

LAW ON INSOLVENCY

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I am hereby promulgating the Law on Insolvency, which was adopted by the Parliament of Montenegro of the 24th convocation, at the seventh session of the second regular session in 2010, on December 22, 2010.

LAW ON INSOLVENCY¹

I. BASIC PROVISIONS

Subject Matter

Article 1

- (1) This Law shall regulate the conditions, the manner of initiating and implementing the insolvency.
- (2) Insolvency, under this Law, shall include bankruptcy and reorganization.
- (3) Bankruptcy shall mean the settlement of creditors by the sale of the property of the insolvent debtor and sale of the insolvent debtor as a legal entity.
- (4) Reorganization shall mean the settlement of creditors in accordance with the adopted plan of reorganization through redefining of debtor-creditor relationship, change of the legal status of the debtor or in another manner envisaged by the reorganization plan.

Objectives of Insolvency Proceedings

Article 2

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 1)

¹ "Official Gazette of Montenegro", no. 001/11 of 11.01.2011, 053/16 of 11.08.2016, 032/18 of 11.05.2018, 062/18 of 21.09.2018, 001/22 of 10.01.2022

- (1) Insolvency proceedings shall be implemented for the purpose of collective settlement of the insolvency debtor's creditors, by cashing-out their property and distributing collected funds to the creditors.
- (2) During the insolvency proceedings, reorganization of the insolvency debtor may be implemented in order to regulate legal status of the insolvency debtor and their relationship with the creditors, for the purpose of maintaining their business activity.

Insolvency Creditors' Protection Principle

Article 3

Insolvency proceedings shall be implemented for the purpose of collective and proportionate settlement of insolvency creditors in accordance with this Law.

Equal Treatment and Equality Principle

Article 4

- (1) Creditors shall be treated equally within insolvency proceedings in accordance with their status regulated by this Law.
- (2) Creditors, within the same seniority class, shall be equal.

Cost-Effectiveness Principle

Article 5

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 2)

Insolvency proceedings shall be conducted in a manner that maximizes the value of the insolvency debtor's assets and provides maximum degree of settlement of creditors with the lowest costs.

Court Jurisdiction Principle

Article 6

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 3)

Upon its initiation, the insolvency proceedings shall be conducted by a competent court.

Imperative and Preclusive Principle

Article 7

Insolvency proceedings shall be regulated by this Law in imperative manner.

- (1) Provisions of the law regulating civil proceedings and mediation proceedings shall apply to the issues not regulated by this Law.
- (2) Prescribed deadlines shall be preclusive, unless otherwise determined by this Law.

Urgency Principle

Article 8

- (1) Insolvency proceedings shall be urgent.

(2) It shall not be allowed to have laches and interruption of insolvency proceedings.

Two-Instance Principle

Article 9

Insolvency proceedings shall be two-instance proceedings, unless a legal remedy is excluded by this Law.

Principle of transparency and access to information

Article 10

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 4)

(1) Insolvency proceedings shall be public.

(2) All participants to the insolvency proceedings shall be entitled to timely access to data related to the proceedings implementation, except data representing a business or official secret.

Insolvency Debtor

Article 11

(1) Insolvency debtor, under this Law, shall mean:

- 1) Legal persons;
- 2) Business organizations not having the status of a legal person;
- 3) Entrepreneurs.

(2) For the purpose of this Law, insolvency debtors cannot be:

- 1) Authorities, organizations and institutions financed from the budget of Montenegro, budgets of local councils and state funds;
- 2) Central Bank or independent regulatory bodies;
- 3) Legal persons, which insolvency proceedings are regulated by a separate regulation.

Reasons for Insolvency

Article 12

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 5)

(1) Insolvency shall be initiated in the case when insolvency reasons defined by this Law are established.

(2) Reasons for insolvency shall be long period of inability to pay and over-indebtedness.

(3) Insolvency debtor is unable to make payments for long period, if it cannot meet its monetary obligations within 45 days from the maturity day; or it has fully suspended all payments continuously for 30 days.

(4) Insolvency debtor shall be over-indebted when its liabilities exceed its assets, but the debtor shall not be considered to be over-indebted if, according to the circumstances of the case, such as available sources of funds, type of assets and acquired insurance,

it can be reasonably assumed that the continuation of business will properly fulfil their obligations as they fall due.

Presumption of Insolvency Reason

Article 13

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 6)

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/22 of 11.08.2016, Article 1)

The existence of insolvency reason shall be presumed in case when petition for initiation of insolvency proceedings (hereinafter referred to as: "the petition") was submitted by a creditor who was unable to settle their claims, within enforcement proceedings in Montenegro, by way of any enforcement mean within 45 days as of the initiation of the enforcement proceedings.

II. INSOLVENCY PROCEEDINGS

Jurisdiction

Article 14

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/22 of 11.08.2016, Article 2)

Insolvency proceedings shall be conducted in the Commercial Court of Montenegro (hereinafter referred to as "the Commercial Court")

Obligations to Participate and Coercive Measures

Article 15

- (1) Insolvency debtor, its authorized representatives and other persons shall be obliged to give to an insolvency court, appointed court expert and insolvency administrator, upon their request, complete and true information. Insolvency debtor or its authorized representatives shall be obliged to contribute securing the insolvency estate, as well as refraining from detrimental actions.
- (2) If an insolvency debtor, its representatives or other persons fail to meet their obligations referred to in paragraph 1 of this Article or perform actions incurring damage to insolvency estate or fail to undertake actions necessary to secure the insolvency estate, an insolvency judge may ex officio or at the proposal of the interim administrator or insolvency administrator impose a pecuniary fine in the amount up to € 5000.
- (3) The fine referred to in paragraph 2 of this Article shall be imposed by a decision.
- (4) Against the decision referred to in paragraph 3 of this Article the appeal may be lodged, which does not stay enforcement of the decision.

Servicing

Article 16

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/22 of 11.08.2016, Article 3)

- (1) Writs shall be serviced, unless otherwise regulated by this Law, by posting the writs on the bulletin board of the court. The servicing shall be deemed done by the expiration of the eighth day from the day of posting the writs.
- (2) When a writ of the court or another insolvency body is served, in accordance with the provisions of this Law, to a debtor or another person having registered office within appropriate registry, the servicing shall be done at the address of the registered office from the registry. If the servicing cannot be done at that address, it shall be done by posting the writ on the bulletin board of the court. The servicing shall be deemed done by expiration of the eighth day from the day of posting the writ.
- (3) If a debtor or another participant has a proxy, they shall be obliged to inform the insolvency administrator thereof when performing the first action in the proceeding.
- (4) If a person has a proxy for receiving writs or interim authorized representative, the servicing shall be done to the proxy or authorized representative.
- (5) In cases not regulated by this Law, the servicing shall be done pursuant to provisions of the Law on Civil Proceedings.

Public Announcements

Article 17

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/22 of 11.08.2016, Article 4)

- (1) Writs (rulings, summons, notices, etc.), which are publically disclosed in accordance with law, shall be published at the same time in the Official Gazette of Montenegro, in electronic form, i.e. on the internet page of the court, and on the bulletin board of the court, in their entirety or extract. The announcement shall be considered done by expiration of the eighth day from the day of publication in the Official Gazette of Montenegro.
- (2) Insolvency court may order that the announcement shall be made in another public media.
- (3) By implementing the public announcement referred to in paragraph 1 of this Article, it shall be deemed that the servicing to all the insolvency parties, within the insolvency proceedings has been done.

Rulings

Article 18

- (1) Rulings in insolvency proceedings shall be made in the form of a orders and a conclusions.
- (2) The conclusion is issuing order to an official or authority within insolvency proceedings to perform certain activities; deciding on administering the proceedings and other issues, when envisaged so by this Law.
- (3) The court may issue other orders aiming to ensure the compliance with the spirit and the goal of this Law or fulfilment of the obligations prescribed by this Law.

Legal Remedies

Article 19

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/22 of 11.08.2016, Article 5)

- (1) Against the insolvency proceedings order an appeal may be lodged within eight days.
- (2) An appeal may be lodged within eight days from the day the order referred to in paragraph 1 of this Article was published in the Official Gazette of Montenegro, unless otherwise specified by this Law.
- (3) When regulated by this Law that the order must be submitted to certain persons, the deadline for appeal shall run from the day of the servicing of the order.
- (4) The court shall be obliged to decide upon the appeal, referred to in paragraph 1 of this Article, at the latest within 30 days from the day of receiving the appeal.
- (5) The appeal shall not stay enforcement of the order, unless otherwise regulated by this Law.
- (6) The insolvency judge may find the appeal successful if they conclude that the appeal is based on merits. A separate appeal shall be allowed against judge's decision.
- (7) The provisions referred to in paragraph 6 of this Article shall not apply to the order on initiating the insolvency proceedings, order on confirming the reorganization plan, and order on closing the insolvency proceedings.
- (8) Petition for repeating the proceedings and the revision cannot be initiated within insolvency proceedings.
- (9) The appeal cannot be lodged against the conclusion.

Objections

Article 20

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 7)

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/22 of 11.08.2016, Article 6)

- (1) Insolvency debtor, creditor, or any person having a legal interest may submit to the court an objection to any activity performed by the insolvency administrator or submit a request for involuntary enforcement of the activity that they should have performed on the basis of this Law, but have failed to do so.
- (2) The objection, referred to in paragraph 1 of this Article, shall be submitted within five days from the day of finding out about the activity of the insolvency administrator, unless otherwise regulated by this Law.
- (3) Insolvency judge shall decide upon the objection referred to in paragraph 2 of this Article, within five days from the day of submission of the objection.
- (4) The submission of the objection shall not stay the enforcement of the ruling of the insolvency administrator, unless otherwise determined by the court.

Costs of the Proceedings

Article 21

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 8)

- (1) Each creditor shall bear their own costs within insolvency proceedings, unless otherwise regulated by this Law.
- (2) Costs incurred in court proceedings for the purpose of exercising the rights of creditors with regard to determining the merits and settlement of claims shall not be considered costs of insolvency proceedings.

Insolvency Proceedings Bodies

Article 22

Bodies of the insolvency proceedings shall be insolvency judge, insolvency administrator, and creditors' committee.

Insolvency Judge

Article 23

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 9)

- (1) Insolvency judge shall:
 - 1) Decide on initiation of preliminary insolvency proceedings;
 - 2) Determine the existence of insolvency reason and decide on initiating of insolvency proceedings;
 - 3) Appoint and relieve of duty the insolvency administrator;
 - 4) Approve the costs of insolvency proceedings;
 - 5) Determine the amount of interim and final costs compensation and remuneration for the insolvency administrator;
 - 6) Decide on objections relating to activities of the insolvency administrator;
 - 7) Consider the proposal of the reorganization plan and reject it or schedule a hearing for plan review;
 - 8) Pass a ruling confirming the adoption of the reorganization plan or its rejection;
 - 9) Pass an order on the main distribution of the insolvency estate;
 - 10) Decide on continuing with insolvency proceedings in accordance with Articles 154 and 157 of this Law;
 - 10a) decide on conclusion of insolvency proceedings;
 - 11) Pass other rulings and undertake other activities regulated by this Law.

Article 24

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/22 of 11.08.2016, Article 7)

Insolvency administrator shall manage the activities and represent an insolvency debtor, unless otherwise envisaged by this Law.

Article 25

(Decision of the Constitutional Court of Montenegro repealing the provision of Article 25, paragraph 2 Law on Insolvency, Official Gazette of Montenegro No. 032/18 of 11 May 2018)

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 8)

Conditions for Issuing a License to Work as the Insolvency Administrator

Article 25a

A license to work as the insolvency administrator shall be issued to a person:

- 1) who is a Montenegrin citizen;
- 2) who has general health and business ability;
- 3) who has the VII1 level of education qualification;
- 4) who has at least five years of work experience with the VII1 level of educational qualifications;
- 5) who has passed the professional exam for insolvency administrator;
- 6) who has not been convicted of a criminal offense that make them unfit to perform the duties of the insolvency administrator;
- 7) against whom criminal proceedings are not conducted for a criminal offense for which prosecution is undertaken ex officio; and
- 8) against whom was not issued a security measure prohibiting the performance of callings, activities and duties.

Professional Exam for the Insolvency Administrator

Article 25b

- (1) The professional exam for the insolvency administrator shall be taken before the commission for taking the professional exam (hereinafter referred to as "the Commission") formed by the state administration body responsible for judicial affairs (hereinafter referred to as "the Ministry").
- (2) The Commission shall have a President, four members and a Secretary.
- (3) The president and members of the Commission shall have deputies.
- (4) The President, members of the Commission and their deputies shall be appointed from among prominent experts in the field of civil, commercial and insolvency law, management and accounting for a period of two years and may be reappointed.
- (5) The Secretary of the Commission shall be appointed from among the employees of the Ministry.
- (6) The President, members of the Commission, their deputies and the Secretary of the Commission shall be entitled to compensation for work in the amount prescribed by the Ministry.
- (7) The Ministry shall prescribe the program and method of taking the professional exam for the insolvency administrator.

Costs for Taking the Professional Exam

Article 25c

- (1) The costs of taking the professional exam for the insolvency administrator referred to in Article 25a paragraph 1 point 5 of this law shall be borne by the person taking the professional exam for the insolvency administrator.
- (2) The amount of the costs of taking the professional exam for the insolvency administrator referred to in paragraph 1 of this Article shall be prescribed by the Ministry.

Issuing of the Licence

Article 25č

- (1) An application for the issuance of a license for the work of the insolvency administrator (hereinafter referred to as "the license") with evidence of the fulfilment of the conditions from Article 25a of this law shall be submitted to the Ministry.
- (2) On the application referred to in 1 of this Article, the Ministry shall make a decision within 15 days from the day of receipt of the request.
- (3) The Ministry shall issue a license for a period of five years to a person who meets the requirements referred to in Article 25a of this law.
- (4) If the applicant does not meet the requirements referred to in Article 25a of this law, the Ministry shall reject the application for issuing a license.
- (5) The license form shall be prescribed by the Ministry.

Licence Extension

Article 25ć

- (1) The insolvency administrator may submit a request for license extension.
- (2) The request for the extension of the license shall be submitted by the insolvency administrator to the Ministry no later than three months before the expiration of the license.
- (3) Along with the request from paragraph 2 of this Article, the insolvency administrator shall submit evidence of the fulfilment of the conditions referred to in Article 25a paragraph 1 points 1, 2 and 7 of this law and the application for taking the insolvency administrator's knowledge test.
- (4) The Ministry shall decide on the request referred to in paragraph 2 of this Article within 15 days, from the date of the examination of the knowledge of the insolvency administrator.
- (5) When deciding on the request for the extension of the license, the Ministry ex officio determines whether the insolvency administrator meets the requirements from Article 25a paragraph 1 points 6 and 8 of this law.
- (6) The insolvency administrator may take the insolvency administrator knowledge test no more than two consecutive times.
- (7) The Ministry shall reject the request for license extension if:
 - 1) determines that the insolvency administrator has ceased to meet the requirements from Article 25a of this law;
 - 2) the insolvency administrator does not pass the knowledge test;
 - 3) the insolvency administrator refused to act as an insolvency administrator more than twice in the previous five-year period without justifiable reason, i.e. if in the said period they were dismissed from the duties of the insolvency administrator in more than two cases in accordance with Article 38 paragraph 1 items 1 to 6 of this of the law;

- 4) the enforced execution measure from Article 39 paragraph 4 of this law shall be applied to the discharged insolvency administrator in the previous five-year period.
- (8) The court shall be obliged to provide the Ministry with information on the insolvency administrator referred to in paragraph 7 point 4 of this Article without delay.

Knowledge Test Exam

Article 25d

- (1) The insolvency administrator's knowledge assessment exam shall be taken before the Knowledge Assessment Examination Commission established by the Ministry.
- (2) The Commission referred to in paragraph 1 of this Article shall have a President, four members and a Secretary.
- (3) The President and members of the Commission referred to in paragraph 1 of this Article shall have deputies.
- (4) The President, the members of the Commission referred to in paragraph 1 of this Article and their deputies shall be appointed from among prominent experts in the field of commercial and insolvency law and management for a period of two years and may be reappointed.
- (5) The Secretary of the Commission referred to in paragraph 1 of this Article shall be appointed from among the Ministry's employees.
- (6) The President, members of the Commission, their deputies and the Secretary of the Commission referred to in paragraph 1 of this Article shall have the right to compensation for work in the amount prescribed by the Ministry.
- (7) The Ministry prescribes the program and method of taking the knowledge assessment exam.

The Costs of Taking the Knowledge Test

Article 25dž

- (1) The costs of taking the knowledge verification exam referred to in Article 25d of this law shall be borne by the insolvency administrator.
- (2) The amount of the costs of taking the knowledge verification exam referred to in paragraph 1 of this Article shall be prescribed by the Ministry.

Termination of the License

Article 25đ

- (1) The license shall cease to be valid at the end of the period for which it was issued or at the request of the insolvency administrator.
- (2) The request referred to in paragraph 1 of this Article shall be submitted by the insolvency administrator to the Ministry.
- (3) The Ministry shall make a decision on the request referred to in paragraph 1 of this Article within 15 days from the date of receipt of the request.

Revocation of the License

Article 25e

- (1) The Ministry shall revoke the license if it determines that:
- 1) when issuing the license, the insolvency administrator did not meet the conditions referred to in Article 25a of this law;

- 2) the insolvency administrator has ceased to fulfil the requirements of Article 25a of this law.
- (2) The license revocation procedure can be initiated by the Ministry, the Commercial Court, a party to the proceedings, i.e. a party's representative or attorney, and another interested party by submitting a reasoned initiative for license revocation to the insolvency administrator.

Administrative-judicial Protection

Article 25f

The decision rejecting the request for the issuance or extension of the license, the decision determining that the license ceases to be valid, as well as the decision to revoke the license shall be enforceable and an administrative dispute can be initiated against it.

Register of Licensed Insolvency Administrators

Article 25g

- (1) The Ministry shall maintain and regularly update the register of licensed insolvency administrators in electronic form.
- (2) The register referred to in paragraph 1 of this Article shall contain the following data:
- 1) first name, last name, telephone number, e-mail address and address of residence, or habitual residence of the insolvency administrator;
 - 2) license issuance date and license number;
 - 3) whether the insolvency administrator has an established employment relationship and the name and headquarters of the legal entity with which the employment relationship is established;
 - 4) about the work biography and level of qualification of the insolvency administrator.
- (3) Data referred to in paragraph 2 of this Article shall be published on the website of the Ministry and on the open data portal.
- (4) Data referred to in paragraph 3 of this Article shall be available electronically to users of the judicial information system.
- (5) The insolvency administrator shall be obliged to inform the Ministry about the change in data referred to in paragraph 2 of this Article.

Entry and Deletion from the Register of Licensed Insolvency Administrators

Article 25h

- (1) An insolvency administrator to whom a license has been issued shall be entered in the register of licensed insolvency administrators immediately after the license is issued.
- (2) An insolvency administrator whose license has ceased to be valid, as well as the insolvency administrator whose license has been revoked, shall be deleted by the Ministry of Justice from the register of licensed insolvency administrators.

Article 26

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 10)

Shall be deleted. *(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 1/22)*

Article 27

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 10)

Shall be deleted. *(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 1/22)*

Article 28

Shall be deleted. *(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 1/22)*

Article 29

Shall be deleted. *(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 1/22)*

Appointment of Insolvency Administrator

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 011/22 of 10.01.2022, Article 11)

Article 29a

- (1) The insolvency administrator shall be appointed by the order on initiating the insolvency proceedings.
- (2) The selection of the insolvency administrator shall be made by the method of random selection from the register of licensed insolvency administrators referred to in Article 25g of this law, using an algorithm that is an integral part of the application of the judicial information system.
- (3) The detailed method of selecting the insolvency administrator referred to in paragraph 2 of this Article shall be prescribed by the Ministry.

Appointment of the Insolvency Administrator with Additional Expertise and Experience

Article 29b

- (1) If the insolvency judge considers that for the conduct of insolvency proceedings it shall be necessary for the insolvency administrator to have additional expertise and experience, they may, before issuing a decision on the opening of insolvency proceedings, submit a reasoned request to the court registry for the appointment of an insolvency administrator in accordance with Article 29a of this law.
- (2) In the request referred to paragraph 1 of this Article, the insolvency judge shall be obliged to state that the insolvency administrator must meet one or more of the following conditions, namely:
 - 1) a person who has passed the bar exam;
 - 2) certified accountant;
 - 3) a person who was engaged as the insolvency administrator in at least ten cases;
 - 4) a person who has at least five years of work experience.

- (3) The election of the insolvency administrator referred to in paragraph 1 of this Article shall be carried out in accordance with Article 29a paragraph 2 of this law.

Appeal

Article 29c

- (1) Decision on the appointment of the insolvency administrator in the decision on the opening of insolvency proceedings referred to in Articles 29a and 29b of this law shall be considered a special decision.
- (2) Against the decision on the appointment of the insolvency administrator referred to in Articles 29a and 29b of this law, the insolvency debtor and creditors may file an appeal.
- (3) The appeal does not stay execution of the decision on the appointment of the insolvency administrator.
- (4) The insolvency administrator appointed by the revoked decision on appointment shall perform the tasks of the insolvency administrator until a new decision is issued.
- (5) The insolvency judge may amend the decision on the appointment of the insolvency administrator within three days of receiving the appeal.
- (6) An appeal shall be allowed against the decision referred to in paragraph 5 of this Article.

Exception of the Insolvency Administrator

Article 29č

- (1) The insolvency administrators cannot manage the affairs and represent the insolvency debtor, if:
- 1) they are the party themselves, the party's legal representative or attorney;
 - 2) the insolvency judge, the party or the party's legal representative or attorney is related to them by kinship in the direct line up to any degree, and in the collateral line up to the fourth degree, or is their married or common-law spouse or relative by in-laws up to the second degree, regardless of whether or not the marriage has ended;
 - 3) is employed by a party to the proceedings or in a company that is majority-owned by one of the parties to the proceedings, or is a shareholder or member of a company that is a party to the proceedings;
 - 4) in the previous year, was a member of the management body or another authorized person, accountant or independent auditor of an insolvency debtor or a person related to them;
 - 5) they were banned from membership in management bodies;
 - 6) if, by being appointed as the insolvency administrators, they came into a conflict of interest in relation to the insolvency debtor;
 - 7) is a related party to the party in the proceedings, in the sense of the law governing companies; or
 - 8) there are other circumstances that cast doubt on their impartiality.
- (2) If, during the insolvency proceedings, the insolvency administrator shall become aware of the existence of any of the circumstances for exemption referred to in paragraph 1 of this Article, they shall be obliged to stop further work in that proceeding and to notify the insolvency judge without delay.

- (3) As soon as the insolvency judge learns that there is one of the reasons for exemption referred to in paragraph 1 of this Article, ex officio or at the request of a party, they shall issue a decision on the exemption of the insolvency administrators.
- (4) The provisions of paragraphs 1, 2 and 3 of this Article shall also apply to the exemption of the temporary insolvency administrator.

Interim Insolvency Administrator

Article 30

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 11)

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 12)

- (1) Court may, ex officio or at the request of the petitioner, appoint an interim insolvency administrator prior to the adoption of the decision to initiate insolvency proceedings, if it is necessary to do so in order to protect the assets from destruction and unauthorized disposition, or if there are other circumstances requiring urgent appointment.
- (2) The temporary administrator referred to in paragraph 1 of this Article shall be appointed in accordance with Article 29a paragraph 2 of this law.

Appointment of another Insolvency Administrator

Article 31

- (1) A creditor who makes probable the existence of the claim in the amount of at least 60% of the total outstanding debt based on the debtor's records, may submit a proposal for appointment of another insolvency administrator even prior to the first creditors' meeting.
- (2) The court shall decide on the proposal referred to in paragraph 1 of this Article within three days from the day of submission of the proposal.
- (3) The authorizations of the former insolvency administrator shall cease on the day of appointment of the new administrator.
- (4) The former insolvency administrator shall be obliged to transfer his duties to the new insolvency administrator within three days from the day of appointment of the new administrator.
- (5) Insolvency judge, by way of conclusion, shall determine necessary measures so that the transfer of duties, referred to in paragraph 4 of this Article, between the insolvency administrators may occur.

Authorizations of Insolvency Administrator

Article 32

- (1) Insolvency administrator shall have the rights and liabilities of the insolvency debtor organization- as a legal person, unless otherwise regulated by this Law.
- (2) If an insolvency debtor continues to operate during insolvency proceedings, the insolvency administrator shall manage the operations.
- (3) Insolvency administrator shall represent the insolvency debtor and insolvency estate.
- (4) Insolvency administrator shall manage only those activities of the entrepreneur, partnership, and limited partnership that relate to insolvency estate, and he shall

represent it as insolvency debtor with the authorizations of the legally authorized representative.

Duties of Insolvency Administrator

Article 33

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 12)

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 13)

- (1) Insolvency administrator shall be obliged to act in good faith and in a timely manner, and in particular to:
- 1) distraint and seize debtor's property;
 - 2) perform a physical inventory of the debtor's property;
 - 3) undertake necessary measures for securing the debtor's property;
 - 4) utilize the state enforcement bodies, police, or hire private security personnel, where necessary for the performance of the activities referred to in items 1, 2 and 3 of this Article;
 - 5) initiate proceedings before the court based on the provisions of this Law or any other regulation where appropriate and justified;
 - 6) initiate proceedings, lodge an appeal, engage an attorney, settle, withhold appeal or waive appeal in proceedings before any court or administrative authority in Montenegro or abroad;
 - 7) petition the appropriate administrative or judicial bodies of foreign countries as the official authorized representative of the debtor's insolvency estate to request the distraining, seizure, protection or return of the debtor's property located in foreign countries;
 - 8) hire or engage necessary number of staff upon approval of the court, determines the amount of fee and preforms supervision of the subordinates and experts engaged for administration of the proceedings;
 - 9) ascertain the validity, volume and priority of claims presented against the debtor, and of any claims' securities, and raise appropriate objections to such claims where adequate merits to do so exist;
 - 10) initiate proceedings before the court or other appropriate judicial authority in the performance of their obligations prescribed by this Law, including the following actions:
 - to recover debtor's funds or assets in the possession of third persons;
 - to return illegally transferred funds;
 - to return funds paid according to a priority that is not based on the law.
 - 11) supervise and administer the activities of the debtor within the scope of his duties prescribed by this Law;
 - 12) issue orders to close all existing debtor's bank accounts, to open a special insolvency account in a court-approved bank, which is located and registered in Montenegro, and to deposit all funds received in the name of the debtor and any of the debtor's funds from existing accounts into this account prior to their closure;

- 13) convert debtor's non-monetary assets into monetary;
 - 14) engage corresponding specialists for collecting of those data and to pay them at the expense of the insolvency estate, if the debtor fails to submit the data within the deadline prescribed by this Law;
 - 15) engage corresponding specialists for confirming the reliability of the data submitted by the debtor and to pay them at the expense of the insolvency estate;
 - 16) notify all corresponding persons for transferring all business correspondence addressed to the debtor, to the administrator or to a special post-office box;
 - 17) notify all the banks where the debtor has activity in order to prevent a transfer of assets and other transaction of the debtor without the approval of the administrator;
 - 18) notify corresponding bodies performing the registration of movable, immovable and other property that is subject to state records, of the insolvency proceedings;
 - 19) develop a draft of the main distribution of the insolvency estate and a final report;
 - 20) make payments to creditors on the basis of the decision on main distribution, i.e. the part of the decision that is final and binding and in accordance with the provisions of this Law;
 - 21) with the consent of an insolvency judge, at the expense of the insolvency estate, insures the insolvency debtor's assets, in its entirety or partially, if necessary for the sake of securing the assets.
- (2) The insolvency administrator cannot hire persons referred to in paragraph 1 point 8, 14 and 15 of this Article, Article 36 paragraph 7 point 6, Article 134 paragraph 5, Article 160 paragraph 1 point 9 and 10, Article 161 paragraph 2, Article 164 paragraph 1 and Article 177 paragraph 3 of this law, if these persons are registered in the register of licensed insolvency administrators.

Contraction of debts within insolvency proceedings by means of credits or loans

Article 34

- (1) Insolvency administrator may take a credit or loan, without security or security on assets making the insolvency estate, in accordance with Article 35, paragraph 1 of this law.
- (2) The credit or loan referred to in paragraph 1 of this Article shall be considered as the liability of the insolvency estate, but shall not have effect on the previously acquired rights of secured creditors.

Relations of Insolvency Administrator with other Bodies within Insolvency Proceedings

Article 35

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 13)

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 14)

- (1) Actions undertaken by the insolvency administrator that have a significant impact on the insolvency estate, such as taking a credit or loan, procurement of equipment of a greater value and other activities can be taken with a prior consent of the creditors' committee.

- (2) Prior to taking the action referred to in paragraph 1 of this Article, insolvency administrator shall be obliged to inform creditors' committee and insolvency judge at the latest 15 days prior to undertaking these activities.
- (3) In cases of extreme urgency, the deadline referred to in paragraph 3 of this Article may be shorter, but not shorter than 3 days, provided no member of the creditors' committee in writing or at committee's meeting objects to such a deadline for submission.
- (4) It shall be considered that the creditors' committee agrees with the proposed activities referred to in paragraph 1 of this Article, if it is informed thereof within the deadlines referred to in paragraphs 2 or 3 of this Article, and if when informed by the insolvency administrator it did not react by contesting the proposed activities or by proposing other activities.
- (5) Activities of the insolvency administrator, referred to in paragraph 1 of this Article, which are taken without the consent of the creditor's committee and insolvency judge shall produce no legal effects.

Reporting

Article 36

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 14)

- (1) Insolvency administrator shall submit to the creditors' committee and insolvency judge quarterly written reports on the course of the insolvency proceedings and the condition of the insolvency estate.
- (2) At the request of the creditors' committee or creditors whose total confirmed or contested claims exceed 20% of the total amount of submitted insolvency creditors' claims, insolvency administrator shall be obliged to submit also monthly and other required reports.
- (3) The creditor shall be obliged to advance the costs of preparing the report referred to in paragraph 2 of this Article, in the amount determined by the court, and if the creditor does not pay the advance within a certain period, the request for submitting the report shall be rejected.
- (4) Costs for preparing and submitting the reports referred to in paragraph 2 of this Article shall bear the party submitting the request.
- (5) If the applicant does not pay the expenses, the insolvency administrator shall not be obliged to submit a monthly report.
- (6) Insolvency administrator's written reports, referred to in paragraphs 1 and 2 of this Article, may be submitted by mail, fax, electronic mail or in person.
- (7) Quarterly report referred to in paragraph 1 of this Article shall include, but not be limited to the following:
 - 1) List of property sold, transferred or otherwise alienated;
 - 2) List of cash inflows and outflows during the last three months;
 - 3) Initial and final bank account balances of the insolvency debtor;
 - 4) List of insolvency debtor's liabilities;
 - 5) List of specialists hired and the fees paid to them.

- (8) In case the insolvency administrator was appointed during preliminary insolvency proceedings, the insolvency administrator shall submit to the court judge a separate written report on the course of the preliminary insolvency proceedings.
- (9) Insolvency administrator shall submit a final report to the court.
- (10) The final report or summary of the final report shall be published on the notice board of the court.

Damage Liability

Article 37

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 15)

- (1) In case when the insolvency administrator while performing the tasks has caused damage to participants in the proceedings, intentionally or by gross negligence, the insolvency administrator shall be liable with their personal property for such damage.
- (2) If damage is incurred by the action of the insolvency administrator performed upon the order of the insolvency judge, the insolvency administrator shall not be liable for the incurred damage, except if the order is given on the basis of their unconscientious actions or proposals.
- (3) Insolvency administrator shall be liable for damage incurred by the persons engaged by them, if damage is incurred due to the insolvency administrator's failure to supervise their work.
- (4) 2) The request for damage compensation shall fall under the statute of limitation within a year from the day the damaged was incurred.

Removal from office of Insolvency Administrator

Article 38

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 16)

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 15)

- (1) Insolvency judge ex officio or at the proposal of the creditors' committee shall remove from office the insolvency administrator, if they establish that that the insolvency administrator:
 - 1) Fails to fulfil their obligations prescribed by this law or undertakes actions which may incur damage to the creditor and insolvency estate;
 - 2) Fails to act upon order of the insolvency judge and does not comply with the deadlines prescribed by this Law, i.e. determined by order of the insolvency judge;
 - 3) Is acting in biased manner towards certain creditors;
 - 4) After one year of the claims investigation hearing, they have not made satisfactory progress in cashing-out the property belonging to the insolvency estate, unless the cashing-out was prevented by force majeure or other unpredictable circumstances;
 - 5) Failed to insure the property against possible damages after warnings of the insolvency judge or the creditors' committee under condition that available funds in the insolvency estate were available for that purpose;

- 6) Failed to ask for consent or failed to act upon obtained consent in cases requiring the consent of the creditors' committee pursuant by this Law;
 - 7) Fails to meet the requirements for the appointment of insolvency administrator due to the new circumstances which resulted in revocation of the licence.
- (2) In case when faced with circumstances referred to in paragraph 1, item 7 of this Article, and reasons revocation of licence of the insolvency administrator, the insolvency judge shall be obliged to inform the Ministry without delay about these circumstances.
 - 3) Before adopting the ruling on removal from office referred to in paragraph 1, of this Article, an insolvency judge shall give the opportunity to the insolvency administrator to give their opinion about the reasons for removal, except in the case referred to in paragraph 1 item 7 of this Article.
 - 4) Insolvency administrator may be removed from office at their personal request.

Handover of Duties

Article 39

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 16)

- (1) Dismissed insolvency administrator shall be obliged to transfer the duties, without delay, to the newly appointed insolvency administrator by transferring the entire documentation and by transferring the property of the insolvency debtor, and by submitting the report on the course of the insolvency proceedings and the condition of the insolvency estate from the day of initiating of the insolvency proceedings to the day of removal from office.
- (2) The report shall contain all data referred to in Article 36, paragraph 5 of this Law.
- (3) The obligation referred to in paragraph 1 of this Article regarding the transfer of documentation shall be applicable to third parties as well, if the documentation of the insolvency administrator is in their possession at the moment of their removal from office, and if required so by the newly appointed insolvency administrator.
- (4) If the dismissed insolvency administrator or the person referred to in paragraph 2 of this Article refuses the transfer of property and documentation or delays the transfer, an insolvency judge shall, at the request of the newly appointed insolvency administrator, order the transfer to be carried out, without delay, under the threat of involuntary enforcement.
- (5) An appeal against the decision on the dismissal of the insolvency administrator does not stay execution of the decision and the obligation to hand over duties to the newly appointed insolvency administrator.
- (6) In case of the failure to act based on the order referred to in paragraph 3 of this Article, an insolvency judge shall impose coercive measures for the purpose of enforcement on the insolvency administrator or third person.

Insolvency administrator remuneration and cost compensation

Article 40

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 17)

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 17)

- (1) Insolvency administrator shall be entitled to remuneration for their work and compensation of actual costs (hereinafter referred to as "the remuneration and cost compensation").
- (2) The final amount of remuneration and cost compensation, shall be envisaged by an insolvency judge, at the time of closing the insolvency proceedings, taking into consideration the scope of tasks, the value of the insolvency estate and business results of the insolvency administrator in line with bases and measures used to determine the amount of remuneration for the insolvency administrator.
- (3) Until the final amount of remuneration and compensation of costs is envisaged, an insolvency judge shall, in the form of a decision to be submitted to the insolvency administrator and creditors' committee, determine an interim amount of remuneration and compensation of costs for the insolvency administrator. Appeal shall not be allowed against the decision on interim amount of fee and costs compensation.
- (4) Compensation of costs shall be determined according to the actual costs that insolvency administrator has incurred during performance of their duties.
- (5) In case when insolvency estate is insufficient to compensate even for the insolvency proceedings, the remuneration and costs compensation for the insolvency administrator shall be paid from a special fund established by the budget of MONTENEGRO.
- (6) Detailed bases and criteria for determining the amount of compensation and rewards referred to in paragraph 1 of this Article shall be determined by a regulation of the state administration authority responsible for economic affairs.

Remuneration for Interim Insolvency Administrator

Article 41

An interim insolvency administrator shall be entitled to one-time remuneration, which amount is determined by the insolvency judge based on the scope and complexity of the work involved.

Initial Creditors' Meeting and Creditors' Committee

Article 42

- (1) The initial creditors' meeting shall be held at the latest within 40 days from the day of initiating the insolvency proceedings.
- (2) Insolvency administrator shall preside over the first creditors' meeting.
- (3) At the first meeting, the creditors shall form the creditors' committee.
- (4) At the first creditors' meeting, discussions shall be held on the report on financial status of the insolvency debtor and estimate of the insolvency administrator whether there is a possibility to conduct reorganization of the insolvency debtor.
- (5) Insolvency administrator shall give the review of all the claims to his knowledge, on the day of the meeting, as well as the estimate of their merits, amounts, or share in percentages out of the total claims.

Costs of Convening Creditors' Meeting

Article 43

- (1) Creditors' meeting may be convened even at the proposal of creditors, insolvency administrator and creditor or creditors holding 5 % or more of the total (known) claims.

Creditors at whose proposal the meeting is convened shall bear the costs of the meeting.

- (2) The costs of the meeting of creditors' committee convened at the proposal of the insolvency administrator shall be covered at the expense of the insolvency estate.
- (3) The debtor or authorized representative of the debtor shall be obliged to attend all creditors' meetings where the debtor's presence is requested, unless the absence is excused by written permission of the administrator.
- (4) At the creditors' meeting, the debtor or authorized representative of the debtor shall be obliged to provide the insolvency administrator and the creditors with requested data and information on all business activities, property and place where the property of the insolvency estate is located.

Composition of the Creditors' Committee

Article 44

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 18)

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 18)

- (1) The creditors' committee shall consist of three or five members, with the largest unsecured or partially secured claims not contested by the insolvency administrator.
- (2) The creditors' committee shall not be formed if the insolvency creditor has less than three creditors or less than three creditors have consented to be members of that committee.

Scope of Work and Rights of the Creditors' Committee

Article 45

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 19)

- (1) Creditors' committee shall:
 - 1) give its consent to all issues of extreme importance for insolvency estate, such as obtaining a credit, giving loans and similar, in accordance with this Law;
 - 2) give its opinion to the insolvency administrator on the manner of cashing-out the property, if the sale is not done through public bidding, and on continuation of the initiated operations of the insolvency debtor in accordance with this Law;
 - 3) consider reports of the insolvency administrator on the course of the insolvency proceedings and the condition of the insolvency estate;
 - 4) perform other activities envisaged by this Law;
- (2) The creditors' committee shall be entitled to:
 - 1) submit an objection against the work of the insolvency administrator to the insolvency judge;
 - 2) have access to minutes, findings of appraisers and other acts belonging to the insolvency case;

- 3) give opinion on approving justifiable losses envisaged in the course of taking the inventory;
 - 4) propose the removal from office of the insolvency administrator and propose the appointment of a new insolvency administrator;
 - 5) state its opinion on the amount of costs compensation and remuneration for the insolvency administrator.
- (3) The creditors' committee shall submit the objections to the work of the insolvency administrator within five days from the day of finding out about the disputed activity.
- (4) Members of the creditors' committee shall be liable for damage caused by their activities to other insolvency creditors, intentionally or by gross negligence.

Relieving the Members of the Creditors' Committee

Article 46

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 20)

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 19)

- 1) Creditors' committee may relieve, ex officio, a member of the creditors' committee when requested by a committee member or at the request of other creditors.
- (2) The insolvency judge may, upon the proposal of the majority of the members of the creditors' committee, dismiss a member of the creditors' committee if they judge that they are obstructing insolvency proceedings and undertake actions that harm the interests of the insolvency debtor and other creditors.
- (3) Creditors' committee shall appoint a new member of the creditors' committee, if due to the removal, the number of the members of the creditors' committee would be less than three.
- (4) If, after dismissal or loss of the position of a member of the creditors' committee, the number of members of the creditors' committee would be less than three, or would fall to an even number, at the request of the creditor, the insolvency administrator shall be obliged to convene a meeting of all creditors to form a new committee of creditors.

Meetings of the Committee and Passing of Decisions

Article 47

- (1) Chairperson of the committee shall convene the meetings of the creditors' committee.
- 2) Members of the creditors' committee shall select a chairperson of the creditors' committee from within their ranks.
- 3) Creditors' committee shall decide on issues within its competence at the meetings if majority of the total number of its members is present.
- 4) A member of the creditors' committee at the meetings may be represented by a person authorized by that member by an authenticated power of attorney.
- 5) Insolvency administrator may attend the meetings of the creditors' committee but without a voting right.
- 6) Insolvency judge cannot attend the meetings of the creditors' committee.

Compensation of Costs

Article 48

- 1) The chairperson and the members of the committee shall be entitled to compensation of necessary costs for the work in the creditors' committee.
- 2) The compensation referred to in paragraph 1 of this Article shall be calculated and paid at the expense of insolvency estate as a cost of insolvency proceedings.
- 3) The calculation and payment of compensation referred to in paragraph 2 of this Article shall be done by insolvency administrator at the proposal of the creditors' committee with the approval of the insolvency judge.

Parties and Other Participants to the Proceedings

Article 49

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 20)

- 1) Parties to the proceedings shall be insolvency debtor and insolvency creditors.
- 2) In addition to the persons referred to in paragraph 1 of this Article, the persons who are joint and several debtors, and guarantors, may participate in insolvency proceedings, in the manner regulated by this Law.
- 3) The persons referred to in paragraph 2 of this Article may as insolvency creditors request to be reimbursed for the payments made on behalf of the insolvency debtor prior or after the initiation of the insolvency proceedings, if they have right of recourse against the insolvency debtor.

Insolvency Creditor

Article 50

Insolvency creditor shall be a person who on the day of initiation of insolvency proceedings has unsecured claim against an insolvency debtor.

Acquiring the Status of a Party

Article 51

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 21)

- 1) Insolvency creditors shall acquire the status of a party by submission of claims in accordance with this Law.
- 2) Insolvency creditors, on the basis of their outstanding claims, may participate in insolvency proceedings even prior to submission of claims to the court, in the manner and in the scope prescribed by this Law.
- 3) Insolvency creditor shall lose the status of the party by full settlement of their claims.

Excluded Creditor

Article 52

- 1) An excluded creditor shall be a person who, on the basis of their real or personal right, is entitled to request a certain asset to be excluded from the insolvency estate.
- 2) The excluded creditor shall not be an insolvency creditor.

- 3) The asset referred to in paragraph 1 of this Article shall not be a part of the insolvency estate.
- 4) If the insolvency debtor has alienated, with no authorization, the asset referred to in paragraph 1 of this Article during insolvency proceedings, the excluded creditor shall be entitled to ask for the settlement of the amount corresponding to the market value of the given asset, which is settled as a liability of the insolvency estate.

Secured Creditor

Article 53

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 21)

- (1) Secured creditor shall be the creditor having security interest or right to satisfy their claims against the assets or rights that are registered in public books or registries.
- (2) Secured creditors shall be entitled to settlement from the proceeds of the sale of the property that they acquired security on. The exercise of these rights may be temporarily postponed in the cases referred to in Articles 64 and 65 of this law.
- (3) Creditors having the legal right of retention of asset shall not be obliged to deliver the asset to the insolvency debtor until their secured claim is satisfied, but they shall be obliged to enable the insolvency administrator to sell the asset subject to retention.
- (4) The creditors referred to in paragraphs 1 and 2 of this Article shall not be insolvency creditors. If the value of their claim is larger than the amount obtained by cashing-out the asset or a secured right, they shall satisfy the remaining part of their claim as insolvency creditors.
- (5) Right to secured claims acquired through enforcement proceedings or security interest within the 60 prior to initiation of insolvency proceedings for the purpose of involuntary enforcement or security shall cease to be valid and such creditors shall not be secured creditors.
- (6) On the basis of the decision of the insolvency judge, the competent authority that keeps the relevant public books or registers shall be obliged to delete the secured rights referred to in paragraph 5 of this article.
- (7) The secured creditors shall be entitled to proportional settlement from the insolvency estate as insolvency creditors if they waive their status of secured creditors or if they cannot, through no fault of their own, settle their secured claim. Secured creditors shall submit a written statement on waiving the status of secured creditors to an insolvency judge and insolvency administrator.
- (8) Secured creditors who have a lien on the items or rights of the insolvency creditor that are kept in public books or registers, and do not have a monetary claim against the insolvency debtor that is secured by that lien, are not insolvency creditors and are settled only from the funds obtained from the sale of the pledged property.
- (9) Secured creditors referred to in paragraph 8 of this Article shall be obliged to inform the court about the right of lien within the deadline for submitting the application of claims, along with providing evidence of the existence of the right of lien and evidence of the amount of the monetary claim against the third party that is secured by that right on the day of the opening of the insolvency proceedings, thereby acquiring the title of a party. Failure to notify the court with the appropriate evidence within the specified period has the consequence that those different creditors cannot exercise their lien rights in the insolvency proceedings.

Creditors based on the contract on fiduciary transfer of property rights

Article 53a

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 22)

- (1) A creditor whose rights derive from the contract on fiduciary transfer of property rights in insolvency proceedings shall have the legal position of a secured creditor.
- (2) The creditor referred to in paragraph 1 of this Article shall lose their rights from the contract on fiduciary transfer of property rights, after the opening of insolvency proceedings.
- (3) A contract concluded contrary to the provisions referred to in paragraph 2 of this Article shall be null and void.

Order of Settlement

Article 54

- (1) Costs of insolvency proceedings shall have priority in terms of settlement in full from the insolvency estate, and afterward the other liabilities shall be recovered from the insolvency estate .
- 2) Insolvency creditors shall be classified, depending on their claims, into seniority payment classes.
- 3) Insolvency creditors of the same seniority class shall be satisfied in proportion to the amount of their claims.
- 4) Insolvency creditors of the lower seniority class may only be satisfied after the settlement of insolvency creditors of higher seniority class.

Seniority Classes

Article 55

Decision of the Constitutional Court of Montenegro (Official Gazette of Montenegro No. 062/18 of September 21, 2018) which repeals the provisions of Article 55, paragraph 1, indent 1, in the part that reads: " and that at most up to the amount of 24 of the average gross salary in Montenegro on the day the insolvency proceedings were opened", point 2, in the part that reads: "as well as claims based on all public revenues before the opening of insolvency proceedings" and item 3, in the part that reads: "including the claims of creditors over the amount from paragraph 1 point 1 and 2 of this Article", of the Law on Insolvency (Official Gazette of Montenegro 1/11 and 53/16) and cease to be valid on the date of publication of this Decision.

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 22)

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 23)

- (1) Seniority classes shall be classified in three tiers:
 - 1) the first tier shall include:

- unpaid gross wages of employees and former employees, with the interest from the day of maturity to the day of opening of insolvency proceedings, in the amount of minimum wages for the last two years prior to opening of insolvency proceedings;
 - claims of employees, prior and after the petition submission, in the name of injury at work at the insolvency debtor;
- 2) the second tier shall include the claims on the basis of all public revenues matured over the last three months prior to initiating insolvency proceedings, except for contributions for pension and disability insurance of employees;
 - 3) the third tier shall include the claims of other insolvency creditors.
- (2) Claims of insolvency creditors who have agreed, prior to initiation of insolvency proceedings, to be settled only upon the full settlement of claims of one or more insolvency creditors shall be settled only upon the full settlement of the third tier with the accompanying interests.

III. INITIATION OF INSOLVENCY PROCEEDINGS

Authorized Petitioners

Article 56

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 23)

- (1) Insolvency proceedings shall be initiated by the petition of creditors, debtor or liquidator.
- (2) Creditor shall submit a petition only in the case of existence of permanent inability to pay, and in the cases referred to in Article 13 of this Law, regardless of the grounds for the claim. An insolvency creditor cannot file a motion to initiate insolvency proceedings if the insolvency creditor's claim is the subject of a separate ongoing litigation.
- (3) Insolvency debtor shall submit the petition and shall not be obliged to prove the existence of insolvency reasons.
- (4) Liquidator shall submit the petition based on grounds prescribed by the law regulating business organizations.

Form and Contents of the Petition

Article 57

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 24)

- (1) The petition shall be submitted to the competent court in a written form.
- (2) The petition referred to in paragraph 1 of this Article shall include:
 - 1) name of the court that the petition is submitted to;
 - 2) company name or name and address of the petitioner, or address of the person authorized, within these proceedings, to receive the writs and to represent the petitioner;
 - 3) company name or name of the insolvency debtor, as well as the information about its contact address;

- 4) list of insolvency and other creditors stating the amounts of and grounds for claims as well as names and permanent residence of the company owners or management members who are liable with their own assets for the insolvency debtor liabilities, balance sheets and profit and loss statements for the last three years, if they were made; the decision to initiate insolvency; data on the debtor's business accounts; a list of property owned by the debtor regardless of where it is located; the list of the debtor's debtors; and data on the number of employed persons, if the petitioner is an insolvency debtor;
- 5) facts and accompanying documentation proving type, grounds, and amount of outstanding claim, if the petitioner is a creditor;
- 6) the list of documents attached to the petition.

Proceedings in case of Improper and Incomplete Petition

Article 58

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 25)

- (1) If the petition does not include all the elements prescribed by article 57 of the Law, the court shall inform thereof the petitioner and determine a deadline that cannot be longer than eight days within which the petitioner is obliged to correct his petition and remove the deficiencies.
- (2) If the petitioner does not act in accordance with the court order referred to in paragraph 1 of this Article, the court shall reject the petition in the form of a decision.
- (3) In the case referred to in paragraph 2 of this Article, the costs of the proceedings shall be borne by the petitioner.

Withdrawing the Petition

Article 59

- (1) The petition can be withdrawn until the announcement on initiating of the insolvency proceedings is posted on the bulletin board of the court, or until issuing of a decision to reject or refuse the petition.
- (2) If the petitioner withdraws the petition, the court shall suspend the proceedings, and the petitioner shall bear the costs of the procedure.

Compensation of Costs

Article 60

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 24)

- (1) The petitioner shall be obliged, within eight days from the day of receiving the order of the court, to make an advance payment in the name of costs of insolvency proceedings, which include the costs of the announcement and costs of the insolvency administrator, in the amount envisaged by the court.
- (2) The advance referred to in paragraph 1 of this Article cannot be determined in an amount higher than 5,000 euros.

- (3) If the petitioner fails to pay the funds referred to in paragraph 1 of this Article within the prescribed period, the court shall reject the petition.
- (4) If the court determines that the petition is without merits, and that conditions for initiating insolvency proceedings do not exist, all incurred costs, based on the court order, shall be covered from the funds referred to in paragraph 1 of this Article.
- (5) If the insolvency proceedings are initiated, the costs of the proceedings shall also include the costs of the preliminary insolvency proceedings.

Decision on initiating the Preliminary Insolvency Proceedings

Article 61

- (1) The court shall issue a decision on initiation of the preliminary insolvency proceedings within three days from the day of submission of the petition. Appeal shall not be allowed against the decision on initiation of preliminary insolvency proceedings.
- (2) Preliminary insolvency proceedings shall be initiated in order to determine the reasons for initiation of insolvency proceedings.
- (3) The decision referred to in paragraph 1 of this Article shall be submitted to the petitioner and the insolvency debtor, if the petitioner is a creditor.
- (4) In addition to the decision, a copy of the petition shall be submitted to the debtor, when the petitioner is a creditor.
- (5) By issuing a decision on initiating preliminary insolvency proceedings the court is, consequently scheduling a hearing for discussing the existence of reasons for insolvency to initiate the insolvency proceedings.

Initiating Insolvency Proceedings without Conducting Preliminary Insolvency Proceedings

Article 62

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 26)

- (1) Insolvency proceedings shall be initiated without conducting preliminary insolvency proceedings in the following cases:
 - 1) if the insolvency debtor submits the petition for initiation of the insolvency proceedings;
 - 2) if the creditor submits the petition, and the insolvency debtor admits the existence of reason for insolvency;
 - 3) the proceedings are initiated based on the petition of the creditor who could not satisfy his claim in the enforcement proceedings.

Obligation of the Insolvency Debtor to Provide Necessary Data

Article 63

- (1) Authorized persons of the insolvency debtor, proxies and persons who perform financial activities and audit activities for the insolvency debtor, shall be obliged to submit all data and notices to the insolvency judge and insolvency administrator, at their request and without delay.

- (2) The obligation referred to in paragraph 1 of this Article shall apply also to the members of the managing and the supervisory boards of the insolvency debtor whose duty has terminated by opening of insolvency proceedings.
- (3) Insolvency judge may order, in the form of a decision the debtor, as well as the persons referred to in paragraph 1 of this Article to, within a specified deadline, submit a written report on the financial condition of the insolvency debtor.
- (4) The appeal cannot be lodged against the order referred to in paragraph 3 of this Article.
- (5) If the insolvency debtor or the persons referred to in paragraph 1 of this Article do not act in accordance with the order of the insolvency judge, the insolvency judge may order and implement measures of involuntary enforcement in accordance with this Law.
- (6) The persons referred to in paragraph 1 of this Article shall be liable to creditors for compensation of damage they caused by denying the data and notices, as well as for negligently prepared report on financial condition of the insolvency debtor or not delivering such a report.

Security Measures

Article 64

- (1) Insolvency judge shall, ex officio or at the request of the petitioner, in the form of a decision on initiation of preliminary insolvency proceedings, determine security measures to prevent the changes in the status of insolvency debtor's property and/or destruction of business documentation, if there is a danger that the insolvency debtor shall alienate the property or destroy documentation until the initiation of insolvency proceedings.
- (2) Insolvency judge may impose one or several measures referred to in paragraph 1 of this Article, as follows:
 - 1) appoint the interim insolvency administrator who will take over all or part of the authorizations of the insolvency debtor's governing bodies;
 - 2) prohibit payments from the insolvency debtor's account without a consent of the interim insolvency administrator;
 - 3) prohibit disposition with the insolvency debtor's property or determine that the insolvency debtor can dispose with his property only with a prior consent of the insolvency judge or the interim insolvency administrator;
 - 4) prohibit or temporarily postpone the enforcement on the insolvency debtor's property, including the prohibition or temporary postponement relating to exercise of the rights of secured creditors.
- (3) In case of violation of the disposition prohibition referred to in paragraph 2, item 3 of this Article, the provisions of this Law regarding legal consequences effective after initiating the insolvency proceedings, due to violation of disposition prohibition, shall apply.
- (4) Appeal shall be allowed against the decision referred to in paragraph 1 of this Article, but shall not stay the enforcement.
- (5) The measures referred to in paragraph 2 of this Article may be imposed only until the termination of the preliminary insolvency proceedings, and insolvency judge may condition or cancel them.

Cancellation and Modification of Security Measures and Legal Prohibitions regarding Enforcement and Satisfaction

Article 65

- (1) In case of prohibition of enforcement and settlement, which includes the establishment of security measures referred to in Article 64, paragraph 2 of this Law or in case of prohibition of enforcement and settlement referred to in Article 95 of this Law, the insolvency debtor or the insolvency administrator shall be obliged to provide adequate security of the property in the manner that will insure that the value and the condition of the property remain unchanged.
- (2) Insolvency judge, at a written request of the secured creditor, may make a ruling on cancelling or conditioning security measures referred to in Article 64, paragraph 2, item 4 or measures referred to in Article 95 of this Law if:
 - 1) the insolvency debtor or insolvency administrator has not adequately secured the property;
 - 2) the value of the property is declining and there is no other possibility to appropriately and efficiently secure the property;
 - 3) the value of the subject property is lower than the overall amount of the secured claims, and the subject property is not of a crucial importance for reorganization.
- (3) Insolvency judge shall decide on the request referred to in paragraph 2 of this Article within 20 days from the day of receiving the request.
- (4) If the insolvency judge does not issue a decision on the request within the prescribed deadline referred to in paragraph 3 of this Article, it shall be considered that the enforcement prohibition is temporarily suspended with regard to the requesting party to the extent necessary to allow the secured creditor to exercise his rights to foreclose on the collateral in accordance with law.
- (5) At the proposal of the secured creditor, the insolvency judge may adopt a ruling on adequate security of the collateral by imposing the following measures:
 - 1) payment of regular cash compensations to the secured creditor equal to the amount of decline in property value or compensation for actual or anticipated losses;
 - 2) exchanging the property or designation of additional secured property sufficient to compensate for the decline in property value or for losses;
 - 3) disbursement of proceeds generated from sale, use or alienation of the collateral for the claim of the secured creditor, to the extent of his secured claim;
 - 4) repair, maintenance, insurance or measures of special protection and of keeping the property;
 - 5) other security measures or other types of compensation for which the insolvency judge deems that they shall secure the secured creditor's assets' value.

Public Character of Security Measures

Article 66

- (1) The decision imposing the security measures referred to in Article 64, paragraph 2 of this Law shall be published on the court's bulletin board and shall be submitted to the organization that keeps a registry of legal persons.
- (2) The authority referred to in paragraph 1 of this Article is obliged, without any delay to register measures imposed by the decision.
- (3) If the decision referred to in paragraph 1 of this Article imposes the measure of prohibiting the payments from accounts, the decision shall be submitted also to the

financial organization or bank dealing with payment operations for the insolvency debtor and to the court in charge of the enforcement procedure.

Provision of Services of Common Interest

Article 67

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 27)

- (1) Legal persons providing utility, telecommunication and services regarding the supply of electrical energy, gas or another source of energy (hereinafter referred to as: the services of common interest) cannot suspend the provision of these services to the insolvency debtor on the basis of unpaid pre-petition debts.
- (2) The insolvency debtor shall be obliged to make regular payments on current utility services referred to in paragraph 1 of this Article as of the petition date onward.
- (3) At the written request of the legal person referred to in paragraph 1 of this Article, the insolvency judge may order to the insolvency debtor to deposit a portion of his funds with the court to secure the payment of services rendered by that legal person for the current liabilities incurred after the petition was submitted.
- (1) The amount of deposited funds, referred to in paragraph 3 of this Article, cannot exceed monthly payments for the services of common interest, which are provided to the debtor during the calendar month preceding the month in which the petition is submitted.

Interim Insolvency Administrator in the Preliminary Insolvency Proceedings

Article 68

- (1) A person who meets the requirements to be appointed as insolvency administrator may be appointed as interim insolvency administrator in preliminary insolvency proceedings.
- (2) If a security measure, prohibiting the disposition of the property is imposed, the authorization to dispose with the property of the insolvency debtor shall be transferred to the interim insolvency administrator who shall be obliged to protect and maintain the property and continue to conduct the insolvency debtor's operations, unless the insolvency judge orders the suspension of operations.
- (3) Interim insolvency administrator shall enjoy the authorizations granted to him by the appointment decision.
- (4) Authorizations of interim insolvency administrator shall terminate by adoption of the decision on initiating the insolvency proceedings.
- (5) Insolvency administrator who is appointed in the preliminary insolvency proceedings shall submit a report on his work, with the data on financial condition of the insolvency debtor and operating results in the preliminary insolvency proceedings, to the insolvency judge.

Duration of Preliminary Insolvency Proceedings

Article 69

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 25)

Preliminary insolvency proceedings may last as a rule 30 days from the day of submission of the petition.

Hearing on Initiating the Insolvency Proceedings

Article 70

- (1) If the preliminary insolvency proceedings is initiated, the insolvency judge shall schedule a hearing to discuss whether the insolvency grounds for opening an insolvency proceedings exist, within 30 days as of the day of the receipt of the petition to initiate the insolvency proceedings.
- (2) The petitioner, insolvency debtor and insolvency administrator, if one was appointed in the preliminary insolvency proceedings, shall be invited to the hearing.

Decision on Initiating the Insolvency Proceedings

Article 71

- (1) The insolvency judge shall adopt a decision on accepting to initiate insolvency proceedings.
- 2) Decision referred to in paragraph 1 of this Article shall be adopted by no later than within three days as of the day the hearing referred to in Article 70 is terminated.
- (3) The decision on rejecting the petition for opening of the insolvency proceedings shall stipulate who should bear costs of the preliminary insolvency proceedings.
- (4) The insolvency judge shall initiate the insolvency proceedings by way of decision adopting the petition referred to in paragraph 1 of this Article.

Content of the Decision on Initiating the Insolvency Proceedings

Article 72

- (1) The decision on initiating the insolvency proceedings shall contain:
 - 1) name and official address of the court which has issued the decision on initiating the insolvency proceedings;
 - 2) name and registered office, and address of the insolvency debtor;
 - 3) existence of the reason for insolvency;
 - 4) The name, last name, and address of appointed insolvency administrator;
 - 5) Invitation to creditors to declare their secured and unsecured claims within 30 days as of the day of publication of the notice on initiating the insolvency proceedings;
 - 6) Invitation to debtors of the insolvency debtor to fulfil their obligations against the insolvency estate;
 - 7) Date, time and place of the hearing to examine the claims;
 - 8) Date, time and place of the first meeting of creditors;
 - 9) Day of posting notice on the notice board of the court.
- (2) Initiation of the insolvency proceedings shall be registered in a relevant register based on the decision on the opening of the insolvency proceedings.

Servicing the Decision and Publishing the Notice

Article 73

- (1) Decision on initiating the insolvency proceedings shall be delivered, on the same day when it is passed, to the insolvency debtor, the petitioner, a bank where the insolvency debtor has the account, to the register of commercial entities, to state authority competent for recording immovable property, pledge register of movable property and competent tax authorities.
- (2) The notice on initiating the insolvency proceedings is drafted by the insolvency judge, immediately after passing a decision on initiating the insolvency proceedings.
- (3) The notice referred to in paragraph 1 of this Article shall be published on the notice board of the court and in the Official Gazette of Montenegro, and may also be published in other national and international information outlets.
- (4) The notice on initiating the insolvency proceeding shall contain all data from the decision on initiating the insolvency proceeding and other data having importance for creditors.
- (5) The court shall be obliged also to publish, on the web site of the court, notices, decisions and other documents posted on the notice board within 24 hours as of the time of their posting on the notice board of the court.

Scheduling the Examination Hearing

Article 74

- (1) The insolvency judge shall schedule hearing for examination of claims (hereinafter: examination hearing) by way of the decision on initiating the insolvency proceedings.
- (2) The examination hearing shall be held within the deadline not exceeding 60 days as of the expiry of the period for declaration of claims.

Timing of Legal Consequences of Initiating the Insolvency Proceedings

Article 75

The legal consequences of the initiation of the insolvency proceedings shall take effect as of the day when the notice on opening of the insolvency proceedings was posted on the notice board of the court, unless otherwise stipulated by this Law.

Transfer of Rights and Obligations onto the Insolvency Administrator

Article 76

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 28)

- (1) As of the day of initiating the insolvency proceedings, the representation and management rights of the chief executive manager, authorised representative, or proxy, as well as the management bodies and supervisory bodies of the insolvency debtor shall cease and such rights shall be transferred onto the insolvency administrator.
- (2) Legal transactions conveying the assets and rights included in the insolvency estate, concluded by the insolvency debtor after the initiation of the insolvency proceedings shall have no legal effect, save for the case of disposal for which general rules of public records reliability apply, while the other party as the insolvency creditor shall have the right to demand retrieval of the counter-performance from the insolvency estate.
- (3) Power of attorneys issued by the insolvency debtor relating to the assets included in the insolvency estate shall terminate as of the initiation of the insolvency proceedings.

Pre-emptive Purchase Right

Article 77

Any pre-emptive purchase right against the assets of the insolvency debtor shall be discharged as of the initiation of the insolvency proceedings.

Inheritance Statement

Article 78

If the insolvency debtor obtained an inheritance after initiation of the insolvency proceedings, the insolvency administrator shall issue an inheritance statement.

Termination of Employment

Article 79

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 29)

- (1) Initiation of the insolvency proceedings shall cancel employment contracts entered between the insolvency debtor and employees.
- (2) The insolvency administrator shall decide on cancelling employment contracts referred to in paragraph 1 of this Article.
- (3) The insolvency administrator may employ required number of persons in order to complete initiated activities, or in order to conduct the insolvency proceedings with the consent of the insolvency judge.
- (4) Wages and other incomes of persons referred to in paragraph 3 of this Article shall be envisaged by the insolvency administrator after obtaining the opinion from the creditor's committee, with the consent of the insolvency judge.
- (5) Wages and incomes referred to in paragraph 4 of this Article, shall be settled from the insolvency estate as the cost of insolvency proceedings.

Title of the Insolvency Debtor

Article 80

The designation "in insolvency" shall be added to the title of the insolvency debtor.

Accounts of the Insolvency Debtor

Article 81

- (1) Accounts of the insolvency debtor shall be closed and the rights of persons who were authorized to dispose of the resources in the accounts of the insolvency debtor shall cease as of the day of initiating the insolvency proceedings.
- (2) The bank shall open a new account at the request of the insolvency administrator, through which the operations of the insolvency debtor shall take place.
- (3) The monetary funds from the closed accounts of the insolvency debtor shall be transferred to the new account.

Claims of Creditors

Article 82

- (1) Insolvency creditors may satisfy their claims against the insolvency debtor only through the insolvency proceedings.
- (2) By initiating the insolvency proceedings, secured rights shall only be settled in the insolvency proceedings, save for the case referred to in Article 65 of this Law.
- (3) Excluding creditors may satisfy their claims in a court and other proceedings.

Claims Due against the Insolvency Debtor

Article 83

- (1) Claims of creditors against the insolvency debtor that have not become due shall be deemed as due on the day of initiating the insolvency proceeding.
- (2) Monetary and non-monetary claims against the insolvency debtor having as subject recurrent grants shall be transformed into one-off claims on the day of initiating the insolvency proceedings and shall be calculated in the monetary value.
- (3) Claims in foreign currency shall be calculated in euro counter value at the exchange rate on the day of initiating the insolvency proceedings.

Right to Off-Set Claims in the Insolvency Proceedings

Article 84

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 26)

- (1) If the insolvency creditor acquired the right to off-set his/her claim with claim of the insolvency debtor against such creditor prior to the filing of the petition for initiating the insolvency proceedings, the opening of the insolvency proceedings shall have no effect on the existence of right to off-set.
- (2) The insolvency creditor shall be obliged to submit to the court a declaration of claims for the entire amount of the claim and statement on offsetting before the expiry of the deadline for declaration of claims. In the contrary, insolvency creditor shall lose the right to offsetting.
- (3) Offsetting shall be allowed during the insolvency proceedings, if during the settlement procedure there were conditions for offsetting between the amount determined for settlement and the amount, which in the meantime occurred as an obligation of the creditor towards the debtor and the insolvency estate.

Cases when the Offsetting is not Permitted

Article 85

- (1) Offsetting shall not be permitted if:
 - 1) The insolvency creditor has acquired right to offsetting after the petition for initiating the insolvency proceedings is submitted;
 - 2) The insolvency creditor acquired claim in the last six months prior to the day of submission of petition for initiating the insolvency proceedings and the insolvency creditor knew or must have known that the creditor is unable to make payments or is over-indebted;
 - 3) Conditions for offsetting were created by a legal transaction or other legal action that could be voided.

- (2) Exceptionally, offsetting of claim in case referred to in paragraph 1 item 2 of this Article shall be permitted if the claim is such as acquired in respect of fulfilling uncompleted contracts or claim which has restored the legal effect by a successful avoidance of legal transaction or other legal action of the insolvency debtor.

Conversion of the Insolvency Debtor's Claims

Article 86

- (1) Non-monetary claims of the insolvency debtor shall be included in the insolvency estate and shall be stated in monetary value.
- (2) Claims in foreign currency shall be included in the insolvency estate in such currency, but shall be calculated in euro counter value at the exchange rate on the day of initiating the insolvency proceedings.

Interests

Article 87

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 30)

- (1) Calculation of contracted and penalty interests for unsecured claims in the insolvency proceedings shall cease on the day of initiating the insolvency proceedings.
- (2) A contracted and penalty interest shall be calculated on secured claims in the insolvency proceedings, but not exceeding the realised value of the asset serving as the collateral for the claim.
- (3) If after settlement of all claims there are available funds for payment, the insolvency judge shall approve calculation and payment of interest to insolvency creditors even for the period after the initiation of the insolvency proceedings, and calculation and payment of interest of secured creditors which were not settled from the realised value of the collateral.
- (4) The interest referred to in paragraph 3 of this Article shall be calculated pursuant to regulations governing rate of statutory penalty interest arising from obligation relations, whereby the interest shall be paid to all insolvency creditors in proportion regardless of the seniority.
- (5) Provisions of the contract invoking contractual penalties, increased interest rate or any other punitive measure in case of default of such contractual obligations of the insolvency debtor shall be deemed as null and void for the purpose of computation of the amount of claim in the insolvency proceedings.

Statute of Limitations of Claims

Article 88

- (1) The statute of limitations of claims existing against the insolvency debtor shall be interrupted by registration of claims.
- (2) The statute of limitations of claims of the insolvency debtor against his debtors shall stay as of the day of initiating the insolvency proceeding and it shall not run for one year as of the day of the initiation of the insolvency proceedings.

Conditional Claims

Article 89

- (1) Provisioning of adequate funds from the insolvency estate shall be envisaged for a creditor whose claims are under a suspensive condition.
- (2) If the suspensive condition does not occur until the decision on the main distribution of the insolvency estate becomes final and binding, the claims under the suspensive conditions shall be discharged and the proceeds are distributed to other creditors commensurate to the level of their claims.
- (3) The claims under a resolutive condition shall be taken into account in the distribution of the insolvency estate if the creditor provides security guaranteeing that they will return what they have received from the insolvency estate, when the resolutive condition takes effect. If the resolutive condition does not occur until the decision on final distribution of the insolvency estate becomes final and binding, it shall be deemed as such condition did not exist at all.

Procedural Consequences of Initiating the Insolvency Proceeding

Article 90

All court and administrative proceedings against the insolvency debtor and the assets thereof shall be interrupted at the time of the occurrence of legal consequences of initiating the insolvency.

Continuing the Proceeding

Article 91

- (1) A civil proceedings whereby an insolvency debtor is a plaintiff shall continue when the insolvency administrator submits a notification on taking over the proceeding to the court before which such proceeding is held.
- (2) An administrative proceedings initiated at the request of the insolvency debtor shall continue when the insolvency administrator submits a notification on taking over the proceeding to a competent authority.

Continuation of the Civil Proceedings

Article 92

A civil proceeding where the insolvency debtor is a respondent shall continue if:

- 1) The plaintiff as an insolvency and secured creditor has filed in a timely and proper manner declaration of claims;
- 2) The insolvency administrator contested claims in the examination hearing;
- 3) The plaintiff as an insolvency or secured creditor is referred to continue interrupted civil proceeding by way of a resolution of the insolvency judge in order to establish merits of the claim.
- 4) And if the plaintiff as insolvency or secured creditor proposed the continuation of interrupted civil proceeding within 8 days as of the day of receipt of the resolution of the insolvency judge referred to in item 3 of this Article.

Terms of Motion to Continue the Civil Proceedings

Article 93

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 31)

- (1) If all procedural requirements referred to in Article 95 of this Law are not met, the civil court shall dismiss the motion to continue the interrupted proceeding by way of a decision.
- (2) If requirements referred to in Article 92 of this Law are met, the court shall stipulate the continuation of the proceeding by way of a decision against which no appeal shall be permitted.
- (3) If interrupted civil proceeding was held before the court of general jurisdiction, such court shall, if the proceeding is continued, decline jurisdiction by way of a decision and assign the case to the court conducting the insolvency proceedings against the respondent.

Proceedings in case of unrevised petition

Article 94

If in the motion to continue with the proceeding a plaintiff fails to revise the statement of claim by presenting declaratory instead of a binding claim, the competent court shall continue the proceeding and dismiss the statement of claim as inadmissible.

Prohibition of Enforcement and Settlement

Article 95

- (1) From the day of initiating the insolvency proceedings, no involuntary enforcement or any other enforcement measure may be assigned and executing against the insolvency debtor or its property for the purpose of settling the claims, except for enforcement in respect of the insolvency estate obligations.
- (2) Proceedings referred to in paragraph 1 of this Article that are in process shall be discontinued.
- (3) The prohibition referred to in paragraph 1 of this Article may be cancelled or altered under the conditions and in the manner stipulated in Article 65 of this Law.

The Right of Choice in the Case of a Mutually Binding Bilateral Contract

Article 96

- (1) If the insolvency debtor and the counterpart thereof did not fulfil a mutually binding bilateral contract they entered into, in its entirety or in part, before the initiating of the insolvency proceedings, the insolvency administrator may execute the contract instead of the insolvency debtor, and demand the other party to fulfil its obligations.
- (2) If the insolvency administrator refuses the execution, referred to in paragraph 1 of this Article, the counterpart of the insolvency debtor may satisfy proper claims as an insolvency creditor.
- (3) If the counterpart of the insolvency debtor invites the insolvency administrator to state whether they intend to fulfil the contract, the insolvency administrator shall be obliged to notify in writing the counterpart of the insolvency debtor on whether they intend to execute the contract within 15 days as of day of receipt of the invitation.
- (4) If the insolvency administrator confirms the execution of the contract but fails to execute it in the course of the insolvency proceedings, claims that arise from such contract shall have the first tier seniority, as costs of the insolvency proceedings.

Financial Leasing

Article 97

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 32)

- (1) If the insolvency proceeding is initiated against the lessee, the lessor shall be entitled to a separate settlement and shall have a priority right over the subject matter of the leasing.
- (2) The prohibition of enforcement and settlement referred to in Article 95 of this Law shall also apply accordingly to exercise of the right referred to in paragraph 1 of this Article.
- (3) The lessor may request the cancellation or modification of the collateral measures or application of protection measures, referred to in Article 65 paragraphs 3 and 4 of this Law.
- (4) In the case of insolvency, the insolvency debtor or insolvency administrator shall be obliged to forfeit the subject matter of leasing to the lessor within 30 days as of the day of receipt of a written request to do so, which can be submitted after the decision on insolvency and sale of assets has been issued, unless the lessor agrees otherwise.
- (5) If insolvency debtor or insolvency administrator fails to forfeit the subject matter of the leasing within the deadline referred to paragraph 4 of this Article, the lessor shall have the right to request the repossession and execution against the subject matter of the leasing in accordance with the contract or law.
- (6) In the case of reorganization, the insolvency debtor or insolvency administrator shall be obliged to notify in writing the lessor on intention to continue the use of the asset subject matter of the leasing within eight days as of the day of receipt of the request in writing.
- (7) If insolvency debtor or insolvency administrator fails to notify the lessor on intent to continue using the subject matter of the leasing within the deadline referred to in paragraph 6 of this Article, or fails to make payments within the contracted deadlines, the lessor shall have the right to request the repossession and execution against the subject matter of the leasing in accordance with the contract or law.
- (8) If the insolvency proceedings are initiated against the lessor, as well as against operating lease contracts, the provisions of Article 96 of this Law shall apply.

Fixed Transactions

Article 98

- (1) If, under a fixed contract, the time of fulfilling an obligation occurred after initiating the insolvency proceedings, the counterpart of the insolvency debtor may not demand execution, but may demand compensation on account of the default, as an insolvency creditor.
- (2) The compensation due to failing to fulfil obligations referred to in paragraph 1 of this Article shall be determined as the difference between the contracted and the market price valid for fixed contracts in the place of execution on the day of initiating the insolvency proceedings.

Application of Rules on Other Transactions with a Contracted Deadline

Article 99

The provisions of Articles 96 and 98 of this Law shall also apply accordingly on legal transactions if the subject matter of the prestation contracts such as: delivery of securities, delivery of precious metals, monetary prestations settled in foreign currency and other,

when the contracted time or the settlement deadline have entered into force after initiating the insolvency proceedings.

Orders and Offers

Article 100

- (1) An order issued by the insolvency debtor shall become ineffective on the day of initiating the insolvency proceedings, unless decided otherwise by the insolvency administrator.
- (2) Offers made to the insolvency debtor or offers made by the insolvency debtor, if they have not been accepted until the day of initiating the insolvency proceedings, shall cease to be valid as of the day of the opening of the insolvency proceedings, unless the insolvency administrator decides otherwise.

Rental

Article 101

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 33)

- (1) The rental of immovable property shall not cease upon initiation of the insolvency proceedings.
- (2) The counterpart of the insolvency debtor may exercise the rights acquired before initiating the insolvency proceedings against the insolvency debtor only as an insolvency creditor.
- (3) The insolvency administrator may cancel the rental contracts irrespective of the term stipulated by law and the contract, with a 30 days cancellation notice.
- (4) The landlord shall exercise the right to damage compensation due to the cancellation of rental in the amount that cannot exceed the amount of six-month rent.
- (5) The counterpart of the insolvency debtor cannot cancel the rental due to a delay in paying the rent or because of an aggravation of the financial situation of the insolvency debtor after the petition for initiating the insolvency proceedings has been filed.
- (6) If the rental contract remains in effect, the insolvency debtor shall have the obligation to make regular payments of the contracted rent, while claims under such contract shall be deemed as the liability of the insolvency estate.
- (7) If insolvency proceedings was initiated before the insolvency debtor has entered the immovable property as a lessee, the insolvency administrator and the counterpart of the insolvency debtor may desist from the rental contract.

Commodities in Transport

Article 102

- (1) The counterpart of the insolvency debtor or the seller or his commission agent, to whom the amount has not been paid entirely, may request the return of the commodity that was forwarded to the insolvency debtor, but has not reached the destination point until the day of the opening of the insolvency proceeding, or was not taken over by the insolvency debtor – the right of pursuit.
- (2) If the insolvency debtor has taken over the commodities that have arrived at the destination point before opening of the insolvency proceedings, only for the purpose of

preserving them, the seller shall not have the right of pursuit, but may exercise his/her rights as an excluding creditor according to the general rules.

IV. INSOLVENCY ESTATE

The Concept

Article 103

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 34)

- (1) The insolvency estate shall mean the entire assets of the insolvency debtor in country and abroad as of the day of initiating the insolvency proceeding, as well as assets acquired during the insolvency proceedings by the insolvency debtor.
- (2) Exceptionally referred to in paragraph 1 of this Article, the insolvency estate shall not include assets or collaterals used by a debtor – payment system participant as a pledge to secure the loan taken from another payment system participant in order to meet the liabilities arising from the payment system.
- (3) The court in charge of the insolvency proceedings shall be obliged forthwith to notify the Central Bank of Montenegro and other payment system operators on the time of registration of the petition to initiate the insolvency proceedings against the payment system participant.
- (4) The Central Bank of Montenegro and other payment system operators shall be obliged forthwith, and not later than within three business days as of the day of receiving the notification referred to in paragraph 3 of this Article, to notify the court on existence of collateral for the loan referred to in paragraph 2 of this Article for the purpose of adopting a ruling on exclusion of such collateral from the insolvency estate.
- (5) Provisions of this Law governing international (cross-border) insolvency shall apply in respect of the insolvency debtor located abroad.

Excluding Rights, Compensation for Excluding Rights

Article 104

- (1) If the excluding right is registered in a land register or another public record or register, the insolvency debtor shall bear the burden of proof that the property having such right shall be included in the insolvency estate.
- (2) If the insolvency debtor alienated property subject to the excluding right, without authorisation, before the opening of the insolvency proceedings, the excluding creditor may request to restore the counteraction right if such action is not yet executed, and if it is executed they may request damage compensation as an insolvency creditor.

Costs of Insolvency Proceedings

Article 105

The costs of insolvency proceedings shall include:

- 1) court costs of the insolvency proceedings;
- 2) remuneration and fees to the insolvency administrator or the interim insolvency administrator;
- 3) other expenses specified by law to be settled as costs of the insolvency proceedings.

Insolvency Estate Liabilities

Article 106

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 35)

- (1) The liabilities of the insolvency estate shall include following:
 - 1) liabilities caused by actions of the insolvency administrator or other administration methods, cashing out and division of insolvency estate, which do not include the costs of the proceedings;
 - 2) from the mutually binding bilateral contract, if its fulfilment is required for the insolvency estate or must occur after the initiation of the insolvency proceedings;
 - 3) created by an unjust enrichment of the insolvency estate;
 - 4) against employees of the insolvency debtor created after initiating the insolvency proceedings.
- (2) The liabilities of the insolvency estate shall also include liabilities referred to in paragraph 1 of this Article, created during the preliminary insolvency proceeding if the insolvency proceeding is initiated.
- (3) The liabilities of the insolvency estate shall also include other liabilities by this law as liabilities of the insolvency estate.

Taking Over the Insolvency Estate

Article 107

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 36)

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 27)

- (1) As of the initiation of the insolvency proceedings, the insolvency administrator shall take possession of all assets included in the insolvency estate and administer them.
- (2) If the insolvency debtor or third party refuse to handover the assets belonging to the insolvency debtor, the insolvency administrator shall request from the insolvency judge to order and conduct an involuntary enforcement.
- (3) The insolvency judge shall deliver the request to the proponent's opponent and may schedule a hearing on the decision on the proposal.
- (4) Along with an order for handing over the property, the insolvency judge may also order coercion measures against the insolvency debtor or third party to enable the enforcement.
- (5) If the assets of the insolvency debtor include cash, securities or valuables, the insolvency administrator shall decide on the manner of their preserving or investing with the consent of the committee of creditors.

Inventory and Sealing

Article 108

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 37)

- (1) The insolvency administrator shall prepare an inventory of the assets included in the insolvency estate, specifying their estimated value expected from the cashing out. If needed, the insolvency administrator shall entrust the evaluation of assets to an authorised appraiser, with the consent of the insolvency judge.
- (2) After taking over the insolvency estate, before or after the inventory of the property, depending on the circumstances, the insolvency administrator may request the authorized officer of the insolvency court to seal the premises in which the property of the insolvency debtor is located.
- (3) The insolvency debtor shall notify, without any delay, the insolvency judge and the committee of creditors about the sealing and the seal removal from business premises, referred to in paragraph 2 of this Article.

List of Creditors

Article 109

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 38)

- (1) The insolvency administrator shall be obliged to compile a list of all creditors they are aware of from the business records and other documentation of the insolvency debtor within 30 days as of initiating the insolvency proceedings.
- (2) A separate record shall be kept of secured and excluding creditors and employees of the insolvency debtor for the amount of unpaid wages in the list referred to in paragraph 1 of this Article.
- (3) The list shall contain the following data for each creditor:
 - 1) company name or name and registered office or habitual residence with the contact address;
 - 2) amount of the claim, specifying the amount of the principal debt and the accumulated interest;
 - 3) legal basis for the claim;
 - 4) specification of the assets subject to secured or excluding claim.

List of Debtors of the Insolvency Debtor

Article 110

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 39)

- (1) The insolvency administrator shall be obliged to compile a list of all debtors they are aware of from the business records and other documentation of the insolvency debtor within 30 days as of initiating the insolvency proceedings.
- (2) Provisions of article 109, paragraph 3 of the Law shall apply to the content of the debtors' list referred to in paragraph 1 of this Article.

Preliminary Review of the Assets and Liabilities of the Insolvency Debtor and the Report on Economic Standing

Article 111

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 40)

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 28)

- (1) The insolvency administrator shall be obliged to make an initial insolvency balance within 30 days as of the day of taking over the property and rights of the insolvency debtor, in which shall state and compare the assets and liabilities of the insolvency administrator.
- (2) At the proposal of the insolvency administrator, the insolvency judge may extend the deadline referred to in paragraph 1 of this Article, for justified reasons.
- (3) The insolvency administrator shall be obliged to submit, the initial insolvency balance with the report on economic and financial standing of the insolvency debtor with an assessment of possible reorganization, to the court and the committee of creditors, by no later than five days before the first creditor's hearing.

V. CONFIRMATION OF CLAIMS

Declaring Claims

Article 112

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 41)

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 29)

- (1) Creditors shall submit declaration of claims in writing to the insolvency court. The declaration must specify, including but not limited to, the following details:
 - 1) company name or name and registered office or habitual residence of the creditor with a contact address;
 - 2) registration number of the legal entity or citizen's social security number;
 - 3) number of business or current account;
 - 4) legal basis for the claim;
 - 5) amount of the claim, specifying in particular the amount of the principal claim including the accumulated interest;
 - 6) property on which the creditor acquired the excluding right if the claim is secured and the amount of their claim which is not secured, if such claim is not entirely secured;
 - 7) specific claim of creditors regarding the main matter and secondary claims, the facts on which the claim is based, the evidence establishing these facts, as well as other data in accordance with the law regulating civil proceedings regarding the submission and content of the claim.
- (2) The creditor shall be obliged to submit the declaration referred to in paragraph 1 of this article within 30 days from the date of publication of the announcement on the opening of insolvency proceedings in the "Official Gazette of Montenegro".
- (2) Creditors with claims in foreign currency shall declare such claims in the currency of the claim.

- (4) If claims that are the subject to an open civil proceeding are declared, the declaration shall include the name of the court before which the proceeding is being heard with the designation of the case file.
- (5) Joint and several debtors and guarantors of the insolvency debtor may request, as insolvency creditors, to be refunded the amount they have paid on behalf of the insolvency debtor after the day of initiating the insolvency proceedings, if they have the right to claim reimbursement against the insolvency debtor.
- (6) Declaration may also be submitted after the expiry of the 30-day period as of initiating the insolvency proceedings, but no later than until the beginning of the examination hearing, if the creditor proves that there were justifiable reasons for failure to act which could have not been envisage or eliminated.
- (7) All declarations submitted after the expiry of deadline referred to in paragraph 5 shall be dismissed as untimely.

Declaration from Excluding Creditors

Article 112a

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 30)

Excluding creditors shall submit declaration in the manner and in accordance with the conditions referred to in from Article 112 of this law.

Excluding Claim

Article 113

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 31)

- (1) An excluding creditor shall submit a request for taking back the asset that is not included in the insolvency estate.
- (2) The insolvency administrator shall be obliged to notify the creditor whether will accept the request for exclusion or reject such request of the creditor within 20 days as of the day of the receipt of the request, and shall also specify the deadline within which will enable the restitution of the asset to the excluding creditor.
- (3) The deadline referred to in paragraph 2 of this Article must not exceed 10 days as of the day of acceptance of the request of the excluding creditor, unless the insolvency judge approves the extension of the deadline on reasonable grounds.
- (4) If the insolvency administrator refuses to exclude the assets from the insolvency estate, the creditor shall have a right to lodge an objection to the insolvency judge within five days as of the day of the receipt of notification from the insolvency administrator.
- (5) If the insolvency judge contests the right for the exclusion of asset, the creditor may exercise his rights in other court proceedings.
- (6) The excluding creditor shall be obliged to notify the insolvency judge and the insolvency administrator of their intention to exercise the right to exclude items in another court proceeding.

Procedure of Confirmation of Claims and List of Claims

Article 114

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 42)

- (1) After the expiry of the deadline for the declaration of claims, the insolvency judge shall submit all declared claims to the insolvency administrator.
- (2) The administrator shall determine the validity, the scope and the seniority of each claim and compile the list of all accepted and contested claims.
- (3) The list referred to in paragraph 2 of this Article shall be compiled within 40 days as of the expiry of deadline for submission of claims set forth by the decision on initiating the insolvency proceedings.
- (4) In case of disputing a claim, the insolvency administrator shall be obliged to submit to the court, along with the list referred to in paragraph 2 of this Article, an explanation of the reasons for disputing the claim.

Claims based on the Enforcement Document

Article 115

- (1) Claim declared based on the enforcement document may be contested if:
 - 1) the enforcement document is cancelled, annulled, altered or abrogated;
 - 2) the claim is terminated based on fact occurred after the enforceability;
 - 3) the statutory deadline for claiming enforcement expired;
 - 4) the claim was not transferred to the insolvency creditor or if the liability was not transferred to the insolvency debtor; or
 - 5) the enforcement document is acquired based on admission or failure to act of the insolvency debtor; and in case it would have been enforced, the enforcement action would have been subject to voidance in accordance with provisions of this Law.

Notification and Posting of the List of Claims

Article 116

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 43)

- (1) The insolvency administrator shall be obliged to post the list of claims on the court notice board, or if the list is disproportionately long, to post an announcement on the court notice board informing on where the list can be found, within five days as of day the expiry of the deadline referred to in Article 114, paragraph 3 of this Law.
- (2) The insolvency administrator shall be obliged to secure personal delivery of the notification to the creditors whose claims are contested. At the request of a creditor with a contested claim, the insolvency administrator shall be obliged to review again, together with the creditor, the contested claim and any additional evidence, and after that to make a final decision on accepting or contesting the claim.
- (3) If the insolvency administrator fails to act in accordance with the paragraph 2 of this Article, the creditor whose claim was contested may lodge an objection, upon which the insolvency judge shall rule.
- (4) If the insolvency administrator changes his decision after the repeated review of the claim, they shall be obliged to correct the list referred to in paragraph 2 of this Article.

Examination Hearing

Article 117

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 44)

- (1) The final list of all submitted claims shall be made at the examination hearing.
- (2) The insolvency administrator shall be invited to attend the examination hearing, while the insolvency debtor and creditors, as well as the persons who have performed jobs with the insolvency debtor and who can provide data about the existence and the amount of the claims, as well as auditors that reviewed the business operations of the insolvency debtor may also be invited.
- (3) The examination hearing shall take place even if not all creditors who have declared their claims are attending.
- (4) Creditors may contest the declared claims of other creditors after the list of claims is posted and no later than on the examination hearing.

Mediation

Article 118

- (1) After accepting the petition for initiating the insolvency proceedings, the Court can refer the petitioner to mediation process before ruling on initiating the insolvency proceedings.
- (2) The creditors of contested claim or the insolvency administrator may propose the resolution of contested relation by way of mediation, in accordance with law that governs the mediation proceedings.

Confirmed Claims

Article 119

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 45)

- (1) A claim shall be deemed as confirmed if not contested by the insolvency administrator or any of the insolvency creditors until the closure of the examination proceeding.
- (2) The insolvency judge shall adopt the final list based on the list of claims compiled by the insolvency administrator and based on amendments entered during the examination hearing. The final list shall include data about all declared claims, who has contested such claims, and in what amount the claim was confirmed or contested.
- (3) Based on the final list referred to in paragraph 2 of this Article, the insolvency judge shall issue a resolution on the list of confirmed and contested claims.
- (4) The resolution on the list of claims shall be delivered to the insolvency administrator, and each insolvency creditor whose claim was contested and shall be referred to the civil proceeding.
- (5) Resolution referred to in paragraph 4 of this Article shall be posted on the notice board of the court.
- (6) A final list confirming the claim and its seniority shall be binding on the insolvency debtor and all insolvency creditors.

- (7) An insolvency creditor who confirms its claim in the civil proceeding to which it was referred, shall have the right to request the correction of the final list of confirmed claims.

Contested Claims

Article 120

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 46)

- (1) A creditor whose claim is contested shall be referred to a civil proceeding in order to confirm the contested claim, which may be initiated within eight days as of the day of receipt of the resolution referred to in Article 119 of this Law or as of the day of expiry of the deadline for mediation.
- (2) A creditor who contested the claim of another creditor, which has been accepted by the insolvency administrator, shall be referred to the civil proceedings in accordance with the paragraph 1 of this Article. The contested claim shall be deemed as accepted if the creditor that contested the claim of another creditor does not initiate the civil proceedings within the statutory deadline.
- (3) A creditor who was referred to a civil proceeding shall be obliged, without any delay, to notify the insolvency judge of the initiation of the civil proceedings.
- (4) If the creditor referred to in paragraph 3 of this Article fails to notify the insolvency judge on initiation of the civil proceedings, it shall be liable for the costs and the damage caused by the failure to act.
- (5) In case of contesting of claims declared based on an enforcement document, the insolvency judge shall, by way of a resolution, refer the insolvency administrator or creditor that has contested the claim to a litigation proceeding, within the deadline referred to in paragraph 1 of this Article.

Proceedings regarding Contested Claims

Article 121

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 47)

- (1) If a civil proceeding regarding a claim is ongoing, at the time of initiating the insolvency proceedings, the insolvency administrator shall take over the civil proceeding in the state it is in at the time of initiating the insolvency proceedings.
- (2) If the civil proceeding referred to in paragraph 1 of this Article is not held before the insolvency court, the court conducting the civil proceeding shall interrupt the proceeding, and upon filing of a motion to continue the proceeding, it shall decline jurisdiction and the case shall be assigned to the insolvency court. No appeal shall be allowed against the decision on assigning the case.
- (3) If there was not civil proceeding ongoing at the time of initiating the insolvency proceedings regarding the claim contested in the insolvency proceedings, such lawsuit, as a rule, shall be conducted by an insolvency judge.
- (4) A final and binding decision on the contested claim shall have effect against the insolvency debtor and all the creditors of the insolvency debtor.

VI. VOIDANCE OF LEGAL ACTIONS OF THE INSOLVENCY DEBTOR

General Conditions

Article 122

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 32)

- (1) Legal transactions and other legal actions entered into or taken before initiating the insolvency proceedings, that are interfering with equal settlement of insolvency creditors or damaging the creditors, as well as legal transactions and other legal actions putting some creditors in a more favourable position over the others, may be voided by the insolvency administrator, on behalf of the insolvency debtor, and by the creditors, in accordance with provisions of this Law.
- (2) In the context of voidance, the failure to enter into a legal transaction or failure to take an action shall be equal to the legal transaction or legal action.
- (3) Legal transactions, legal and procedural actions serving as a ground for adoption of enforcement documents or undertaken based on an enforcement documents or are in process of involuntary enforcement, may also be voided if meeting requirements referred to in paragraph 1 of this Article. If the request for voidance is adopted, the effect of the enforcement document against the insolvency estate shall cease to have effect.
- (4) Voidance may be performed from the day of initiating the insolvency proceedings until the day when the hearing on the main distribution is held.

Regular Settlement

Article 123

- (1) A legal transaction or other legal action taken within six months before lodging the petition to initiate the insolvency proceedings, providing security or settlement to one creditor in the manner and at the time in accordance with the substance of their right (hereinafter referred to as: the regular settlement), may be voided if at the time those were undertaken the insolvency debtor was unable to make payments and the creditor knew or had to know of its inability to make payments.
- (2) The legal transaction or other legal action leading to regular settlement may be voided even when undertaken after the petition to initiate the insolvency proceedings is filed, if the creditor knew or had to know that the insolvency debtor was unable to make payments or knew that the petition to initiate the insolvency proceedings was filed.
- (3) It shall be deemed that the creditor knew or had to know of inability to make payments of the insolvency debtor or of the petition to initiate the insolvency proceedings, if was aware of the circumstances undoubtedly leading to the conclusion that inability to make payments exists, or that the petition was submitted to initiate the insolvency proceedings.
- (4) It shall be deemed that a party related to the insolvency debtor at the time of undertaking legal transaction or other legal actions knew or had to know of the inability to make payments or of the petition to initiate the insolvency proceedings.

Irregular Settlement

Article 124

A legal transaction or legal action providing security or settlement to a creditor, which the given creditor was not entitled to request at all, or was entitled to request but not in the manner and at the time when it was provided (hereinafter referred to as "the irregular settlement"), may be voided if it was entered into within twelve months before the petition to initiate the insolvency proceedings was filed.

Direct Damage of Creditors

Article 125

- (1) A legal transaction or legal action of the insolvency debtor directly damaging the creditors may be voided if:
 - 1) entered into within six months before lodging of the petition to initiate the insolvency proceedings, and if the insolvency debtor was unable to make payments at the time the transaction was entered into, and if the counterpart of the insolvency debtor knew of its inability to make payments;
 - 2) the transaction was entered into after lodging of the petition to initiate the insolvency proceeding, and the counterpart of the insolvency debtor knew or had to know that the insolvency debtor was unable to make payments or that the petition to initiate the insolvency proceedings was submitted;
 - 3) the legal action or failure to undertake legal action of the insolvency debtor shall cause the loss of some of its rights or due to which is unable to exercise such right any longer, and the action was undertaken or failed to be undertaken within six months before lodging of the petition to initiate the insolvency proceedings.
- (2) It shall be deemed that the counterpart knew or had to know of inability to make payments of the insolvency debtor or of the petition to initiate the insolvency proceedings, if was aware of the circumstances undoubtedly leading to the conclusion that inability to make payments exists, or that the petition was submitted to initiate the insolvency proceedings.
- (3) Provisions of Article 123 paragraphs 3 and 4 of this Law shall apply accordingly in the case referred to in paragraph 1 of this Article.

Intentional damaging of Creditors

Article 126

A legal transaction or legal action entered into or taken with the intent to damage one or more creditors within five years before submitting the petition to initiate the insolvency proceedings or after that, may be voided if the counterpart of the insolvency debtor knew of the intent of the insolvency debtor. Existence of intent is presumed if the counterpart of the insolvency debtor knew there was a threat of inability to make payments against the insolvency debtor and that the action would damage the creditors.

Transactions and Actions without Compensation or with Negligible Compensation

Article 127

- (1) A legal transaction and legal action of the insolvency debtor without compensation or at a negligible compensation may be voided if entered into or taken within five years before the petition to initiate the insolvency proceedings was filed.
- (2) Customary appropriate gifts, prize gifts, as well as gratitude gifts or donations for humanitarian purposes cannot be voided provided that at the time such were made,

were commensurate to the financial capabilities of the insolvency debtor and are customary for the economic sector of the insolvency debtor.

- (3) Renouncing inheritance shall be deemed as a legal action of the insolvency debtor without compensation.

Related Parties

Article 128

Related parties of the insolvency debtor, for the purpose of this Law, shall be considered to be:

- 1) chief executive manager and member of the board of directors of the insolvency debtor;
- 2) person liable for insolvency debtor's liabilities, with all of its assets;
- 3) shareholder having at least 20% share of insolvency debtor's assets;
- 4) legal entity controlled by the insolvency debtor under the law governing corporate organisations;
- 5) persons having access to confidential information or having possibility to be informed about the financial standing of the insolvency debtor;
- 6) person having a blood kinship in lineal lineage regardless of the degrees of removal or collateral lineage up to the fourth degree of removal, kin through in-laws up to the second degree of removal or spouse of natural persons referred to in items 1), 2), 3), and 5) of this Article.

Impossibility to Void

Article 129

- (1) No legal transactions entered into or actions taken, may be voided if undertaken to:
- 1) execute an approved reorganization plan of the insolvency debtor undertaken after initiating the insolvency proceedings;
 - 2) continue business operations, undertaken after initiating the insolvency proceedings;
- (2) Legal action or legal transaction considered as regular or irregular settlement for the purpose of this Law, cannot be voided if the insolvency debtor simultaneously or shortly before or after completion of the legal transaction or legal action, had received equal value in form of counter compensation from the creditor or another person for whose account the legal transaction or legal action was carried out.

Refusal Actions

Article 130

- (1) Legal transaction or legal action of the insolvency debtor shall be refused by an action.
- (2) Legal transaction or legal action of the insolvency debtor may also be refused by filing a counterclaim or objection in the civil proceeding, regardless of the deadline stipulated in Article 122 paragraph 4 of this Law.

Parties to the Refusal Proceeding

Article 131

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 33)

- (1) Both the creditor and the insolvency administrator can be plaintiffs within refutation proceedings.
- (2) Action shall be taken against the persons with whom a legal transaction was entered into (hereinafter referred to as "the refutation opponent").
- (3) Action to refute a legal transaction or a legal action may also be filed against the heir or other universal legal successor of the refutation opponent.
- (4) The action may also be filed against other legal successors of the refutation opponent if:
 - 1) the legal successor was aware of the facts that constitute the basis for refutation of legal transactions or actions of its predecessor;
 - 2) the legal successor was ceded, without compensation or with negligible compensation, the acquisition under legal transaction or legal action being refuted.

Effects of Refutation

Article 132

- (1) If the motion for refutation of a legal transaction or other legal action is adopted by a final and binding decision, the refuted legal transaction or legal action shall have no effect against the insolvency estate and the refutation opponent shall be obliged to return to the insolvency estate all material gain acquired based on the voided transaction or other action.
- (2) Having returned the material gain referred to in paragraph 1 of this Article, the refutation opponent shall have the right to realise his counterclaim as an insolvency creditor by filing late declaration of claims.

VII. Cashing out and Distribution of the Insolvency Estate, Settlement, and Closure of the Insolvency Proceeding

Decision on Liquidation and Cashing out of the Assets

Article 133

- (1) The insolvency judge shall adopt a decision on liquidation, if:
 - 1) the insolvency debtor fails to submit the statement on intent to carry out reorganisation, within 30 days as of the day of initiating the insolvency proceedings;
 - 2) no reorganisation plan is filed within prescribed deadline;
 - 3) no reorganisation plan is adopted at the hearing to discuss the reorganisation plan;
 - 4) the debtor requests that the court to adopt a decision on liquidation and there is no competing plan being proposed by another party.
- (2) In cases referred to in paragraph 1 items 2 and 3 of this Article, the insolvency judge shall be obliged to adopt the decision on liquidation of the insolvency debtor on the day following the expiry of the prescribed deadline for submission of the reorganisation plan, or the hearing where the plan was not adopted or by no later than two days from the day such hearing was held.
- (3) The insolvency administrator and the creditors' committee may file an objection against this decision referred to in paragraph 1 of this Article.

The Manner of Cashing Out

Article 134

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 48)

- (1) Following the adoption of the decision on liquidation, the insolvency judge shall commence and conduct sale of all assets or part of the assets of the insolvency debtor.
- (2) The insolvency administrator shall be obliged to assess appropriateness of the sale of the insolvency debtor as legal entity or the sale of all assets of the insolvency debtor compared to the sale of assets of the insolvency debtor in parts and to notify thereof the committee of creditors.
- (3) The sale assets shall be done by way of a public auction, public collection of bids or through a direct agreement in accordance with this Law.
- (4) The insolvency administrator may hire, with consent of the committee of creditors, domestic or foreign persons experienced in public auction sale when is deemed that such hiring would create an increased transparency of sale and more favourable cashing out.
- (5) The sale proposal referred to in paragraph 4 of this Article must contain all conditions of such sale including also costs of hiring experts.
- (6) If the sale is conducted through the public auction or public collection of bids, the insolvency administrator shall be obliged to announce the sale in at least two daily newspapers with high circulation, distributed on the entire territory of Montenegro, and no later than 30 days before the day set for the public auction or submission of bid to take place.
- (7) By way of exception, if costs of advertising are disproportionately high compared to the value of the subject matter of sale, the insolvency administrator may announce the sale in a different manner than the one stipulated in paragraph 6 of this Article, with the consent of the committee of creditors.
- (8) The notice, referred to in paragraph 1 of this Article shall contain, including but not limited to, terms and conditions of sale, as well as the particulars on when and where potential buyers may view the asset being subject matter of the sale.
- (9) The insolvency administrator shall be obliged to conduct the first public sale with the lowest selling price at least equal to the estimated value of the property to be sold.
- (10) The insolvency administrator can conduct each subsequent public sale with a reduction of the lowest sale price by one-fifth of the estimated value, that is, each subsequent sale may be reduced by one-fifth of the total estimated value of the property.
- (11) In the event that the public sale was not successful for even a fifth of the total assessed value of the property, the insolvency administrator may conduct the next public sale based on the principle of the highest offered price.
- (12) The sale through direct agreement may only be conducted if such method of sale had a prior approval of the creditors` committee.

Notification on Intent to Sell

Article 135

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 49)

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 34)

- (1) Before the sale of the property the insolvency administrator shall notify the insolvency judge, debtor, all the creditors if so possible, all persons having a pledge or any other right, ownership right or interest in the assets intended for sale.
- (2) The insolvency administrator shall be obliged to submit the notification on intent to sell, to persons referred to in paragraph 1 of this Article, no later than 20 days before the proposed date of public auction or direct agreement.
- (3) If there is a larger number of persons referred to in paragraph 1 of this Article, the insolvency administrator shall be authorized to inform about the intention to sell the property of the insolvency debtor through advertising in at least two daily print media with high circulation that are distributed throughout the territory of Montenegro.
- (4) The notification of the intention to sell the assets of the insolvency debtor shall be considered to have been delivered to the persons referred to in paragraph 1 of this article, on the day of advertising in accordance with paragraph 3 of this article.

Content of the Notification on Intended Sale

Article 136

- (1) If the sale is done in public auction, the notification of the insolvency administrator must contain:
 - 1) place and address where the asset being sold is located;
 - 2) detailed description of asset with data on intended use of asset;
 - 3) starting price and conditions of public auction.

In case of sale through public collection of bids, the notification must include:

- 1) place and address where the asset is located;
 - 2) detailed description of asset with data on intended use of asset;
 - 3) estimated asset value;
 - 4) the procedure and requirements for selection of bids.
- (3) In case of sale by direct agreement, the notification must include:
 - 1) place and address where the asset is located;
 - 2) detailed description of asset with data on intended use of asset;
 - 3) estimated asset value;
 - 4) data on the proposed buyer;
 - 5) all relevant terms of the proposed sale including the price and the manner of payment.

Sale of Assets used as Collateral

Article 137

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 50)

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 35)

- (1) When the assets to be sold is subject to the securing of the claims of one or more different creditors, the different creditor may, within ten days from the date of receipt of the notification of the proposed sale, propose a more favourable way of monetizing the

property, including taking over the property with a secured claim with an obligation reimbursement of costs in accordance with Article 139 paragraph 2 of this law.

- (2) The transfer of ownership, on the assigned assets, to a different creditor shall be carried out after the decision on assignment becomes final and the settlement of costs, rewards and fees from Article 139 paragraph 2 of this law on the account of the insolvency debtor.

Objection to Proposed Sale

Article 138

- (1) The insolvency debtor and creditors may lodge an objection against the proposed sale within ten days before the date of proposed sale. The insolvency judge shall rule on the objection. The objection shall not stay the sale, unless the insolvency judge decides otherwise.
- (2) Within ten days after the sale, the insolvency administrator shall be obliged to notify the insolvency judge and creditors' committee of the sale, its conditions and the price.
- (3) Creditors may object the sale. The objection shall not affect the sale, but shall represent grounds for establishing the liability of the insolvency administrator if a damage is caused by action of the insolvency administrator during the procedure of the sale. The grounds for the objection could be fraud, biased actions of the insolvency administrator, inadequate notice given or any other reason showing that the insolvency administrator conducted the sale in a manner damaging the insolvency estate. A mere assertion that the price achieved at an auction was too low shall not constitute sufficient grounds for lodging the objection.

Intended Use of the Sale Proceeds

Article 139

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 51)

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 36)

- (1) Proceeds realised from sale of property without encumbrances shall be included the insolvency estate, while their distribution shall be done in accordance with the distribution procedure stipulated under this Law.
- (2) Where the property was a subject of collateral of one or more secured creditors, the proceeds shall be primarily used to settle costs of sale including the remuneration of the insolvency administrator, while the secured creditors whose assets were secured by sold assets shall be paid from the remaining amount in the line with their seniority class.
- (3) Settlement of secured creditors must take place within three days of the day the insolvency administrator receives the sale proceeds. Any amount remaining after settlement of the secured creditors shall be included into the insolvency estate and shall be distributed to the insolvency creditors according to the provisions on distribution of this Law.

Ownership Right over Purchased Property

Article 140

- (1) When the buyer pays the price, the ownership right on purchased property shall be transferred to buyer regardless of the earlier registrations and without encumbrances, as well as without any obligations created before the execution of buying and selling, including also tax liabilities and liabilities against corporate entities who are providers of common interest services relating to the purchased property. The insolvency judge shall assert by way of decision that the sale was executed and shall order to the relevant register, to record the ownership right and delete encumbrances created before the completion of sale or recording of other rights acquired by sale.
- (2) Precious metals, minerals, securities or other assets having an exchange quoted price or market price, shall be sold at such price at relevant exchange or market. If the precious metals, minerals, securities or other similar assets tradable on the exchange or having market price do not have quoted prices on an exchange or market price they shall be sold by direct agreement with the consent of the creditors' committee.

Market Compensation

Article 140a

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 37)

- (1) Under the market compensation for the purpose of this law, shall be considered the price realized during the sale of the property of the insolvency debtor in insolvency proceedings.
- (2) At the request of the person who purchased the property in the insolvency proceedings, the insolvency judge shall provide an opinion on whether the market compensation has been paid, in accordance with this law.

Division of Property of the Legal Relationship

Article 141

- (1) A legal relationship, for the purpose of this Law, shall be co-ownership, partnership and similar forms of legal and property relationship of the insolvency debtor with a third party.
- (2) If the insolvency debtor is part of the legal relationship, the separation of the relationship is carried out in line with the rules on non-adversarial and enforcement proceedings. The party in the relationship shall have right to a separate settlement for obligations incurred in the legal relationship.
- (3) If the separation of the relationship referred to in paragraph 1 of this Article was temporarily or permanently prohibited, such prohibition shall cease to have effect as of the day of initiating the insolvency proceedings.

Sale of the Insolvency Debtor as a Legal Entity

Article 142

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 52)

- (1) An insolvency debtor as a legal entity may be subject matter of sale, with the consent of the creditors' committee.
- (2) Before a sale of the insolvency debtor as a legal entity, the insolvency administrator shall be obliged to carry out the appraisal of its value.

Consequences of the Sale of the Insolvency Debtor as a Legal Entity

Article 143

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 53)

- (1) After selling the insolvency debtor as a legal entity, the insolvency proceedings against the insolvency debtor shall be terminated.
- (2) The money received by selling the insolvency debtor shall be included in the insolvency estate and insolvency proceedings shall continue by settling the insolvency creditors.
- (3) The insolvency administrator shall represent the insolvency estate.
- (4) In the case where the insolvency debtor is sold as a legal entity, secured creditors that had secured right on any part of the assets of the insolvency debtor shall have a priority right in distribution of proceeds from the sale, according to the seniority class acquired in accordance with law, and in proportion to the percentage share in the value of the asset being subject matter of the secured right compared to the appraised value of the legal entity.
- (5) In case of claims against the insolvency debtor incurred until the termination of the insolvency proceeding, neither the insolvency debtor, nor its buyer, shall be liable to the creditors, while legal entities that were providing services of common interest to the insolvency debtor cannot suspend provision of such services based on unpaid invoices generated before the initiation of the insolvency proceeding.
- (6) Changes arising from the contract for the sale of the insolvency debtor as a legal entity shall be registered in the register of business entities, the Securities Commission, the Central Depository Agency, the administrative body responsible for cadastre affairs and other appropriate registers.
- (7) The insolvency judge shall establish that the sale of the legal entity has been carried out.

Sale of Perishable Commodities

Article 144

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 54)

- (1) The insolvency administrator shall be obliged to inform the insolvency judge about the intention to sell perishable goods or assets that require significant maintenance expenses or are encumbered for other reasons.
- (2) If the insolvency judge fails to issue a resolution on the sale of perishable goods and does not notify the insolvency administrator within 24 hours from the receipt of notification from them, the insolvency administrator may consummate the sale.
- (3) If the insolvency judge, within five days of receiving the notification from paragraph 1 of this Article, does not inform the insolvency administrator about reaching a conclusion on the extraordinary sale of property that requires significant maintenance expenses or is encumbered for other reasons, the insolvency administrator may proceed with the sale .

- (4) In case of sale of goods referred to in paragraphs 2 and 3 of this Article provisions of Articles 136 and 137 of this law.

Distribution

Article 145

- (1) The insolvency estate for distribution to insolvency creditors (distribution estate) is comprised of insolvency debtor's cash on the day of initiating the insolvency, money earned from continuing business operations and proceeds from the conversion of the debtor's assets and rights into cash, as well as insolvency debtor's claims collected in the course of the insolvency proceedings.
- (2) Distribution to insolvency creditors shall be conducted before or after the main distribution, according to the dynamics of the cash inflow of the insolvency debtor.
- (3) Upon the recommendation of the insolvency administrator, and depending on the cash inflow of the insolvency debtor, the insolvency judge shall decide whether to permit a partial distribution to be conducted in the way and under conditions envisaged for the conduct of the main distribution.

Draft Decision on the Main Distribution

Article 146

- (1) Before the main distribution of the insolvency estate, the insolvency administrator shall make a draft decision on the main distribution of the insolvency estate (hereinafter referred to as the "draft of the main distribution").
- (2) The insolvency administrator shall deliver the draft of the main distribution to the creditors' committee and the insolvency judge, in order for this draft to be posted at the court's bulletin board.
- (3) The draft of the main distribution shall include the following information:
- 1) the final list of all claims referred to in Article 116 of this Law, including the claims established after the investigating hearing in the mediation procedure or litigation proceedings;
 - 2) the amount of each claim;
 - 3) the seniority rank of payment of each claim;
 - 4) the amount of the insolvency estate that will be distributed to insolvency creditors, with the percentage of settlement of insolvency creditors.
 - 5) the amount of insolvency debtor's claims with maturity after the distribution, which are ceded to creditors in order to settle envisaged claims.
 - 6) the manner of distribution of the remaining insolvency estate if it is evident that such remaining estate exists.
- (4) Claims referred to in paragraph 3, item 5 of this Article, can be collected by creditors by mean of involuntary enforcement on the grounds of final ruling on distribution.

Decision on the Main Distribution

Article 147

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 55)

- (1) The insolvency judge shall pass a decision out-of-hearing on the main distribution upon the expiry of eight days from the submission of the draft of the main distribution, unless an objection to the draft of the main distribution has been filed by the creditors' committee or individual creditors.
- (2) An objection raised upon the expiry of the period of eight days referred to in paragraph 1 of this Article shall not be considered.
- (3) If the creditors' committee or an individual creditor raises an objection to the draft of the main distribution, the insolvency judge shall hold a hearing to pass a decision on the main distribution.
- (4) The decision on the main distribution shall be posted at the court's bulletin board and delivered to the creditors' committee, the creditor, who filed the objection and the insolvency administrator.
- (5) It is deemed that the delivery to all creditors has regularly been made upon the expiry of eight days upon the delivery of the decision to the creditors' committee or its posting at the court's bulletin board.
- (6) The insolvency administrator and the creditors whose objections have been rejected, have the right to appeal against the decision on the main distribution with the requirement to state the reasons for appeal and submit the proofs of their admissibility.
- (7) The appeal referred to in paragraph 6 of this Article may be filed only due to wrong assessment of the admissibility of the objection to the draft of the main distribution.
- (8) By way of exception referred to in paragraph 6 of this Article, the appeal against the decision on the main distribution may also be filed by the insolvency administrator and creditors in case when the decision on the main distribution deviates from the published draft of the main distribution, as well as due to the violation of previously vested right or erroneous calculation.

Contested Claims

Article 148

In case that a creditor whose claims have been contested files an appeal within the legal timeframe, or a petition for continuation of previously initiated litigation, the amount that the creditor would have received if their claim hadn't been contested shall be allocated in a proportion envisaged in the decision on the main distribution until the final decision in the litigation proceedings has been passed.

Conditional claims

Article 149

- (1) If the insolvency creditor's claim is under a resolutive condition, it shall be taken into account if the insolvency creditor provides security that he shall return the received funds should the resolutive condition be fulfilled.
- (2) If an insolvency creditor has a claim with a suspensive condition, he shall receive a proportional amount of his claim if the suspensive condition is fulfilled before the hearing for main distribution.

Main Distribution

Article 150

- (1) The distribution of the insolvency estate or settlement of the creditors shall be done after the decision on the main distribution becomes final.

- (2) The distribution of the insolvency estate shall also be commenced in the case of partial finality of the decision on the main distribution, in part where such decision has become final.
- (3) The distribution may, at the proposal of the insolvency administrator, be commenced before the decision becomes final, with previous allocation of funds required for realization of rights of the appeal filers.
- (4) The insolvency judge shall make the decision in respect of the proposal referred to in paragraph 3 of this Article in a form of a conclusion.

Final Distribution

Article 151

- (1) The final distribution of the insolvency estate shall be commenced after the conversion of the entire or substantial part of the insolvency estate into cash, if the main distribution does not cover the entire distribution estate.
- (2) Final distribution shall be conducted in the manner and under conditions prescribed for the main distribution.

Final Hearing

Article 152

- (1) The insolvency judge shall issue a decision scheduling the final hearing at which:
 - 1) the final report of the insolvency administrator shall be discussed;
 - 2) the final requests for payment of the remuneration of the insolvency administrator shall be discussed;
 - 3) objections against the final report or submitted requests for payment of compensations and remunerations are filed;
 - 4) parts of insolvency estate that have not been distributed shall be decided upon;
 - 5) other issues of significance for the liquidation of the insolvency debtor shall be decided upon.
- (2) The decision on the final hearing shall be posted at the bulletin court board of the court and published in the Official Gazette of Montenegro.
- (3) The period for holding the final hearing may not be less than eight or exceed 30 days from the day of announcing the invitation for its holding.

Depositing of Retained Funds

Article 153

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 56)

The insolvency administrator shall, with the approval of the insolvency judge and on behalf of interested parties, deposit with the court or to a special purpose account the amounts that have been allocated in respect of contested claims at the occasion of final distribution of the insolvency estate.

Procedure Regarding the Remaining Part of the Insolvency Estate

Article 154

- (1) If all claims of the insolvency creditors can be fully settled in the course of the distribution, before the final distribution or in the final distribution, the insolvency administrator will distribute the remaining part of the distribution estate to the holders of interest or shares in the business company, in proportion to their ownership shares.
- (2) The insolvency judge may pass a decision on the distribution of funds referred to in paragraph 1 of this Article based on the reasoned proposal of the insolvency administrator even before the payment of insolvency creditors, if it has been undoubtedly established that available cash (existent distribution estate) is sufficient to fully settle all insolvency creditors with respective interest in accordance with this law.

Decision on Insolvency Proceedings Closure

Article 155

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 57)

- (1) The insolvency judge shall pass a decision on the closure of the insolvency proceedings at the final hearing.
- (2) If the entire assets of the insolvency debtor is converted into cash, and there are litigation proceedings in process, the insolvency judge may issue a decision on insolvency proceedings closure, at the proposal of the insolvency administrator.
- (3) In the case referred to in paragraph 2 of this Article the insolvency administrator is appointed as the representative of the insolvency debtor's insolvency estate, which is comprised of the funds allocated in respect of contested claims and funds gained by the finalization of litigation proceedings in favour of the insolvency debtor.
- (4) The insolvency administrator shall represent the insolvency estate.
- (5) If the litigation is finalized in favour of the creditor of contested claim, the insolvency administrator shall, after the court decision becomes final, pay the contested claim to the creditor in accordance with the decision on the main distribution.
- (6) If the litigation is finalized in favour of the insolvency estate, the insolvency administrator shall act in accordance with the provisions of this law regulating the subsequent distribution.
- (7) The decision referred to in paragraph 1 of this Article shall be posted on the bulletin board of the court and published in the Official Gazette of Montenegro, and after becoming final it shall be delivered to the register of corporate entities or other equivalent register for the purpose of removing the insolvency debtor from such register.
- (8) After approving the final report submitted by the administrator, the court issues a decision on releasing the administrator from all further duties related to the case in question, except for the duty to carry out any further division that has not yet been carried out.

The Registry of Insolvency Estates

Article 155a

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 38)

- (1) The Register of Insolvency Estates shall be maintained by the administrative body responsible for the registration of business entities.

- (2) In the Register of Insolvency Estates shall be entered data on insolvency estate, changes to registered data are recorded, as well as deletion of data on debtors' insolvency estate.
- (3) The register referred to in paragraph 1 of this Article shall be maintained as a single, central, public electronic database on the insolvency estate.
- (4) The insolvency judge shall deliver the decision referred to in Article 155 paragraph 2 of this law to the administrative body responsible for registration of business entities, for the purpose of registering the insolvency estate of the insolvency debtor in the Register of Insolvency Estates.
- (5) After the registration of the insolvency estate in accordance with paragraph 4 of this Article, the administrative body responsible for registration of business entities shall maintain and regularly update the Registry of the insolvency estate based on the report submitted by the insolvency administrator representing the insolvency estate.
- (6) The state administration body responsible for economic affairs shall prescribe the detailed method of registration and management of the Register of Insolvency Estates.

Special cases where insolvency proceedings are suspended or closed

Article 156

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 58)

- (1) Insolvency proceedings shall be suspended immediately after establishing that the insolvency debtor has only one creditor.
- (2) Insolvency proceedings shall be closed after establishing that the insolvency debtor's assets are less than the amount of insolvency proceedings expenses or that insolvency debtor's assets are of irrelevant value.
- (3) If in the case referred to in paragraph 2 of this Article there are remaining assets of the insolvency debtor, the insolvency judge shall issue a decision on the closure of the insolvency proceedings and order the insolvency administrator to convert such assets into cash and cover the incurred expenses by such funds, and pay the potential remaining funds into the budget of Montenegro.
- (4) If requested by creditors or insolvency debtor, the insolvency proceedings shall be resumed in cases referred to in paragraph 2 of this Article, if the requesting party deposits the funds required to cover the insolvency proceedings expenses.
- (5) At the reasoned request of the owner of the capital, if all creditors in the insolvency proceedings have been settled, as well as all obligations of the insolvency estate and costs of the proceedings, and upon the obtained opinion of the insolvency administrator, the court may suspend the insolvency proceedings.

Subsequent distribution

Article 157

- (1) If assets that are a part of the insolvency estate are discovered after the closure of the insolvency proceedings, the insolvency judge, at the proposal of the insolvency administrator or other interested party, shall conduct the subsequent distribution by converting into cash and distributing the funds obtained through the sale of such assets.

- (2) In case of subsequently discovered assets of the insolvency debtor, the sale and distribution of assets shall be conducted in accordance with this law, save the part related to rights and obligations of the board of creditors.
- (3) Appeal is not admissible against the decision on the conduct of subsequent distribution.
- (4) The decision on the conduct of subsequent distribution shall be delivered to the insolvency administrator to convert the subsequently discovered assets into cash and distribute it based on the decision on the main distribution.
- (5) The insolvency administrator shall submit an additional report on conversion into cash and distribution of discovered assets to the insolvency judge.
- (6) The insolvency administrator is entitled to remuneration and compensation of costs in case of sale of subsequently discovered assets and settlement of creditors from the gained funds.

Court Liquidation

Article 158

In cases when the court orders liquidation based on other regulations, the liquidation shall be carried out in accordance with provisions of the law governing insolvency issues.

VIII. REORGANIZATION

Implementation of Reorganization

Article 159

- (1) The reorganization shall be conducted if it provides for more favourable settlement of creditors in relation to liquidation, and particularly if there are economically justifiable conditions for continuation of debtor's business activity.
- (2) The reorganization shall be implemented according to the plan of reorganization that shall be formulated in a written form.
- (3) The plan of reorganization may be submitted at the same time that a petition is submitted or after initiating the insolvency proceedings in accordance with this Law.

Content of the Reorganization Plan

Article 160

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 59)

- (1) The plan of reorganization shall include:
 - 1) a brief introduction generally describing the insolvency debtor's business operations and the circumstances leading to the financial difficulty;
 - 2) measures and tools for implementation of the plan, as well as a detailed description of measures to be undertaken and the manner in which the reorganization is to be conducted;
 - 3) detailed list of creditors by seniority assigned to classes of creditors and criteria used for formation of the classes;
 - 4) amount of money or property that is to serve for full or partial settlement by classes of creditors, including secured and unsecured creditors, as well as the funds

- allocated for creditors of contested claims, the procedure for settlement of claims and schedule of such payments;
- 5) description of the procedure to be used for the sale of assets, describing what assets are to be sold with or without pledge, as well as intended use of the proceeds from such sales;
 - 6) timeframes for execution of the reorganization plan and timeframes for implementation of the main elements of reorganization plan, if possible;
 - 7) clear statement that by adopting the reorganization plan all rights and obligations of creditors from the plan are defined solely in accordance with the provisions of the adopted plan, including the situation where the plan has not been fully completed, or where the plan has been suspended;
 - 8) the list of the management authority members and the amount of their remuneration;
 - 9) the list of experts to be engaged and the amount of remuneration for their work;
 - 10) the name of independent expert that is to monitor the implementation of the plan in the interest of all creditors covered by the plan and the manner how such expert is to inform the creditors of the implementation of the reorganization plan, as well as the amount and schedule of payment of the remuneration for their work;
 - 11) annual financial reports for the previous three years with the auditor opinion if they have been subject to audit;
 - 12) financial projections including projected income statement, balance sheet and cash flow for the period of the reorganization plan implementation;
 - 13) an estimate of the amount of money that would be generated from the conversion of assets into cash through liquidation;
 - 14) commencement date of the reorganization plan;
 - 15) the timeframe for implementation of the plan may not exceed the period of five years;
- (2) The timeframe referred to in paragraph 1 item 15 of this Article does not apply to the measures for implementation of the reorganization plan that are related to envisaging repayment of claims in instalments, alteration of maturity dates, interest rates or other conditions related to loans, credits or other claims or security instruments, repayment period of the credit or loan taken in the period of the insolvency proceedings or in accordance with the reorganization plan, or to maturity dates of debt securities.

Measures for Implementation of the Reorganization Plan

Article 161

- (1) Measures for implementation of the reorganization plan shall be:
- 1) envisaging of repayment in instalments, modification of maturity dates, interest rates or other conditions of a loan, credit or other claim or security instrument;
 - 2) settlement of claims;
 - 3) cashing-out of the estate with or without lien or transfer of such property for the purpose of settlement of claims;
 - 4) closure of a plant or change of business activity;
 - 5) termination or amendment of the contract;
 - 6) discharge of debt;
 - 7) enforcement, alteration or waiver of pledge;

- 8) pledge of encumbered or unencumbered assets;
 - 9) conversion of debt to equity;
 - 10) signing of a credit or loan contract;
 - 11) contesting and voidance of claims that are not legally valid;
 - 12) termination of employment or recruitment of other persons;
 - 13) transfer of unencumbered assets in settlement of claims;
 - 14) amendments of insolvency debtor's general acts and other documents related to foundation or management;
 - 15) status changes;
 - 16) changes of the legal form;
 - 17) transfer of a part or entire property to one or several existing or newly formed entities;
 - 18) cancellation of issued or issuance of new securities by the insolvency debtor or any of newly created entities;
 - 19) other measures of significance for implementation of the reorganization plan.
- (2) In case that the reorganization plan envisages the measure of conversion of claims into equity of the insolvency debtor, the insolvency judge may, ex officio or at the proposal of the insolvency administrator, engage an independent expert to appraise the equity of the insolvency debtor, at expense of the submitter of the plan.

Plan Submitter and Submission Costs

Article 162

- (1) A reorganization plan may be submitted by the insolvency debtor, insolvency administrator, secured creditors holding no less than 30% of secured claims in relation to the total claims from the insolvency debtor, insolvency creditors holding no less than 30% of unsecured claims in relation to the total claims from the insolvency debtor, and the persons owning no less than 30% of the insolvency debtor's equity.
- (2) Expenses related to the formulation and submission of a reorganization plan shall be borne by the party proposing the reorganization plan.
- (3) Expenses related to the formulation and submission of the reorganization plan proposed by the insolvency administrator or the insolvency debtor shall be the cost of the insolvency proceedings.

Deadline for Submission of the Plan

Article 163

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 60)

- (1) A reorganization plan is submitted to the insolvency judge no later than 60 days from the day of initiating the insolvency proceedings.
- (2) Insolvency judge may extend the deadline referred to in paragraph 1 of this Article by no more than 15 days if a reasoned proposal for extension of this deadline is submitted within the deadline referred to in paragraph 1 of this Article.

Rejecting the Reorganization Plan Proposal

Article 164

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 61)

- (1) Insolvency judge may ex officio or at the proposal of an interested party order the insolvency administrator or other experts that they have engaged, to establish the accuracy of data from the proposed reorganization plan, as well as order to the submitter of the proposed plan to eliminate deficiencies related to the content and measures from the plan and set an appropriate deadline for eliminating those deficiencies. The expenses incurred in this respect shall be borne by the submitter of the reorganization plan proposal.
- (2) Insolvency judge shall ex officio or at proposal of an interested person reject the proposal of reorganization plan if:
 - 1) the provisions of this law related to authorized submitters, content and deadline for submission of the reorganization plan have been violated, and deficiencies may not be eliminated or have not been eliminated within the proper timeframe envisaged by the insolvency judge;
 - 2) if the plan is not in compliance with other regulations governing the area of activity of the insolvency debtor.
 - 3) the proposer of the plan fails to comply with the order of the court within the time limit, in accordance with paragraph 1 of this Article.
- (3) Only the submitter of the reorganization plan may file an appeal against the decision rejecting the reorganization plan.

Hearing on the Reorganization Plan

Article 165

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 62)

- (1) Insolvency judge shall hold a hearing for considering the proposal reorganization plan and voting of creditors within 20 days from the day of submission of the proposed reorganization plan.
- (2) Notice of the scheduled hearing shall be delivered by the court or the plan proponent in a manner approved by the court, to the insolvency debtor, administrator, all creditors and any other affected party no later than 10 days prior to the hearing. The reorganization plan shall be delivered or made easily accessible to the administrator, the debtor, all the creditors known to the court, and any owners no later than 10 days before the hearing.
- (3) The court shall issue a public notice of the hearing for consideration of the reorganization plan and voting by creditors in the Official Gazette of Montenegro and a daily newspaper distributed in the whole territory of Montenegro.
- (4) The notice, referred to in paragraph 3 of this Article, shall indicate the name of the insolvency debtor, the name of the party proposing the plan, the day and place of the hearing and voting procedure, and the manner in which any person may be familiarized with the contents of the plan.
- (5) By way of exception referred to in paragraph 1 of this Article, when proposal of the reorganization plan is submitted simultaneously with initiation of insolvency

proceedings or before the establishment of claims' list, the hearing for consideration of the reorganization plan proposal shall be scheduled within 20 days as of the day when claims' list was established.

Voting and Adoption

Article 166

- (1) All creditors are entitled to vote in proportion to the amount of their claims. In case when claim is disputed or not-investigated the insolvency judge shall assess the grounds and the amount of the claim for the purpose of voting.
- (2) Where voting is performed in writing, ballots certified with the authorized person's signature must be submitted to the court.

Voting Classes

Article 167

- (1) Voting shall be performed within the classes of creditors.
- (2) The following classes of creditors shall be established and they shall vote separately:
 - 1) secured creditors;
 - 2) first tier creditors;
 - 3) second tier creditors;
 - 4) third tier creditors.
- (3) Insolvency judge, upon proposal of the insolvency administrator, may order or approve the formation of one or several additional classes in the following cases:
 - 1) actual and substantial attributes of claims are such that the formation of a separate class is justified;
 - 2) all the claims within a proposed class are substantially alike, except for classes formed for administrative reasons in accordance with paragraph 3 of this Article.
- (4) A special class of claims may be established for administrative reasons where there is a large number of claims (more than 100) whose amounts are small (not exceeding EUR 500) if the court approves the formation of such a class. Upon court approval, such claims from the administrative class may receive expedited settlement, where necessary to relieve the administrative burden that a large number of small claims pose. These claims may be paid only if it is evident that there are sufficient available funds for payment of all priority and senior claims.
- (5) Prior to the commencement of voting, the court shall inform the attendees of the hearing about the voting results in absentia.

Voting of the Plan

Article 168

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 63)

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 39)

- (1) Reorganization plan shall be considered as accepted in one class of creditors if creditors having simple majority in the total amount of claims of creditors in such class have voted in favour of the plan.

- (2) A class of creditors whose claims are to be settled in full prior to the commencement of the implementation of the reorganization plan shall not vote in respect of the reorganization plan, i.e. it is considered that the reorganization plan in such a class has been accepted.
- (3) The reorganization plan is considered adopted if it is properly accepted by majority of formed classes and if it is in accordance with the provisions of this law.
- (4) If more than one reorganization plan is submitted, they shall be voted upon according to the submission order, and the reorganization plan that is first voted in shall be deemed adopted.
- (5) If the reorganization plan fails to receive the required number of votes, the insolvency judge may approve the proponent of the reorganization plan to submit a revised reorganization plan in no later than 15 days and shall schedule a hearing in accordance with this law. If such revised reorganization plan fails to be adopted, the bankruptcy shall be done on the insolvency debtor.
- (6) The commencement date of the reorganization plan implementation is considered to be the date set by the reorganization plan.

Minimal Protection

Article 169

Creditors that did not vote for the reorganization plan shall have the right to be paid the amount, which they would be receiving in case of bankruptcy, in line with the priority of their claim.

Decision on Confirmation of the Reorganization Plan Adoption

Article 170

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 64)

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 40)

- (1) The insolvency judge shall pass a decision to confirm the adoption of the reorganization plan or acknowledge that the plan has not been adopted at the hearing where proposal of reorganization plan is considered and voted on by the creditors.
- (2) The decision on confirmation of the plan shall be posted at the bulletin court board of the court and published in the Official Gazette of Montenegro.
- (3) The deadline for the appeal shall run on the eighth day from the day of publication in the Official Gazette of Montenegro.
- (4) After the decision on confirmation of the reorganization plan adoption has become final, the insolvency proceedings shall be suspended.
- (5) The submitter of the plan shall be obliged to settle the costs of the insolvency proceedings and the obligations of the insolvency estate within 60 days from the date of the finality of the decision confirming the adoption of the reorganization plan.
- (6) If the submitter of the plan does not act in accordance with paragraph 5 of this Article, it shall be considered that the reorganization plan has not been adopted, and the insolvency proceedings against the insolvency debtor shall continue with bankruptcy.

- (7) The insolvency debtor, insolvency administrator, insolvency creditors and separate creditors may file an appeal against the ruling referred to in paragraph 1 of this Article.
- (8) After the decision on confirming the plan becomes final, the insolvency judge shall deliver a copy of the adopted plan to the register of legal entities, or other equivalent register, to post it on the website of such register or publish it in another way if such register does not have its website. The authority keeping the register shall ensure that the adopted reorganization plan permanently remain accessible to any third party.

Legal Consequences of Confirmation of the Plan

Article 171

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 41)

- (1) After the decision on confirmation of the reorganization plan adoption has been passed, all claims and rights of creditors and other persons and obligations of the insolvency debtor envisaged in the reorganization plan shall be regulated solely according to the conditions from the reorganization plan.
- (2) Creditors whose claims arose before the adoption of the reorganization plan, and are not included in the plan, and who have not registered their claims in the insolvency proceedings, cannot settle that claim by forced means during the implementation of the reorganization.
- (3) By virtue of a court order, the adopted reorganization plan has the force of an enforcement document and shall be considered a new contract for settlement of claims presented therein.
- (4) Activities and actions undertaken by the insolvency debtor must be in line with the adopted reorganization plan.
- (5) The insolvency debtor shall be obliged to undertake all the measures prescribed in the adopted reorganization plan.
- (6) After the decision, on confirmation of the reorganization plan adoption, has been passed, all the consequences of initiated insolvency proceedings shall cease, and the designation "in insolvency" shall be removed from the name of the insolvency debtor.

Priority of Creditor Classes

Article 172

In respect of any reorganization plan, creditors of lower priority class may receive funds from the distribution estate, or retain any rights, only if all the claims of creditors of higher priority have been fully settled, or such creditors have voted in favour of lesser treatment in accordance with the reorganization plan.

Settlement over the Nominal Amount of Claims

Article 173

- (1) A reorganization plan may envisage the settlement in the amount exceeding the nominal amount of the original claim, as compensation for extension of the payment dates.
- (2) Creditors of higher priority class may be paid in the amount exceeding the full settlement of their claims if all lower ranking classes of creditors have been fully settled

or if such creditors voted in favour of a different treatment, in accordance with the reorganization plan.

Exemption from Application of Securities Regulations

Article 174

Any securities that are issued or cancelled to participants within the reorganization, in accordance with the adopted reorganization plan, shall not be subject to application of securities regulations in respect of issuance of securities or regulations governing the takeover of joint stock companies.

Creditors Right to Information Access

Article 175

In the course of implementation of the adopted reorganization plan, any creditor to which the plan relates has the right to information and access to acts of the reorganization subject in accordance with the provisions of the law regulating corporate organizations related to the right of shareholders to information.

Execution of the Reorganization Plan

Article 176

After the execution of the reorganization plan whereby the insolvency debtor has fulfilled all the obligations envisaged in the reorganization plan, creditors' claims set forth by the reorganization plan shall cease.

Failure to Act in Accordance with the Adopted Plan and Fraudulent and Illegal Plan as an Insolvency Reason

Article 177

- (1) Creditors covered by the adopted plan, as well as the creditors whose claims incurred before the adoption of the plan but are not covered by the plan, may also file a petition for initiation of insolvency proceedings in the case:
 - 1) that the reorganization plan has been effected in a fraudulent or illegal way;
 - 2) the insolvency debtor fails to act in accordance with the plan or acts contrary to the reorganization plan thus substantially threatening the implementation of the reorganization plan.
- (2) It shall be considered that the implementation of the plan is substantially threatened in terms of paragraph 1 item 2 of this Article if the failure to act in accordance with the plan or acting contrary to the adopted plan resulted in:
 - 1) negative effect on the cash flow of the reorganization entity;
 - 2) disabling of the reorganization entity to conduct its business activity;
 - 3) significant undermining of interests of one or more classes of creditors.
- (3) In the case referred to in paragraph 1 of this Article the insolvency judge may engage an expert or appoint an interim insolvency administrator to establish facts of significance for assessment of the existence of an insolvency reason in the course of preliminary insolvency proceedings.

IX. INTERNATIONAL INSOLVENCY

Application of International Insolvency Provisions

Article 178

- (1) International insolvency provisions shall be applied if:
 - 1) a foreign court or other foreign authority conducting control or supervision of the estate or business operations of the debtor or a foreign representative seeks assistance with regard to a foreign proceeding;
 - 2) a court or an insolvency administrator seeks assistance in a foreign country with regard to an insolvency proceeding conducted in Montenegro in accordance with this law;
 - 3) a foreign proceeding is conducted concurrently with the insolvency proceeding conducted in Montenegro in accordance with this law.
- (2) For the purpose of this law the foreign proceeding implies a judicial or administrative proceeding, including preliminary proceeding that is conducted for the purpose of collective settlement of creditors through reorganization or liquidation in a foreign country in accordance with the regulation governing insolvency, where the assets and business operation of the debtor are under the control or supervision of a foreign court or other competent authority.
- (3) The debtor for the purpose of paragraph 2 of this Article may be:
 - 1) a business organization or legal entity not headquartered in Montenegro;
 - 2) natural person who is not a resident of Montenegro
- (4) A foreign representative in terms of paragraph 1 of this Article shall be a person or authority, including those appointed on interim basis, authorized in a foreign proceeding to administer the reorganization or liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding.

Governing Law

Article 179

- (1) The law of the state where the insolvency proceedings have been initiated shall govern the insolvency proceedings, unless otherwise stipulated by this law.
- (2) In case of recognition of a foreign proceeding in accordance with this Law, excluding rights or secured assets located at the territory of Montenegro shall be subject to application of the regulations of Montenegro.
- (3) The law governing employment contracts shall apply to effects of insolvency proceedings on employment contracts.

In rem Jurisdiction for Recognition of a Foreign Proceeding and Cooperation

Article 180

The recognition of a foreign proceeding and cooperation with foreign courts and other competent authorities shall be conducted by the competent commercial court.

Territorial Jurisdiction for Recognition of a Foreign Proceeding and Cooperation

Article 181

The recognition of a foreign proceeding and cooperation with foreign courts and other competent authorities shall be conducted by the court in whose territory the substantial part of the debtor's assets is located in Montenegro in case referred to in Article 178 paragraph 1 item 1 of this Law, or the court administering the insolvency proceedings in Montenegro in the cases referred to in Article 178 paragraphs 2 and 3 of this law.

Authorization of the Insolvency Administrator to Act in a Foreign Country

Article 182

An insolvency administrator appointed in accordance with this law shall be authorized to act in a foreign country on behalf and for the account of the insolvency debtor, or insolvency estate if allowed by the law of that country.

Exemption in Cases Contrary to Public Order

Article 183

The competent court may refuse to act with regard to an international insolvency if such acting would be contrary to the public order of Montenegro.

Assistance to a Foreign Representative

Article 184

The competent court or insolvency administrator may provide other assistance to a foreign representative, in accordance with the law.

Interpretation

Article 185

When applying the provisions on international insolvency the competent court shall particularly take into account their international character and the need for improvement of their unified application in good faith.

Right to Direct Access

Article 186

- (1) A foreign representative shall have the right to direct acting before the courts in Montenegro.
- (2) When taking actions referred to in paragraph 1 of this Article a foreign representative shall, by submitting a suitable application or its equivalent in order to prove its capacity, enclose the following:
 - 1) decision on initiation of a foreign proceeding and appointment of a foreign representative in original or certified copy or certified transcript, translated in the language in official use in the competent court in Montenegro, together with the proof of its enforceability according to the law of the foreign country;
 - 2) certificate by a foreign court or other competent authority on existence of a foreign proceeding and appointment of the foreign representative;
 - 3) any other proof of existence of a foreign proceeding and appointment of a foreign representative satisfactory to the competent court in Montenegro, in absence of proofs referred to in items 1 and 2 of this paragraph.

Jurisdiction in Case of an Application Submitted by a Foreign Representative

Article 187

By submitting the application to the competent court in Montenegro by a foreign representative, in accordance with this law, the jurisdiction of such court is established for deciding only in respect of the subject application.

Foreign Representative's Petition for Initiating of a Proceeding

Article 188

A foreign representative shall be entitled to submit a petition for initiation of the insolvency proceedings if all the conditions related to initiation of such proceedings have been met in accordance with this law.

Foreign Representative's Participation in a Proceeding

Article 189

Upon recognition of a foreign proceeding, the foreign representative is entitled to participate in a proceeding related to the debtor in accordance with this law.

Application for Recognition of a Foreign Proceeding

Article 190

- (1) A foreign representative may submit an application for recognition of a foreign proceeding, in which the foreign representative has been appointed, to the competent court in Montenegro, whereby they are to prove their capacity in the manner envisaged in Article 186 paragraph 2 of this law.
- (2) The application for recognition shall also be accompanied by a statement of the foreign representative specifying all foreign proceedings related to the debtor that are known to the foreign representative, translated in the language officially used in the competent court in Montenegro.

Assumptions Concerning Recognition

Article 191

- (1) If the decision or certificate referred to in Article 186 paragraph 2 of this law proves that the foreign proceeding is of the character of the proceeding referred to in Article 178 paragraph 2 of this law and that the foreign representative is the person or authority referred to in Article 178 paragraph 4 of this law, the court may deem such facts established.
- (2) The court may consider the documents submitted in support of the application for recognition as authentic, irrespective whether they have been legalized in terms of the law regulating the legalization of documents in international communication.
- (3) In absence of proof to the contrary, the debtor's registered office, or habitual residence in the case of a natural person, is presumed to be the centre of the debtor's main interests.

Ruling on Recognition of a Foreign Proceeding

Article 192

- (1) Save the case referred to in Article 183 of this law, a foreign procedure shall be recognized if:
 - 1) the foreign proceeding has the character of the proceeding referred to in Article 178 paragraph 2 of this law;
 - 2) the foreign representative applying for recognition is the person or authority referred to in Article 178 paragraph 4 of this law;
 - 3) the application meets the requirements referred to in Article 186 paragraph 2 of this law;
 - 4) the application has been submitted to the competent court in accordance with Articles 179 and 180 of this law.

- (2) A foreign proceeding shall be recognized as:
- 1) the main foreign proceeding, if it is conducted in the country of the debtor's centre of main interests;
 - 2) a non-main foreign proceeding, if the debtor has a permanent establishment in such foreign country.
- (3) Main foreign proceeding in terms of paragraph 2 item 1 of this Article means a foreign proceeding conducted in the country of the centre of debtor's main interests not being headquartered in Montenegro. By way of exception, the main foreign proceeding implies a foreign proceeding conducted in the country where the debtor is headquartered, if according to the law of the country of the centre of debtor's main interests a foreign proceeding may not be conducted in such respect.
- (4) Non-main foreign proceeding in terms of paragraph 2 item 2 of this Article implies a foreign proceeding conducted in the country where the debtor has an establishment.
- (5) The establishment in terms of paragraph 4 of this Article implies any place of business where the debtor performs economic activity, using human labour force, goods, or services which is not of transit character.
- (6) An application for recognition of a foreign proceeding shall be decided by the court according to emergency procedure.
- (7) The first instance court shall ex officio or if requested by an interested party amend or cancel the decision on recognition of a foreign proceeding if it has been established that the conditions for its adoption have not been fulfilled or that they have ceased to exist after the recognition of the foreign proceeding.
- (8) After initiating the insolvency proceedings over the insolvency debtor headquartered in Montenegro or having the centre of main interests in Montenegro, the foreign proceeding may be recognized only as a non-main foreign proceeding.

Obligation to Inform

Article 193

From the time of filing the application for recognition of the foreign proceeding, the foreign representative shall promptly inform the court to which the application has been submitted of:

- 1) any substantial change in the status of the foreign proceeding or the status of the foreign representative;
- 2) any other foreign proceeding related to the same debtor that becomes known to the foreign representative.

Assistance Granted after the Application for Recognition of a Foreign Proceeding

Article 194

- (1) From the time of filing an application for recognition until the application is decided upon, the court may, if requested by the foreign representative, provide assistance of interim nature if such assistance is urgently needed for protection of the assets of the insolvency debtor or interests of creditors.
- (2) Assistance referred to in paragraph 1 of this Article shall include the imposing of the following measures:
 - 1) prohibition of enforcement against the debtor's assets;
 - 2) entrusting the administration or sale of all or a part of debtor's assets located in Montenegro to the foreign representative or another person designated by the court,

in order to protect and preserve the value of assets that, by their nature or due to other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy;

- 3) other measures that may be designated after the recognition of the foreign proceeding in accordance with this law.
- (3) The provisions of this law regulating the security measures in the preliminary insolvency proceeding shall be accordingly applied to designation, importance, cancellation and modifying of measures referred to in paragraph 2 of this Article.
- (4) The measures referred to in paragraph 2 of this Article designated by the court shall cease to be valid after the ruling on the application for recognition has been passed, unless their effect has been extended in accordance with this law within the relief to be granted after the recognition of the foreign proceeding.
- (5) The court may refuse to grant requested assistance if such assistance would interfere with the administration of the main foreign proceeding.

Legal Effect of the Recognition of the Main Foreign Proceeding

Article 195

- (1) The consequences of the recognition of the main foreign proceeding are as follows:
 - 1) the initiation of new or discontinuation of initiated proceedings related to debtor's assets, rights, obligations or liabilities are prohibited;
 - 2) enforcement against the debtor's assets is prohibited;
 - 3) transferring, encumbering and other disposing of any of the debtor's assets is prohibited.
- (2) The court may determine exemptions from application of effects referred to in paragraph 1 of this Article only in cases envisaged by this law for exemptions from application of effects of initiating the insolvency proceedings, as well as in the case when it is established that the main foreign proceeding does not provide adequate protection of interests of creditors in Montenegro.
- (3) The prohibition referred to in paragraph 1 item 1 of this Article is without prejudice to filing appeals, or initiating proceedings, if required for preservation of claims of creditors from the debtor.
- (4) The prohibition referred to in paragraph 1 of this Article is without prejudice to submission of the petition for initiation of insolvency proceedings in Montenegro or to submission of claims in such proceedings.

Assistance Granted after the Recognition of a Foreign Proceeding

Article 196

- (1) Upon the recognition of a foreign proceeding, whether main or non-main, the court may, if requested by the foreign representative, provide adequate assistance through designation of the following measures, if it is required for the protection of the insolvency debtor's assets or interests of creditors:
 - 1) prohibition of the initiation of new or discontinuation of initiated proceedings related to debtor's assets, rights, obligations or liabilities, if the same have not been terminated in accordance with Article 195 paragraph 1 item 1 of this law;
 - 2) prohibition of enforcement against the debtor's assets, if the enforcement has not been suspended in accordance with Article 195 paragraph 1 item 2 of this law;

- 3) prohibition of transferring, encumbering and other disposing of any of the insolvency debtor's assets, if such prohibition is not the result of the application of the provision of Article 195 paragraph 1 item 3 of this law;
 - 4) presenting of proofs by hearing the witnesses or in another way, as well as provision of data related to assets, business activities, rights, obligations and responsibilities of the debtor;
 - 5) entrusting the administration or sale of all or a part of debtor's assets located in Montenegro to a foreign representative or other person designated by court;
 - 6) extension of validity of measures referred to in Article 194 paragraph 1 and 2 of this law;
 - 7) granting other authorizations that the insolvency administrator has in respect of this law or determining of other prohibitions in accordance with this law.
- (2) After the recognition of a foreign proceeding, whether main or non-main, the court may if requested by a foreign representative entrust the distribution of all or part of the debtor's assets located in Montenegro to a foreign representative or other person designated by court, provided that the court is settled that the interests of creditors in Montenegro are adequately protected.
 - (3) When providing assistance to a foreign representative in case of a non-main foreign proceeding in accordance with this Article, the court shall establish that such assistance is related to assets that, under the provisions of this law, should be administered in the secondary foreign proceeding or related to information required in that foreign proceeding.

Protection of Creditors and other Interested Persons

Article 197

- (1) When passing a decision on providing or denying assistance in accordance with Article Articles 194 and 196 of this law or in modifying or abrogating such measures in accordance with paragraph 3 of this Article, the court shall be obliged to establish that the interests of creditors and other interested persons, including the debtor, are adequately protected.
- (2) The court may subject the effect of specific measures to conditions in the manner it finds suitable.
- (3) The court may, if requested by the foreign representative or a person affected by the measures envisaged within the relief granted based on Articles 194 and 196 of this law or ex officio, modify or abrogate specific measures.

Refusal of Debtor's Legal Actions

Article 198

- (1) After the recognition of a foreign proceeding, the foreign representative may refute debtor's legal actions in accordance with the rules on refusal of legal actions of the insolvency debtor.
- (2) In case of a non-main foreign proceeding, the court must be settled that refusal relates to assets that, according to the provisions of this law, should be administered in such foreign secondary proceeding.

Participation of a Foreign Representative in a Proceeding Conducted in Montenegro

Article 199

- (1) After the recognition of a foreign proceeding, the foreign representative may, according to law, participate in any proceedings where the debtor is a party.
- (2) The existence of authorization of the foreign representative is a prelocutory question in the proceeding referred to in paragraph 1 of this Article.

Cooperation and direct communication between courts in Montenegro and foreign courts and other competent authorities or foreign representatives

Article 200

- (1) In matters referred to in Article 178 of this law, the court shall be obliged to cooperate to the maximum extent possible with foreign courts and other competent authorities or foreign representatives, either directly or through the insolvency administrator.
- (2) The court shall be entitled to communicate directly, or to request information or assistance directly from foreign courts and other competent authorities or foreign representatives.

Cooperation and direct communication between the insolvency administrator and foreign courts and other competent authorities or foreign representatives

Article 201

- (1) In the matters referred to in Article 178 of this law, the insolvency administrator shall, in exercise of its functions and subject to the supervision of the court, cooperate to the maximum extent possible with foreign courts and other competent authorities or foreign representatives.
- (2) The insolvency administrator is entitled, in the exercise of its function and subject to the supervision of the court, to communicate directly with foreign courts and other competent authorities or foreign representatives.

Forms of cooperation

Article 202

The cooperation referred to in Articles 200 and 201 of this law may be conducted in any suitable way, including but not limited to:

- 1) appointment of a person or authority to act as ordered by the court;
- 2) exchange of information in a way that the court finds acceptable;
- 3) coordination of the administration and supervision of the debtor's assets and affairs;
- 4) approval or application of agreements concerning the coordination of proceedings by courts;
- 5) coordination of concurrent proceedings conducted in respect of the same debtor.

Opening of insolvency proceedings after the recognition of the main foreign proceeding

Article 203

- (1) After the recognition of a main foreign proceeding, insolvency proceedings may be initiated only in the case that the debtor has assets in Montenegro.
- (2) Insolvency proceedings referred to in paragraph 1 of this Article shall be restricted only to the insolvency debtor's assets located in Montenegro, to the extent required to implement cooperation in accordance with Articles 200, 201 and 202 of this law, and to other assets of the insolvency debtor that, according to this law, should be administered within the insolvency proceedings.

Coordination of an insolvency proceeding and a foreign proceeding

Article 204

- (1) Where a foreign proceeding and an insolvency proceeding are conducted concurrently in respect of the same debtor, the court shall seek cooperation and coordination in accordance with Articles 200, 201 and 202 of this law.
- (2) If at the time of filing the application for recognition of a foreign proceeding, the petition for initiation of the insolvency proceeding has already been filed:
 - 1) any assistance granted under Article 194 or 196 of this law must be consistent with the rules and needs of the preliminary insolvency proceedings, i.e. insolvency proceedings;
 - 2) Article 195 of this law shall not apply if the foreign proceeding is recognized as the main foreign proceeding.
- (3) When the petition for initiation of the insolvency proceedings is filed after the recognition or after the filing of the application for recognition of the foreign proceeding:
 - 1) the court shall ex officio review any assistance provided in accordance with Article 194 or 196 of this law and modify or abrogate any such measures if they are contrary to the rules or needs of the preliminary insolvency proceedings, or the insolvency proceedings;
 - 2) if the foreign proceeding is a main foreign proceeding, the modification or abrogation of the prohibition referred to in Article 195 paragraph 1 of this law shall be performed in accordance with Article 195 paragraph 2 of this law, if such prohibitions are contrary to the rules or needs of the preliminary insolvency proceedings, or the insolvency proceedings.
- (4) In granting or modifying assistance measures provided to a representative of a non-main foreign proceeding, the court must be settled that such assistance relates to assets that, under the provisions of this law, should be administered in such non-main foreign proceeding, or concerns information required in such proceeding.

Acting in Case of Several Foreign Proceedings

Article 205

In the cases referred to in Article 178 of this law, when more than one foreign proceeding is initiated regarding the same debtor, the court shall seek the cooperation and coordination in accordance with Articles 200, 201 and 202 of this law, where:

- 1) any assistance granted under Article 194 or 196 of this law to a representative of a foreign secondary proceeding after the recognition of a foreign main proceeding must be in accordance with the rules and needs of the main foreign proceeding;
- 2) if a main foreign proceeding is recognized after the recognition of secondary foreign proceeding or after the filing of the application for recognition of a non-main foreign proceeding, the court shall ex officio review any assistance provided in accordance with Articles 194 or 196 of this law and modify or abrogate any such measures if they are contrary to the rules or needs of the main foreign proceeding;
- 3) if, after the recognition of a secondary foreign proceeding, another non-main foreign proceeding is recognized, the court shall ex officio or if requested by a foreign representative designate, modify or abrogate the relief measures for the purpose of facilitating the coordination of proceedings.

Assumption of Existence of an Insolvency Reason based on Recognition of a Main Foreign Proceeding

Article 206

In the absence of evidence to the contrary, the existence of an insolvency reason shall be assumed in case of existence of a final ruling on recognition of the main foreign proceeding conducted regarding the insolvency debtor. The court shall not initiate insolvency proceedings if the insolvency debtor proves that none of the insolvency reasons referred to in Article 12 of this law exists.

Settlement of Creditors in Concurrent Proceedings

Article 207

Except in the case of existence of a secured or priority right, the creditor whose claim has been paid in part in the proceeding that is conducted in accordance with the law regulating insolvency in a foreign country, may not accept payment in respect of the same claim in an insolvency proceeding conducted regarding the same debtor as long as the payments to other creditors of the same seniority or class in reorganization are proportionally less than the amount that such creditor has already received.

X. TRANSITIONAL AND FINAL PROVISIONS

Transitional provisions

Article 208

- (1) Insolvency proceedings initiated according to the Law on Insolvency of Corporate Organizations (Official Gazette of the Republic of Montenegro no. 6/02, 01/06, 02/07, and Official Gazette of Montenegro no 62/08), in which the decision on initiation of insolvency proceedings has not been passed so far, shall continue pursuant to the provisions of this Law.
- (2) Insolvency proceedings initiated by the day this Law enters into force shall continue pursuant to the provisions of the Law on Insolvency of Corporate Organizations (Official Gazette of the Republic of Montenegro no. 6/02, 01/06, 02/07, and Official Gazette of Montenegro no. 62/08).

Article 208a

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 053/16 of 11.08.2016, Article 65)

- (1) Insolvency proceedings initiated under the Law on Insolvency (Official Gazette of Montenegro, no. 1/11), in which a decision on the opening of insolvency proceedings has not been adopted by the date of entry into force of this law, shall be terminated pursuant to provisions of this law.
- (2) Insolvency proceedings in which, by the date of entry into force of this law, a decision on the opening of insolvency proceedings has been made shall continue pursuant to provisions of the Law on Insolvency (Official Gazette of Montenegro, no. 1/11).

Initiated Proceedings

Article 208b

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 42)

- (1) Insolvency proceedings initiated under the Law on Insolvency (Official Gazette of Montenegro, no. 1/11, 53/16, 32/18 and 62/18), in which a decision on the main division has not been made by the date of entry into force of this law, shall be terminated pursuant to the provisions of this law.
- (2) Insolvency administrators appointed in proceedings initiated under the Law on Insolvency (Official Gazette of Montenegro, no. 1/11, 53/16, 32/18 and 62/18), shall continue working in those procedures until they are completed, provided that in accordance with Article 208c paragraphs 1 and 2 of this law they submit an application and pass a knowledge exam.

Deadline for Submission of Applications and Taking the Exam

Article 208c

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 42)

- (1) The insolvency administrator who is registered on the list of insolvency administrators on the date of entry into force of this law shall be obliged to submit to the Ministry an application to take the knowledge test referred to in Article 25d of this law within 30 days from the date of entry into force of this law.
- (2) The insolvency administrator referred to in paragraph 1 of this Article shall be obliged to pass the insolvency administrator's knowledge test within six months from the date of submission of the application for taking the insolvency administrator's knowledge test.
- (3) The Ministry shall delete an insolvency administrator from the list of insolvency administrator who:
 - 1) did not submit an application to the Ministry to take the insolvency administrator's knowledge test within 30 days from the date of entry into force of this law, or
 - 2) did not pass the knowledge verification exam within six months from the date of submission of the application for taking the insolvency administrator's knowledge verification exam.

Establishing the Registry of Licenced Insolvency Administrators

Article 208č

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 42)

- (1) The Register of licensed insolvency administrators shall be established within one year from the date of entry into force of this law.
- (2) Until the establishment of the Register referred to in paragraph 1 of this Article, insolvency administrators shall be appointed from the list of insolvency administrators established in accordance with the Law on Insolvency (Official Gazette of Montenegro, no. 1/11, 53/16, 32/18 and 62/18).

Obligation to Submit Request for Issuance of the Licence

Article 208ć

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 42)

The insolvency administrator who is registered in the list of insolvency administrators and who has passed the insolvency administrator's knowledge test shall be obliged to submit an application to the Ministry for the issuance of the license for the work of insolvency administrator within 15 days from the date of establishment of the Register of licensed insolvency administrators.

Establishing the Registry of Insolvency Estates

Article 208d

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 42)

The Registry of Insolvency Estates shall be established within three months from the day of entry into force of this law.

Bylaws

Article 209

- (1) Bylaws necessary for the implementation of this Law shall be adopted within six months as of entry into force of this Law.
- (2) Until the adoption of bylaws referred to in paragraph 1 of this Article, regulations passed based on the Law on Insolvency of Corporate Organizations (Official Gazette of Montenegro, no. 6/02, 1/06, 2/07, and Official Gazette of Montenegro no. 62/08) shall apply.

Reason for Alignment of Bylaws

Article 209a

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 43)

- (1) Bylaws for implementation of this law shall be adopted within two months from the date of entry into force of this law.
- (2) Until the adoption of regulations referred to in paragraph 1 of this Article, the regulations adopted on the basis of the Law on Insolvency (Official Gazette of Montenegro, no. 1/11, 53/16, 32/18 and 62/18) shall apply.

Application

Article 209b

(Law amending the Law on Insolvency, Official Gazette of Montenegro no. 001/22 of 10.01.2022, Article 43)

- (1) Provisions of Articles 25a to 25ć, Articles 25đ to 25h, Articles 29a, 29b, 29c and Article 30 item 2 of this law shall be applied one year after entry into force of this law.

(2) On the day of application of provisions referred to in paragraph 1 of this Article, provisions of 25, 27, 28 and 29 Law on Insolvency (Official Gazette of Montenegro no. 1/11, 53/16, 32/18 and 62/18) are hereby repealed.

Law Repealing

Article 210

On the day this law enters into force, the Law on Insolvency of Business Companies (Official Gazette of the Republic of Montenegro", no. 6/02, 01/06, 02/07, and Official Gazette of Montenegro no. 62/08) is hereby repealed.

Entry into Force

Article 211

This Law shall enter into force on the eighth following that its publication in the Official Gazette of Montenegro.