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## Insolvency/Restructuring in Montenegro

*Bankruptcy and reorganization are the two primary procedures available for solving a collective action problem in dealing with financially troubled debtors, and both are regulated by the Montenegrin Insolvency Act. Bankruptcy envisages settlement with creditors by sale of the debtor's assets or sale of the debtor as a legal entity, while reorganization involves settlement with creditors in accordance with an adopted reorganization plan which redefines mutual debtor-creditor relations.*

Grounds for initiation of insolvency proceedings over a Montenegrin corporate debtor are: (i) the permanent insolvency of the debtor (i.e., a debtor cannot respond to its financial obligations within 45 days from the date of maturity of the obligation or has completely suspended all payments for more than 30 consecutive days); or (ii) over-indebtedness, (i.e., the value of the assets of the debtor is lower than the values of its liabilities).

Insolvency proceedings may be initiated by: (i) a creditor, (ii) the debtor, or (iii) the company's liquidator before the commercial court in Podgorica. Parties involved in insolvency proceedings are: (i) the insolvency receiver, (ii) the insolvency judge, and (iii) the creditors' committee. Once insolvency proceedings are initiated, all management and representation authorities are entrusted to the insolvency receiver and all authorizations of the former management are revoked. Where a reorganization plan is adopted during the insolvency proceedings, the management of the debtor is determined by the reorganization plan.

The Montenegrin legislature, recognizing the importance of the continuation of business by financially troubled companies and the negative impact that terminating such companies may have on the market, introduced reorganization as an insolvency measure to serve a dual purpose: financial recovery of the debtor and a favorable settlement of creditors' claims. Reorganization is to be implemented in accordance with a reorganization plan, which can be submitted to the insolvency judge either simultaneously with the petition for the initiation of insolvency proceedings or after the opening of the insolvency proceedings. If the latter, the plan of reorganization should be submitted within 90 days following the date of the insolvency proceedings' opening. A reorganization plan may be submitted by the debtor, the receiver, creditors holding at least 30% of the aggregate amount of the secured claims, creditors holding at least 30% of the aggregate amount of the unsecured claims, or persons owning at least 30% of the share capital of the debtor.

For the sake of uniformity and creditor protection the legislature has envisaged the same creditor payment priority rankings for both reorganization and bankruptcy. Insolvency creditors are classified into the following payment priority rankings: (i) unpaid gross salaries of debtor's employees up to the amount of the annual minimum wage in the two years prior to the insolvency proceeding opening, and employee claims for work-related injuries, (ii) all public income claims (i.e., taxes and other liabilities owed to the state) due in the last three months prior to the insolvency proceeding opening, except for contributions for pension and disability insurance, and (iii) other creditors' claims. It should be noted that costs and expenses of the insolvency proceedings and the obligations of the insolvency estate are ranked senior to all creditors' claims.

The Montenegrin Insolvency Act does not envisage an equitable subordination of claims and thus further incentivizes parent companies (and other affiliates of the



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debtor) to finance the operation of their subsidiaries through debt rather than equity.

The outcome of insolvency proceedings depends on whether a reorganization plan has been adopted in the course of the insolvency proceedings. Where no reorganization plan has been adopted, an insolvency proceeding will result in bankruptcy of the debtor, which involves: (i) the sale of all the debtor's assets, (ii) settlement with the debtor's creditors from the bankruptcy estate, and (iii) termination of the debtor. As an exception, an insolvency proceeding may end with bankruptcy entailing only the sale of the debtor as legal entity – thus without necessitating its termination. On the other hand, if a reorganization plan is adopted and verified, the competent court adopts a decision to suspend the insolvency and the debtor continues to carry on its business. The reorganization itself is finished once all reorganization measures have been fulfilled and creditors' claims settled.

Amendments to the Insolvency Act are currently in legislative consideration. Such amendments are aimed at aligning the Montenegrin Insolvency Act with relevant EU legislation as well as making insolvency proceedings more efficient by shortening the deadlines and clarifying certain provisions that in practice created obstacles due to a wide range of possible interpretations.

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