
NUMBER G-3090

INDEMNITY AGREEMENT

(Second Fiscal and Financial Sector Resilience Policy-Based Guarantee)

between

MONTENEGRO

and

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

Dated May 4, 2020

NUMBER G-3090

INDEMNITY AGREEMENT

AGREEMENT, dated May 4, 2020 between MONTENEGRO (the “*Member Country*”) and the INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the “*Bank*”) (the “*Indemnity Agreement*”) in connection with the Guarantee relating to that certain EUR 250,000,000 Facility Agreement, dated on or about the date hereof (the “*Guaranteed Agreement*”), between, *inter alia*, the Lenders named therein (the “*Beneficiary*”), the Member Country and the Bank, as partial guarantor, in support of the Program (as defined in the Appendix to this Agreement). The Bank has decided to provide the Guarantee on the basis, *inter alia*, of (a) the actions which the Member Country has already taken under the Program and which are described in Section I A of the Schedule to this Agreement, and (b) the Member Country’s maintenance of an adequate macroeconomic policy framework. The Member Country and the Bank therefore hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. (a) The provisions of the General Conditions (as defined in the Appendix to this Indemnity Agreement) set forth in Section II of the Appendix to this Indemnity Agreement constitute an integral part of this Indemnity Agreement.

Section 1.02. Unless the context otherwise requires, the capitalized terms used in this Indemnity Agreement have the meanings ascribed to them in the General Conditions or in Section I of the Appendix to this Indemnity Agreement.

ARTICLE II

Indemnity by Member Country to the Bank; Opinion; Guarantee Fee

Section 2.01. In consideration of the Bank providing the Guarantee on the terms and conditions set out in the Guaranteed Agreement, the Member Country hereby irrevocably and unconditionally agrees:

(a) to reimburse the Bank immediately on demand or as the Bank may otherwise direct in writing for any amount paid by the Bank under the Guarantee together with interest thereon at the rate per annum determined by the Bank and notified to the Member Country (which rate shall not exceed the Bank’s highest prevailing lending rate for loans with a fixed spread denominated in the currency of payment, as may be shown from time to time on the Bank’s external website) from the date such payment is made by the Bank until such amount is reimbursed in full;

(b) to indemnify the Bank on demand and hold the Bank harmless against all actions, proceedings, liabilities, claims, losses, damages, costs and expenses brought against, suffered or incurred by the Bank directly or indirectly in relation to or arising out of or in connection with the Guaranteed Agreement (except as otherwise provided in Section 8.04(i) of the General Conditions);

(c) that the obligations of the Member Country under this Indemnity Agreement will not be affected by any act, omission, matter or thing which, but for this Section, would reduce, release or prejudice any of its obligations under this Indemnity Agreement; and

(d) in the event that the Bank receives funds from the Member Country pursuant to Section 2.01(a) and, in respect of the same amounts, the Bank receives a refund of funds from the Beneficiary pursuant to the Guarantee Agreement or receives funds as a result of the exercise of the Bank's subrogation rights under the Guarantee (the "**Double Payment**"), then the Bank shall promptly refund to the Member Country the amount of the Double Payment together with any interest payments received pursuant to the Guarantee by the Bank from the Beneficiary in respect of such Double Payment.

Section 2.02. Any payment required to be made by the Member Country pursuant to the terms of this Indemnity Agreement shall be applied first, to pay all interest and other charges due to the Bank and second, after such interest and other charges are paid, to pay all other amounts then due to the Bank under this Indemnity Agreement.

Section 2.03. The Member Country shall furnish to the Bank an opinion or opinions satisfactory to the Bank of counsel acceptable to the Bank or, if the Bank so requests, a certificate satisfactory to the Bank of a competent official of the Member Country, showing the following matters: (a) that this Indemnity Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Member Country and is legally binding upon the Member Country in accordance with its terms; and (B) any other matter reasonably requested by the Bank in connection with this Indemnity Agreement or the Program. The Member Country acknowledges that the receipt by the Bank of such opinion, opinions or certificate will be a condition to the effectiveness of the Guarantee.

Section 2.04. In consideration of the Bank providing the Guarantee on the terms and conditions set out in the Guaranteed Agreement, the Member Country shall pay directly to the Bank (i) a front-end fee (the "**Front-end Fee**") in an amount equal to 0.25% (25 basis points) of the Guaranteed Amount, (ii) a guarantee fee (the "**Guarantee Fee**") equivalent to 0.70 percent (70 basis points) per annum applied against the present value exposure for each semiannual period of the Guaranteed Amount. The Front-end Fee and the Guarantee Fee shall be due and payable to the Bank on or before the effective date of the Guarantee. The Front-end Fee and the Guarantee Fee shall be paid to the Bank by electronic transfer in immediately available freely transferable funds in Euros to the bank account designated by the Bank.

ARTICLE III

Program

Section 3.01. The Member Country declares its commitment to the Program and its implementation. To this end:

- (a) the Member Country and the Bank shall from time to time, at the request of either party, exchange views on the Member Country's macroeconomic policy framework and the progress achieved in carrying out the Program;
- (b) prior to each such exchange of views, the Member Country shall furnish to the Bank for its review and comment a report on the progress achieved in carrying out the Program, in such detail as the Bank shall reasonably request; and
- (c) without limitation upon the provisions of paragraphs (a) and (b) of this Section, the Member Country shall promptly inform the Bank of any situation that would have the effect of materially reversing the objectives of the Program or any action taken under the Program.

Section 3.02. The Member Country shall apply the proceeds of the financing provided under the Guaranteed Agreement in support of the Program in accordance with Section II of the Schedule to this Indemnity Agreement.

ARTICLE IV

Remedies

Section 4.01. In addition to the other remedies available to the Bank under loan and guarantee agreements between the Bank and the Member Country, in the event that: (i) the Member Country has failed to perform any of its obligations under Article II, Article III or any other provision of this Indemnity Agreement and such failure has continued and remained uncured in the opinion of the Bank for sixty (60) days or more after notice thereof shall have been given to the Member Country by the Bank; or (ii) any representation made by the Member Country in or pursuant to this Indemnity Agreement, or any representation or statement furnished by the Member Country and intended to be relied on by the Bank in providing the Guarantee, shall in the opinion of the Bank have been incorrect in any material respect, then the Bank, or the International Development Association, as the case may be, may suspend or cancel in whole or in part the Member Country's right to make withdrawals under any loan agreement between the Bank and the Member Country, or under any development credit agreement or financing agreement between the International Development Association and the Member Country, or any Bank loan or International Development Association credit to a third party guaranteed by the Member Country, or declare the outstanding principal and interest of any such loan or credit due and payable immediately.

ARTICLE V

Effective Date

Section 5.01. This Indemnity Agreement shall come into force and effect upon signature by the parties.

ARTICLE VI

Representative; Addresses

Section 6.01. The Member Country's Representative is its Minister of Finance.

Section 6.02. For purposes of Section 10.01 of the General Conditions:

(a) the Member Country's Address is:

Address: Ministry of Finance
Stanka Dragojevicica 2
81000 Podgorica
Montenegro

Attention: Minister of Finance

(b) the Member Country's Electronic Address is:

Facsimile: +382 20 224 450

Email: mf@mif.gov.me

With a copy to: Director of Directorate for State Treasury

E-mail: dragan.darmanovic@mif.gov.me

Section 6.03. For purposes of Section 10.01 of the General Conditions:

(a) the Bank's Address is:

International Bank for Reconstruction and Development
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Attention: Vice President, Europe and Central Asia Region

With a copy to: Manager, Guarantees (IPG, Financial Structuring & PPPs,
Global Themes Practice (GTIFP))

(b) the Bank's Electronic Address is:

Facsimile: +1 202 477 6391

With a copy to: Manager, Guarantees (IPG, Financial Structuring & PPPs,
 Global Themes Practice (GTIFP))

Facsimile: +1-202-522-0761

Email: guarantees@worldbank.org

AGREED as of the day and year first above written.

[Signature Page Follows]

MONTENEGRO



By: 
Authorized Representative

Name (printed): DARKO RADUNOVIĆ

Title: MINISTER OF FINANCE

**INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT**

By: _____
Authorized Representative

Name (printed): _____

Title: _____

MONTENEGRO

By: _____
Authorized Representative

Name (printed): _____

Title: _____

**INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT**

By:  _____
Authorized Representative

Name (printed): LINDA VAN Gelder

Title: Regional Director

SCHEDULE

Section I. Actions Taken under the Program. The actions taken by the Member Country under the Program include the following:

Pillar 1: Strengthening Fiscal Sustainability

1. To improve its revenue collection and reduce tax informality, the Member Country has introduced electronic fiscalization of cash and non-cash transactions, as evidenced by the *Law on Fiscalization in the Trade of Products and Services*.
2. To strengthen its public finance management, the Member Country has (a) advanced the implementation of accrual accounting as the basis for financial reporting, and (b) reinforced prioritization, selection, appraisal and evaluation of public capital investments, as evidenced by the *Decision on Capital Budgeting* and the *Law on Public Sector Accounting*.
3. To reduce inefficiencies in its general government staffing, the Member Country has (a) launched a time-bound public-sector staff optimization plan, (b) adopted a decree on severance pay in case of consensual termination of employment, and (c) launched a central government payroll module to be integrated with the central personnel records, as evidenced by, respectively, the *Decision on Adopting the Public Administration Optimization Plan*, the *Decree on Severance Pay in Case of Consensual Termination of Employment of Public Sector Employees*, and the *Inception Report to Implement the Central Government Payroll Module*.
4. To contain the cost of public pharmaceutical spending, the Member Country has adopted clinical protocols and pharmacotherapeutic guidelines to rationalize the use of expensive drugs, as evidenced by the *National Good Clinical Practice Guidelines* published by the Ministry of Health.
5. To increase the flexibility of labor markets, the Member Country has (a) extended the maximum length of fixed-term contracts from 24 to 36 months, (b) streamlined dismissal procedures, and (c) removed severance payment requirements for job durations below 18 months with the same employer, as evidenced by the Labor Law.
6. To increase the transparency and efficiency of its public procurement, the Member Country has introduced centralized procurement for standard goods and services, as evidenced by the *Decree on Amending the Decree on Centralizing Public Procurement of Goods and Services*, and the *Publicly Disclosed Centralized Procurement Contracts*.
7. To mitigate the negative effects of climate change, the Member Country has established a legal framework for (a) the regulation and control of greenhouse gas emissions and an emission trading scheme, and (b) development of a National Climate Change Adaptation and a Low-Carbon Development Strategy, as evidenced by the *Law on Protection Against the Adverse Impacts of Climate Change*.

Pillar 2: Strengthening Financial Sector Resilience

8. To improve its regulation on minimum standards for management of credit risk in line with the European Banking Authority guidelines, the Member Country has (a) prohibited banks from classifying assets as performing based on adequate collateral rather than on borrowers' ability to repay, and (b) reinforced clear and uniform prudential treatment of restructured loans, as evidenced by the *Amendments of the CBM Decision on Minimum Standards for Credit Risk Management*.
9. To strengthen its financial sector stability, the Member Country, through its Central Bank, has updated the time-bound Supervisory Action Plans (SAP) to ensure full compliance with minimum regulatory requirements, and has taken action to resolve, restructure or liquidate banks that are materially non-compliant with the regulatory requirements and SAP provisions, as evidenced by the *CBM Decision on Initiating the Bankruptcy Procedure in Invest Bank Montenegro*, *CBM Decision on Initiating the Bankruptcy Procedure in Atlas Bank*, and the *CBM Supervisory Action Plan*.
10. To strengthen its financial sector regulatory and supervisory framework and its financial safety net, the Member Country has adopted its Credit Institutions Law, Credit Institutions Resolution Law, and Deposit Protection Law in line with European Banking Directives (Capital Requirements Directive, Bank Recovery and Resolution Directive, and Deposit Guarantee Schemes Directive), as evidenced by the Credit Institutions Law, the Credit Institutions Resolution Law, and the Deposit Protection Law.

Section II. Availability of Proceeds of the Financing Provided Under the Guaranteed Agreement

- A. **Deposits of Proceeds.** Except as the Bank may otherwise agree:
 1. all withdrawals of the proceeds of the financing provided under the Guaranteed Agreement shall be deposited by the Member Country into an account designated by the Member Country and acceptable to the Bank; and
 2. the Member Country shall ensure that upon each such deposit, an equivalent amount is accounted for in the Member Country's budget management system, in a manner acceptable to the Bank.
- B. **Closing Date.** The Closing Date is June 30, 2021.

APPENDIX

Section I. Definitions

1. ***“Amendments of the CBM Decision on Minimum Standards for Credit Risk Management”*** means the amendments of the same name, published in the Official Gazette of Montenegro, No. 86/2018, dated December 28, 2018 and in the Official Gazette of Montenegro, No.42/2019, dated July 26, 2019.
2. ***“CBM”*** means the Central Bank of Montenegro.
3. ***“CBM Decision on Initiating the Bankruptcy Procedure in Atlas Bank”*** means the CBM decision of the same name, No. 0101-3292-4/2019, published April 5, 2019, on the website of the CBM at https://cbcg.me/uploads/oglas_0419_eng.pdf.
4. ***“CBM Decision on Initiating the Bankruptcy Procedure in Invest Bank Montenegro”*** means the CBM decision of the same name, No. 0101-10202-3/2018, published January 4, 2019, on the website of the CBM at https://cbcg.me/uploads/oglas_04_01_2019.pdf.
5. ***“CBM Supervisory Action Plan”*** means the CBM decision of the same name, registration No. P- 03-417/2019, dated December 11, 2019.
6. ***“Credit Institutions Law”*** means the Member Country’s law of the same name, published in the Official Gazette of Montenegro, No. 72/2019, dated December 26, 2019.
7. ***“Credit Institutions Resolution Law”*** means the Member Country’s law of the same name, published in the Official Gazette of Montenegro, No. 72/2019, dated December 26, 2019.
8. ***“Decision on Adopting the Public Administration Optimization Plan”*** means the decision of the same name, issued by the Government of the Member Country (Ministry of Public Administration), No. 07-3481, dated July 6, 2018, and published on the website of the Government of the Member Country at http://www.gov.me/sjednice_vlade_2016/84.
9. ***“Decision on Capital Budgeting”*** means the Decision on drafting the capital budget and determining and evaluating criteria for the selection of capital projects, issued by the Government of the Member Country (Ministry of Finance), dated June 28, 2018, and published in the Official Gazette of Montenegro, No. 57/2018, dated August 10, 2018.
10. ***“Decree on Amending the Decree on Centralizing Public Procurement of Goods and Services”*** means the decree of the same name, No. 1499, issued by the Government of the Member Country (Ministry of Finance) and published in the Official Gazette of Montenegro, No. 75/2018, dated November 23, 2018.
11. ***“Decree on Severance Pay in Case of Consensual Termination of Employment of Public Sector Employees”*** means the decree of the same name, issued by the Government of the Member Country (Ministry of Finance), published in the Official Gazette of Montenegro, No. 41/2019, dated July 22, 2019.
12. ***“Deposit Protection Law”*** means the Member Country’s law of the same name, published in the Official Gazette of Montenegro, No. 72/2019, dated December 26, 2019.

13. “**General Conditions**” means the “General Conditions for IBRD Financing (2018): Development Policy Financing”, dated December 14, 2018, with the modifications set forth in Section II of this Appendix.
14. “**Guarantee**” means the guarantee provided by the Bank pursuant to the Guarantee Agreement.
15. “**Guaranteed Amount**” has the meaning set forth in the Guaranteed Agreement.
16. “**Inception Report to Implement the Central Government Payroll Module**” means the report of the same name prepared by AAM Management Information Consulting Ltd. for the Ministry of Finance of the Member Country and approved by the Ministry of Finance on March 26, 2019.
17. “**Labor Law**” means the Member Country’s law of the same name published in the Official Gazette of Montenegro No. 74/2019, dated December 30, 2019.
18. “**Law on Fiscalization in the Trade of Products and Services**” means the law of the same name, published in the Official Gazette of Montenegro, No. 46/2019, dated August 7, 2019.
19. “**Law on Protection Against the Adverse Impacts of Climate Change**” means the law of the same name, published in the Official Gazette of Montenegro, No. 73/2019, dated December 27, 2019.
20. “**Law on Public Sector Accounting**” means the law of the same name, published in the Official Gazette of Montenegro, No. 66/2019, dated December 6, 2019.
21. “**Member Country’s Representative**” means the representative of the Member Country so designated in Article VI of this Agreement.
22. “**National Good Clinical Practice Guidelines**” means the National Good Practice Guidelines published by the Ministry of Health of the Member Country on its website at <http://www.mzd.gov.me/rubrike/nacionalne-smjernice>.
23. “**Program**” means the program of actions, objectives and policies designed to promote growth and achieve sustainable reductions in poverty and set forth or referred to in the letter dated December 3, 2019 from the Member Country to the Bank declaring the Member Country’s commitment to the execution of the Program, and requesting assistance from the Bank in support of the Program during its execution.
24. “**Publicly Disclosed Centralized Procurement Contracts**” means the list of publicly disclosed centralized procurement contracts that were concluded between the Property Directorate (contracting authority), Suppliers, and Service Providers in 2018 and 2019 discoverable in the Member Country’s search portal at <http://portal.ujn.gov.me/delta2015/search/noticeSearch.html>, where the “Awarding Authority” is “Uprava za imovinu” (Property Directorate).

Section II. General Conditions

The following provisions of the General Conditions, with the modifications set forth below, constitute an integral part of this Agreement:

1. Article I. (*Introductory Provisions*)
2. Section 2.04 (*Eligible Expenditures and Excluded Expenditures*), modified by replacing the words “Loan proceeds” with “proceeds of the financing provided under the Guaranteed Agreement” and by adding the following sentences to the end of that Section:

“If the Bank determines at any time that an amount of such financing was used to make a payment for an Excluded Expenditure, the Member Country shall, promptly upon notice from the Bank, deposit into the account described in Part A of Section II of the Legal Agreement (or, if the Member Country cannot or fails to do so, prepay to the Beneficiary in accordance with the terms of the Guaranteed Agreement) an amount equal to the amount of such payment. Any such deposits made hereunder shall be utilized only for Eligible Expenditures.”
3. Sections 3.06 (*Place of Payment*), 3.07 (*Currency of Payment*), 3.09 (*Valuation of Currencies*) and 3.10 (*Manner of Payment*).
4. Section 5.03 (*Records*), modified to read as follows:

“The Member Country shall retain all relevant documentation evidencing expenditures from the proceeds under the financing provided under the Guaranteed Agreement until two years after the Closing Date. The Member Country shall enable the Bank’s representatives to examine such records.”
5. Section 5.04 (*Program Monitoring and Evaluation*), modified to read as follows:

“(a) The Member Country shall maintain or cause to be maintained policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with indicators acceptable to the Bank, the progress of the Program and the achievement of its objectives.

(b) The Member Country shall prepare or cause to be prepared and furnish to the Bank not later than twelve (12) months after the Closing Date, a report of such scope and in such detail as the Bank shall reasonably request, on the execution of the Program, the performance by the Member Country and the Bank of their respective obligations under this Agreement and the accomplishment of the purposes of the financing provided under the Guaranteed Agreement.”
6. Sections 5.05 (*Cooperation and Consultation*) (modified by replacing references to the term “Loan” with the term “Guarantee”), 5.06 (*Visits*) and 5.07 (*Disputed Area*).
7. Section 6.01 (*Financial and Economic Data*).
8. Section 6.02(a) (*Negative Pledge*), modified to read as follows:

“It is the policy of the Bank, in making loans to, or with the guarantee of, its member countries not to seek, in normal circumstances, special security from the member concerned but to ensure that no other Covered Debt shall have priority over its loans in the allocation, realization or distribution of foreign exchange held under the control or for the benefit of such member country. To that end, if any Lien is created on any Public Assets as security for any Covered Debt, which will or might result in a priority for the benefit of the creditor of such Covered Debt in the allocation, realization or distribution of foreign exchange, such Lien shall, unless the Bank shall otherwise agree, *ipso facto* and at no cost to the Bank, equally and ratably secure the amounts payable by the Member Country under this Agreement, which, for purposes of the Section only, shall be deemed to be equal to eighty million Euros (EUR80,000,000), and the Member Country, in creating or permitting the creation of such Lien, shall make express provision to that effect; provided, however, that if for any constitutional or other legal reason such provision cannot be made with respect to any Lien created on assets of any of its political or administrative subdivisions, the Member Country shall promptly and at no cost to the Bank secure all amounts payable by the Member Country under this Agreement by an equivalent Lien on other Public Assets satisfactory to the Bank.”

9. Section 6.02(c) (*Negative Pledge*).
10. Section 6.02(d) (*Negative Pledge*).
11. Article VIII (*Enforceability; Arbitration*).
12. Article X (*Miscellaneous Provisions*).
13. Paragraphs 6 (“Arbitral Tribunal”), 7 (“Association”) and 10 (“Bank”) of the Appendix.
14. Paragraph 11 (“Borrower”) of the Appendix, modified to read as follows:

““Borrower” means the Member Country that is the party to the Loan Agreement.”
15. Paragraphs 25 (“Covered Debt”), 26 (“Currency”), 41 (“Electronic Address”), 42 (“Electronic Communications System”), 43 (“Electronic Document”) and 44 (“Electronic Means”) of the Appendix.
16. Paragraph 45 (“Eligible Expenditure”) of the Appendix, modified by replacing the words “the Loan” with “the financing provided under the Guaranteed Agreement”.
17. Paragraphs 47 (“Euro”, “€” and “EUR”), 48 (“Euro Area”) and 50 (“Excluded Expenditure”) of the Appendix.
18. Paragraph 65 (“Legal Agreement”) of the Appendix, modified to read as follows:

“Legal Agreement” means this Indemnity Agreement.”
19. Paragraph 67 (“Lien”) of the Appendix.
20. Paragraph 68 (“Loan”) of the Appendix, modified to read as follows:

“Loan Agreement” means the Legal Agreement.”

21. Paragraph 70 (“Loan Agreement”) of the Appendix, modified to read as follows:
“Loan Agreement” means the Legal Agreement.”
22. Paragraph 71 (“Loan Currency”) of the Appendix, modified to read as follows:
“Loan Currency” means Euro, or such other Currency as the Bank may designate.”
23. Paragraph 72 (“Loan Party”) of the Appendix, modified to read as follows:
“Loan Party” means the Member Country.”
24. Paragraph 73 (“Loan Payment”) of the Appendix, modified to read as follows:
“Loan Payment” means any amount payable by the Member Country under the Legal Agreement.”
22. Paragraph 82 (“Program”) of the Appendix, modified to read as follows:
““Program” means the program referred to in the Legal Agreement in support of which the Guarantee is provided.”
23. Paragraphs 86 (“Public Assets”), 96 (“Taxes”) and 97 (“Umpire”) of the Appendix.