in private pharmacies as well, thus equalizing private and public pharmacy sectors. This project has been assessed as positive by all stakeholders (patients, Ministry of Health, Health Insurance Fund and Association of Private Pharmacies). However, the contracts with private pharmacies have been cancelled, so from November 2015 citizens of Montenegro cannot get free prescribed medicines in private pharmacies. We would like to kindly ask you on future plans of the Government in this regard, so the health sector would return on previously defined reform pathway with the aim to provide beneficiaries of the Fund with the possibility to enjoy their lawful rights in all eligible pharmacies, both public and private?

RESPONSE: American Chamber of Commerce submitted a set of recommendations to the Ministry of Health and the Health Insurance Fund in November 2015. The recommendations proposed the prolongation of the aforementioned agreement with private pharmacies for 2016. This would give an option to citizens to practice their rights stipulated by the Law on Health Insurance in private and state owned pharmacies equally. The Ministry of Health provided a response to these recommendations by attached document number 51-641/2015 dated on November 17, 2015.

Signing an agreement with private pharmacies in 2015 was a timely bound project by Health Insurance Fund with accordance to Government conclusion number 08-641 dated from March 13, 2014, with the aim to allow citizens to enjoy their right of acquiring prescribed medicine in private pharmacies as well in order to address the shortage of medicine during this period. These types of contracts are agreed solely for the benefit of citizens of Montenegro, not the needs of private pharmacies or for purpose of enabling commercial market benefits to pharmacies.

Aforementioned contracts were cancelled upon the expiry of the signed timeframe and stabilization of supply chain within the system of public pharmacies. Private pharmacies complaints were addressed by Ombudsperson and Anti-trust Agency who gave their opinion on legality of aforementioned contracts. The stabilization of the supply chain is sustained and preconditions for citizens to enjoy their rights and acquire prescribed medicine in system of public pharmacies, even in places where there are no private pharmacies.

The mainstream position of the Government is to enable an environment in which citizens can enjoy their right for acquiring prescribed medicine, which is now being successfully realized through state Pharmacies of Montenegro "Montefarm". If, for any reason, current sustainability of supply chain of the public system is diminished, the Government will assess the situation and, through the already-utilized or some new model, will enable citizens to enjoy their rights of acquiring prescribed medicines in the most convenient manner.