Business Reorganisation Assessment

Montenegro

European Bank
for Reconstruction and Development

Special thanks to:

BDK Advokati
Karanovic & Partners
Stankovic & Partners Law Firm
Schoenherr
Secretariat to the Competitiveness Council of Montenegro

Part A

General Information

Macro Data

0.623	9.0%	US$ 9,060	€ Euro – EUR	9%	0.4%	15.86%
Population (million)[1]	GDP growth rate[1]	GDP per capita[1]	Currency	Corporate tax rate[2]	Inflation rate[1]	Unemployment rate[1]

Insolvency Legislation

The primary legislative text governing insolvency and restructuring proceedings for non-bank legal entities and entrepreneurs in Montenegro is the Bankruptcy Law (the Insolvency Law) as published in the Official Gazette of Montenegro, Nos. 1/2011, 53/2016, 32/2018 and 62/2018. Relevant secondary legislation includes the Rulebook on the detailed basis and criteria for determining the amount of compensation and award for the work of the bankruptcy administrator as published in the Official Gazette of Montenegro, No. 27/2012 and the Rulebook on the professional exam for the bankruptcy administrator as published in the Official Gazette of Montenegro No. 63/2016.

The Law on Consensual Financial Restructuring of Debts towards Financial Institutions (the Consensual Financial Restructuring Law) as published in the Official Gazette of Montenegro, Nos. 20/2015, 37/2017 and 43/2018, provided a debtor in financial difficulty with the possibility of reaching an out-of-court agreement with its creditors through the process of mediation supervised by the **Centre of Mediation**. This procedure was available for financial institution creditors and for legal and natural person debtors but expired in 2019. It was part of a strategy for the reduction and recovery of non-performing loans known as the 'Podgorica Approach'.

Insolvency Data

There is limited statistical data available on insolvency-related matters. Some data is available on the **website** of the Commercial Court in Montenegro. According to its website, the Commercial Court in Montenegro initiated 437 insolvency (bankruptcy) proceedings in 2020. However, there is no indication of the number of reorganisation proceedings. Another source of information is the online database of the Central Registry of Commercial Entities (see below) which can be searched by applying the "insolvency" filter (crps.me). However data obtained from the Central Registry is fully unaggregated.

[1] **IMF – Source as of July 2021:** www.imf.org/en/Countries/MNE

[2] **PWC – Source as of July 2021:** taxsummaries.pwc.com/montenegro/corporate/taxes-on-corporate-income

[3] **World Bank – Source as of July 2021:** data.worldbank.org/indicator/SL.UEM.TOTL.ZS?locations=ME

Company Information

The company law framework in Montenegro is governed mainly by the **Law on Business Organisations**, dated 3 July 2020, as published in the Official Gazette of Montenegro No. 65/2020.

The Central Registry of Business Entities is the body in charge of the registration of legal entities and entrepreneurs. Information relating to the incorporation and the corporate life of legal entities is contained in the Central Registry. The Central Registry can be accessed free of charge **here**.

Insolvency Courts, Regulatory Authorities and Practitioners

The **Commercial Court of Montenegro** in Podgorica is the competent first instance court for hearing insolvency cases.

The **Ministry of Justice, Human and Minority Rights of Montenegro** is the main official authority for insolvency. The Ministry is responsible for establishing the programme, terms and conditions of the professional entrance examination for insolvency practitioners (known as bankruptcy administrators) and for registration and removal of insolvency practitioners from a list of authorised practitioners. The Ministry maintains the list of authorised insolvency practitioners, which is available **here**.

Continue to Part B →

Part B

Business Reorganisation

Are there any incentives for extrajudicial voluntary agreements (workouts)?

There are no specific incentives for extrajudicial voluntary agreements. However, the pre-negotiated reorganisation plan allows the debtor to submit a pre-negotiated plan with its creditors to the court.

What is the nature and purpose of the reorganisation procedure?

There is one reorganisation procedure with an option for a pre-negotiated reorganisation plan under the Insolvency Law. **Click here** for an overview of the procedure.

The purpose of the reorganisation procedure (reorganizacija) is the settlement of creditors' claims according to an adopted reorganisation plan, through the redefining of debtor-creditor relationships, changes in the debtor's legal status, or in any other manner provided by the reorganisation plan (Article 1).

Reorganisation should secure a more favourable settlement of creditors compared to liquidation, especially if economically justifiable reasons exist for the continuation of the debtor's business. The reorganisation plan can be submitted to the court either simultaneously with the petition for commencement of insolvency proceedings, in which case it is a pre-negotiated plan, or following the petition (Article 159).

The reorganisation plan can include: debt rescheduling; change of maturity, interest rates or other terms of the loan, credit or other claim or security instrument; and debt write-off (Article 161).

Who can commence the process and what entry conditions apply?

The reorganisation plan can be submitted to the court simultaneously with the petition for commencement of insolvency proceedings or within 60 days from the date of the opening of insolvency proceedings. A maximum 15-day extension can be granted for the submission in specific circumstances (Article 159).

Insolvency proceedings are opened where a debtor is in a state of permanent insolvency or over-indebtedness. The debtor is deemed to be permanently insolvent if it is unable to meet its payment obligations within 45 days from the liability due date, or if all payments have been completely suspended for a consecutive period of 30 days. The debtor is deemed to be over-indebted if its assets are less than its liabilities (Article 12).

Insolvency proceedings may be initiated by a petition of a creditor, debtor or liquidator. A creditor may file a petition for the initiation of insolvency proceedings, regardless of the grounds for claims, only where the debtor is permanently insolvent and where the creditor was unable to settle its claims in an enforcement procedure conducted in Montenegro through any means of enforcement within 45 days from the date of initiation of enforcement proceedings. However, a debtor may file a petition for the initiation of insolvency proceedings and does not need to establish the grounds for insolvency (Article 56).

Is there any court involvement?

Yes. The entire process for the adoption of a reorganisation plan, including the commencement of the insolvency proceedings, the review of the proposed plan, the organisation of voting of creditors, and the approval of the plan, is administered by the court (Articles 61, 62, and 170).

Are there any hybrid reorganisation procedures?

The pre-negotiated reorganisation procedure is hybrid because of the minimal involvement of the court.

Does the debtor remain in possession of the company and continue carrying its business operations while conducting the reorganisation?

Yes, the debtor remains in possession of its business but under different management since, as of the date of opening of insolvency proceedings, the representation and management rights of the executive director, representative and attorney, as well as the rights of the management bodies of the debtor, are terminated and transferred to the insolvency practitioner, also known as the insolvency administrator (Articles 76 and 24).

Is there a need to appoint an insolvency practitioner?

Yes, the court appoints the insolvency practitioner, also known as an insolvency administrator, in its decision on the opening of insolvency proceedings (Article 29).

The insolvency practitioner manages the debtor's operations and represents the debtor (Article 24).

References to Articles in this part are to Articles of the Insolvency Law, unless specified otherwise. For an explanation of technical terms, please see the **Glossary of the Main Assessment Report**

Is there any applicable stay or moratorium?

Yes, at the initial stage of the proceedings, the insolvency judge may, with or without the request of the petitioner for initiation of insolvency proceedings, decide on the opening of the preliminary proceedings and impose security measures in order to prevent any changes in the economic status of the debtor. Security measures can include, among other matters, a prohibition or temporary delay of enforcement actions against the debtor, including the prohibition or temporary delay of the exercise of secured creditors' rights (Article 64).

As of the entry into force of the decision on opening the insolvency proceedings, all judicial and administrative proceedings related to the debtor and its property are suspended (Article 90).

From the date of the opening of insolvency proceedings, no enforced execution or any other procedural measure can be determined or taken against the insolvency debtor and/or its assets, except for enforcement related to the liabilities of the insolvency estate. Any procedures in progress are suspended (Article 95).

Is there any protection for essential contracts and to prevent termination of contracts by third parties?

Yes, there is some protection with respect to essential services but there is no general prohibition on third parties including contractual termination provisions based on a debtor's insolvency or entry into an insolvency or reorganisation procedure. Legal entities providing services of public interest (communal, telecommunications and energy supply) may not suspend the provision of these services to an insolvency debtor on the basis of unpaid invoices created before the submission of the proposal for initiating insolvency. The insolvency judge may order the debtor to deposit part of its funds (valued at one month's services) with the court in order to ensure payment of such services in the future (Article 67).

Is there a provision for new financing?

No, there are no express provisions on new financing. However, after the decision on confirming the adoption of the reorganisation plan is made, all claims and rights of creditors and third parties along with obligations of the debtor determined by the reorganisation plan are regulated exclusively according to the conditions of the reorganisation plan (Article 171). One of the measures for the implementation of the reorganisation plan could be concluding a loan agreement (Article 161). As a result, in practice the new loan may be protected by creating a security interest over the debtor's assets.

Does the law recognise separate classes of creditors for voting purposes?

Creditors should vote on the reorganisation plan in separate classes. The following creditor classes should be determined, in descending order of priority: secured creditors; creditors of the first payment order relating to employees' claims; creditors of the second payment order relating to claims of public revenues which have become due; and creditors of the third payment order relating to claims of other insolvency creditors, including the claims of creditors mentioned in the first two categories above exceeding specific thresholds.

The judge may, at the proposal of the insolvency practitioner, approve the formation of one or several additional classes when real and substantial characteristics of claims justify the formation of a special class and when all claims within the proposed special class are significantly similar (Articles 55 and 167).

What are the majorities required to approve a reorganisation plan?

All creditors have the right to vote in proportion to the amount of their claims (Article 160).

The reorganisation plan is considered adopted in each class if creditors holding a simple majority of claims by value in that class vote in favour. The reorganisation plan is considered adopted if it is supported by the majority of voting classes (Article 168). It is therefore not necessary to get the consent of every class and cross-class cram down is possible.

Creditors which did not vote for the reorganisation plan are entitled to payment of the amount they would have received in the event of an insolvent liquidation in accordance with the priority of their claims (Article 169).

Who does the reorganisation plan bind?

The approved reorganisation plan is binding on all affected creditors. On the decision on adoption of the reorganisation plan, all claims and rights of creditors and other parties, and obligations of the insolvency debtor, determined by the reorganisation plan are governed exclusively in accordance with the terms of the reorganisation plan (Article 171).

Creditors which did not vote in favour of the reorganisation plan have the right to payment of the amount that they would have received in the case of an insolvent liquidation in accordance with the payment order of their claims (Article 169).

What is the timeframe for the reorganisation procedure and any moratorium?

The court will, within three days from the date of submission of a petition for the initiation of insolvency proceedings, adopt a decision on whether to initiate preliminary insolvency proceedings. Preliminary insolvency proceedings may be initiated in order to determine the grounds for the initiation of insolvency proceedings (Article 61).

However, insolvency proceedings may be opened without the preliminary insolvency proceedings' phase in the following cases: if the debtor files a petition for the initiation of insolvency proceedings; if a creditor files a petition for initiation of insolvency proceedings and the debtor acknowledges the existence of grounds for insolvency; and when the proceedings have been initiated based on the petition filed by a creditor which was unable to settle its claims in an enforcement procedure (Article 62).

The reorganisation plan may be proposed by: the debtor; an insolvency practitioner; secured creditors holding at least 30 per cent of all secured claims; unsecured creditors holding at least 30 per cent of all unsecured claims; and shareholders of the debtor owning at least 30 per cent of the share capital (Article 162).

A debtor that wants to propose a reorganisation plan has to submit a statement on its intention to undergo reorganisation, within 30 days from the opening of insolvency proceedings (Article 133).

The reorganisation plan may be proposed within 60 days from the date of the opening of insolvency proceedings and a maximum 15-day extension can be granted for such proposal in specific circumstances (Article 163).

The implementation of the reorganisation plan should not exceed five years (Article 160).

Has the UNCITRAL Model Law on Cross Border Insolvency been adopted?

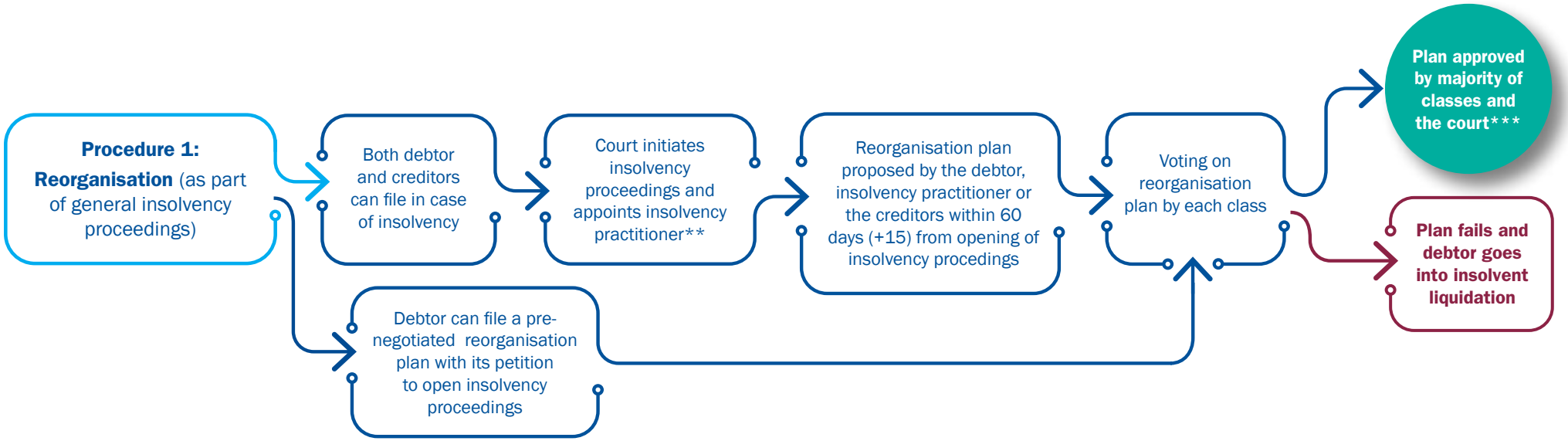
Yes, the UNCITRAL Model Law was adopted in 2002, by virtue of the earlier Law on Insolvency of Companies (superseded by the Insolvency Law). As a consequence, foreign insolvency proceedings are eligible for recognition in Montenegro if certain criteria are met (Article 192).

Effects of recognition of foreign proceedings may include: prohibition of initiation of new and termination of ongoing procedures related to property, rights, obligations or responsibilities of the debtor; prohibition of enforcement actions over the property of the debtor; and prohibition of transfer, disposal or creating of a lien of the property of the debtor (Articles 194 and 195).

Special features/observations:

Montenegro is among relatively few economies where we invest where there is a pre-negotiated reorganisation procedure that allows a company to present simultaneously with the petition for the opening of insolvency proceedings a prepared plan for court-supervised reorganisation. This is an option, not an obligation, as the plan can also be submitted following the petition for insolvency.

Overview of Montenegrin Business Reorganisation Framework*



* This provides a high-level overview of the business reorganisation procedures. See the commentary in this profile and the Insolvency Law for further details, including with respect to any applicable moratorium and creditor voting thresholds

** In some cases the court will open preliminary insolvency proceedings to determine the grounds for the initiation of insolvency proceedings, e.g. if the applicant is not the debtor and the debtor has not accepted that insolvency grounds exist.

***Implementation of plan has a five-year maximum term.

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